

State of U.P. and anr. Vs. Ivth Additional District Judge and ors.

State of U.P. and anr. Vs. Ivth Additional District Judge and ors.

SooperKanoon Citation : sooperkanoon.com/473516

Court : Allahabad

Decided On : Feb-28-2005

Reported in : 2005(1)ARC772; 2005(3)AWC2148

Judge : Mukteshwar Prasad, J.

Acts : Limitation Act - Sections 5; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 10, 21, 21(8), 22 and 24

Appeal No. : Civil Misc. Writ Petition No. 34684 of 1995

Appellant : State of U.P. and anr.

Respondent : ivth Additional District Judge and ors.

Advocate for Def. : Prabhat Agarwal, S.C.

Advocate for Pet/Ap. : K.S. Singh, Adv. and ;U.K. Pandey, S.C.

Disposition : Petition allowed

Judgement :

Mukteshwar Prasad, J.

1. Heard learned Standing Counsel for the petitioners and Sri Prabhat Agarwal, learned Counsel for respondent No. 3.

2. Counter and rejoinder affidavits have been exchanged between the parties and are on record. With the consent of learned Counsel for the parties, the petition is being disposed of finally at this stage,

3. By means of this petition, the tenant-petitioners have challenged the order-dated 5.8.1995 passed by the respondent No. 1 whereby the tenants' application for condonation of delay under Section 5 of the Limitation Act was rejected.

4. It appears that an application under Section 21 (8) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'the Act') was filed by the landlord, respondent No. 3 for enhancement of the rent. The building in question was admittedly let out to the State of U.P. in which the office of Trade Tax Officer, Kasganj, Etah was functioning. The application of the landlord was finally disposed of on 31.3.1994 by the Rent Control and Eviction Officer (hereinafter referred to as 'the R.C. and E.O.')

and the rent was enhanced to Rs. 3333.33 w.e.f. 1.1.1993.

5. After disposal of the application under Section 21 (8) of the Act, the tenants applied for issuing a certified copy of the order, which was issued on 23.4.1994. Thereafter, the department took time in obtaining permission of the State Government for filing an appeal as provided under Section 22 of the Act and the correspondence took place. Ultimately on 28.6.1994, the State Government granted permission to file an appeal against the order-dated 9.2.1994 passed by R.C and E.O. It was also made clear in the order issued by the Government that an application for condonation of delay would also be moved. Thereafter, an appeal was filed on 14.7.1994 in the Court of District Judge, Etah alongwith an application for condonation of delay, The then IVth Additional District Judge found that there was no sufficient cause for condonation of delay and as such, the Court rejected the application and appeal was also dismissed as barred by time. Hence this writ petition.

6. Learned Standing Counsel has urged that there was delay of 54 days only which should have been condoned. It is well known that departments take their own time in obtaining necessary permission to file appeal etc. from the Law Department of the State Government and considerable time is wasted in this

exercise. In the instant case, an application was moved on 4.4.1994 for issuing a certified copy of the order, which was received on 23.4.1994. Thereafter, correspondence took place and after obtaining permission of the State Government, the appeal was filed on 14.7.1994.

7. On the other hand, learned Counsel for the respondent has contended vehemently that the State Government granted permission to file an appeal against the order dated 9.2.2004 passed by R.C. and E.O. and the permission was granted on 28.6.1994. He has, therefore, submitted that the respondent No. 1 rightly refused to condone the delay and dismissed the appeal.

8. After having considered the rival contention of the parties and perusing the entire material on record; I am inclined to accept the contention of learned Standing Counsel. Admittedly, the order enhancing the rent of the disputed accommodation was passed by the R.C. and E.O. on 31.3.1994. The officers of the department moved an application to the Government for according permission of file an appeal. Annexure-12 to the writ petition dated 6.6.1994 indicates that a letter was sent by the Commissioner, Trade Tax to Special Secretary, Finance for granting permission to file an appeal against the impugned order-dated 31.3.1994. Thereafter, on 28.6.1994, the Joint Legal Remembrancer granted permission for filing an appeal against the order-dated 31.3.1994. The order-dated 9.2.1994 passed by the R.C.&E.O.; is also on record, which in my view is not appealable.

Section 22 of the Act runs as under:-

'22. Appeal.- Any person aggrieved by an order under Section 21 or Section 24 may within thirty days from the date of the order prefer an appeal against it to the District Judge, and in other respect, the provisions of (Section 10) shall mutadis mutandis apply in relation to such appeal.'

9. When all the papers filed by the petitioners including the letter of the Commissioner, Trade tax are read together, it is crystal clear that Trade Tax Department sought permission of the State Government for filing an appeal against the final order passed by the R.C. and E.O. which was accorded vide letter dated 28,6.1994. It is true that there is typing error in the letter regarding date of

impugned order. It appears that respondent No. 1 took a very technical view and committed illegality in rejecting the application for condonation of delay.

10. So far as condonation of delay is concerned, there was delay of 54 days only. The Apex Court of the country in the case of Collector, Land Acquisition, Anantnag v. Mst. Katiji, AIR 1987 SC 1353, has observed that the Legislature has conferred the power to condone delay in order to enable the Courts to do substantial justice to parties by disposing of matters on merits. Refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated and that when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

11. In view of law laid down by the Supreme Court of India, it is crystal clear that the Courts have to adopt a literal approach in condoning the delay in filing the appeal etc. and Courts must ensure that substantial justice is done between the parties. In this view of the matter, I hold that the order impugned in this petition is not sustainable and the respondent No. 1 has committed illegality in rejecting the application for condonation of delay and dismissing the appeal on the ground that it was barred by limitation.

12. In the result, the petition succeeds and is allowed. The impugned order passed by respondent No. 1 dated 5.8.1995 is hereby quashed. The application for condonation of delay in filing the appeal is allowed. The matter is sent back to District Judge, Etah for admitting the rent appeal under Section 22 of the Act and decide it in accordance with law within a period of two months from the date of production of a certified copy of this order. The parties are directed to appear in his Court on 15.3.2005.

A certified copy of this order shall be made available to learned Counsel for the parties within four days on payment of usual charges.