

VipIn Kumar Vs. Raj Kumar and anr.

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Court : Allahabad

Decided On : Jan-12-2007

Reported in : 2007(2)AWC1468

Judge : Rakesh Tiwari, J.

Appellant : VipIn Kumar

Respondent : Raj Kumar and anr.

Advocate for Def. : Sri. K. Shailendra

Judgement :

Rakesh Tiwari, J.

1. Heard Sri Rajesh Tripathi for the petitioner and Sri K. Shailendra for contesting respondent No. 1.
2. This petition has been filed for quashing of the impugned order dated 4.3.2005 passed by the Civil Judge (Senior Division), Hathras in P.A. Case No. I of 2002 Raj Kumar v. Vipin Kumar and Ors.
3. By the aforesaid order the Civil Judge (Senior Division), Hathras has rejected the application moved by the petitioner for amendment on the ground that it is only a dilatory tactics adopted by the petitioner to delay the decision of the matter.

4. The contention of the learned Counsel for the petitioner is that an application under Section 21(1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as U.P. Act No. XIII of 1972) was filed by the petitioner before the Prescribed Authority which was numbered as P.A. Case No. 1 of 2002 Raj Kumar v. Vipin Kumar and Anr. The application was for eviction of the petitioner from the shop in dispute and it was prayed that the same may be released in favour of the landlord on the ground of bona fide need for himself and his eldest son Sri Ajay Kumar who is unemployed.

5. A written statement was filed by the petitioner denying the allegations made in the release application that the need of the landlord is bona fide and that Sri Ajay Kumar, the eldest son of the landlord is unemployed. In fact the landlord is already doing their business from other shops and is earning sufficient income and Sri Ajay Kumar is already employed as a Munim in M/s. Anil & Co., situated at Krishi Utpadan Mandi Samiti, Yard Hathras.

6. The amendment has been sought on the ground that during the pendency of the aforesaid case certain subsequent developments/events took place and came to the knowledge of the petitioner which he wanted to incorporate by way of amendment in his written statement by way of adding paragraph Nos. 22(A) to 22(D). The amendment application has been appended as Annexure-3 to the writ petition.

7. The amendments sought by the petitioner are to the effect that the father of the petitioner is about 88 years of age and will not be able to do any business. Sri Ajay Kumar is working as a Munim in M/s. Anil & Co. and the petitioner has no other shop except the shop in dispute from which he is earning his livelihood for himself and his family.

8. Sri K. Shailendra, learned Counsel for the respondents, has submitted that the petitioner is a tenant of a shop situate at Nunihai Bazar, Nayaganj, Sabzi Mandi, Hathras and has come up in this writ petition against an order rejecting the amendment application filed in an application for release filed by the landlord under Section 21(1) of U.P. Act No. XIII of 1972. He states that the shop is on a monthly rent of Rs. 216 per month, the area of which is more than 100 sq. ft.

situate in the main market of Nunihai Bazar aforesaid wherein the petitioner is doing his business of electrical goods. He states that the rent of a shop in the locality of the aforesaid area is not less than Rs. 5,500 per month. He further submits that the petitioner has also got a fresh writ petition listed and then got the same dismissed on 12.12.2005 for want of prosecution and then he again got the writ petition restored on 18.1.2006 but never argued the case on merits; that the petitioner is deliberately delaying the proceedings of P.A. Case No. 1/2002 by contending that he has challenged the order dated 4.3.2005 in High Court which has seized of the matter.

9. It is vehemently urged that the petitioner-tenant is enjoying his own two shops which are just 25 paces away from the shop in dispute but is neither ready to vacate the same nor is letting the proceedings to go on before the Prescribed Authority in the garb of filing this writ petition.

10. From the order impugned to this writ petition passed by the Prescribed Authority, it appears that the case was listed for arguments and the petitioner-tenant has already taken two adjournments earlier but did not argue the case. The Prescribed Authority has found that the amendment sought by the petitioner is vague as he has not specifically averred in the application as to when he came to know about the new facts and further that whatever has been stated by him in the amendment application could have been brought into evidence by him in his statement and evidence in the case that the need of the landlord was not bona fide which he has already stated in his written statement and that he only wants to delay the proceedings.

11. The conduct of the petitioner as appears from the record cannot be appreciated. It is ill-motivated and not in good faith. The Prescribed Authority has rightly come to the conclusion that he wants to delay the proceedings even though he has his own two shops just about 25 paces away in which he has already been running his business. The delay being caused by the petitioner appears to be with ulterior motive to harm the respondent in the facts and circumstances mentioned above.

12. In this view of the matter the petition is dismissed.

13. However, the Prescribed Authority is directed to conclude the proceedings expeditiously by a reason and speaking order in accordance with law within a period of two months from the date of production of a certified copy of this order by either of the parties. No order as to costs.

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