

Rajendra Kumar (Sri) Vs. Viith Additional District Judge and anr.

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Court : Allahabad

Decided On : Feb-18-2005

Reported in : 2005(1)ARC793

Judge : Vikram Nath, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1) and 22

Appeal No. : W.P. No. 19256 of 2001

Appellant : Rajendra Kumar (Sri)

Respondent : Viith Additional District Judge and anr.

Advocate for Def. : Rama Goel, Adv.

Advocate for Pet/Ap. : K.K. Dubey, Adv.

Disposition : Petition dismissed

Judgement :

Vikram Nath, J.

1. This writ petition has been filed by the tenant for quashing of the judgment dated 24.4.2001, passed by the VIIth Additional District Judge, Moradabad, (Annexure No. 15 to the writ petition), whereby the Rent Control Appeal No. 35 of

1998, filed by the landlord Kamlesh Kumar has been allowed, and after setting aside the order of the Prescribed Authority dated 22.7.1998 the release application of the appellant for eviction of the petitioner has been allowed.

2. The dispute relates to a shop situated in Mohalla Bishanpur, Main Bazar, Kasba Kanth, District Moradabad, in which the petitioner is a tenant at monthly rent of Rs. 30.81 and respondent No. 2 is the owner of the said shop. The landlord respondent No. 2 has 5 shops out of which one shop is in the possession of the landlord; the second shops in the possession of the petitioner and 3 others shops are in occupation of tenants. Respondent No. 2 filed an application under Section 21 (1) (a) of the Act U.P. Act No. 13 of 1972 for release of the shop in occupation of the petitioner on the ground that the respondent No. 2 required the same for extending his business and consequently increasing his income as his family had increased. The need of the landlord of the premises in dispute is genuine. It was further alleged in the release application that the shop in occupation of the respondent No. 2 and that in occupation of the petitioner were adjoining each other and merely by removing the wall in between the respondent No. 2 will utilize the space of the shop in occupation of the petitioner and can extend his business. The respondent No. 2 also mentioned in the release application that he may either utilize the premises in dispute for extending his business or for setting a new business, as the case may be. It was further mentioned in Paragraph No. 7 of the release application that the other 3 shops in the ownership of the respondent No. 2 were situated at different places and it was only premises in dispute, which was best suited. The respondent No. 2 also mentioned in Paragraph Nos. 16, 17 & 18 of the release application, the details of various vacant shops in the same locality, which the petitioner could take on rent and carry on his business from there.

3. Reply was filed by the petitioner denying the allegations made in the release application and stating that the need set up by the landlord was not bona fide nor genuine and the release application had been filed only to harass the petitioner and to get the shop in dispute vacated and thereafter let it out on enhanced rent. It was further alleged that the petitioner has no other accommodation to shift his business and all the reference given by the respondent No. 2 in his release application are in respect of premises, which cannot be taken on rent.

4. Both sides filed their affidavits. Report of the Amin was also called for by the Prescribed Authority, which is Annexure 5 to the writ petition. The site plan attached to the Amin's report give a picture of the spot showing that the shops in occupation of the petitioner and the respondent No. 2 are separated by a common wall and both are of the same size having frontage of only 2.20 mtrs. (approximately 7 feet). The Prescribed Authority vide judgment dated 22nd July, 1998 dismissed the release application of respondent No. 2 holding that the respondent No. 2 had no bona fide need and also that in case the release application is allowed the petitioner will face greater hardship.

5. Respondent No. 2 filed appeal under Section 22 of the Act, which was registered as Rent Control Appeal No. 35 of 1998. In the appeal the respondent No. 2 filed an application for amendment of release application dated 15.1.1999, whereby paragraphs No. 3A & 4A were sought to be added in the release application. By means of these two paragraphs the respondent No. 2 wanted to add that he was unable to carry on his business smoothly and for this reason he was compelled to carry on small business and secondly, he wanted to extend and set up his business in order to meet the needs of the growing children and enlarge family. This amendment application was rejected by the Appellate Court vide order dated 2.2.1999 on the ground that the amendment sought was superfluous as the amendment sought were already part of the release application. Thereafter the second amendment application dated 4.8.1999 was filed. By means of which paragraph No. 9A was sought to be brought on record stating that Piyush Kumar son of the respondent No. 2, who was studying in class XIIth had no interest in studies that he had passed class XI with very poor marks and he does not wish to continue to pursue his studies. Respondent No. 2 wanted to settle his son Piyush Kumar in business, therefore, the need of the respondent to establish his son in separate business be considered. Objection to the said amendment application was filed by the petitioner on 31.8.1999. The amendment application was allowed by the Appellate Court vide order dated 15.9.1999 and the petitioner filed additional written statement dated 5.10.1999 (Annexure 11 to the writ petition). The parties also filed evidence in the form of the affidavits with regard to the amendment application allowed by the Appellate Court. The petitioner denied need in respect of Piyush Kumar son of respondent No. 2 mainly on the ground

that he was a minor and secondly, he was pursuing his studies being a good student and the case set up that Piyush Kumar was not interested in studies was incorrect and had been set up with mala fide intention.

6. The VII Additional District Judge vide judgment dated 24.4.2001 allowed the appeal, set aside the judgment of the Prescribed Authority dated 22.7.1998 and directed that the premises in dispute be released in favour of the respondent No. 2 after payment of compensation equal to 2 years rent being paid to the petitioner as required under law. The Appellate Court recorded findings that the need set up by the respondent No. 2 in the release application was genuine and bona fide and further the need for the son was also genuine and bona fide. Further after discussing the need of comparative hardship appellate Court came to the conclusion that the respondent No. 2 would suffer greater hardship in case, no order for eviction is passed.

7. Aggrieved by the said orders dated 24.4.2001 the present writ petition has been filed.

8. I have heard Sri K.K. Dubey, learned Counsel for the petitioner and Miss Rama Goel, learned Counsel for the respondent No. 2.

9. The writ petition is being finally decided with the consent of the parties as the affidavits have been exchanged between the parties.

10. The first contention raised by the petitioner is that the additional need set up in appeal by way of amendment could not have been looked into. The appellate authority having examined the additional need for the son Piyush Kumar its judgment was vitiated. In reply learned Counsel for the respondent contended that subsequent developments can be looked into in order to do complete justice between the parties. The son having lost interest in studies was a subsequent development and, therefore, the worry and concern of the father (Landlord) to establish son in some business cannot be said to be mala fide or not genuine. The law relating to taking into consideration subsequent events/developments during pendency of the litigation is now well settled by the Apex Court in the case of Kedar Nath Agarwal and Ors. v. Dhanraji-Devi and Ors. reported in 2004 (2) ARC

764. The Apex Court in Para 14 of its judgment has summarised the principle as follows:-

14. 'In our opinion, by not taking into account the subsequent event, the High Court has committed an error of law and also an error of jurisdiction. In our judgment, the law is well settled on the point, and it is this: the basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit or proceeding and the suit/action should be tried at all stages on the cause of action as it existed at the commencement of the suit/action. This, however, does not mean that events happening after institution of a suit/proceeding cannot be considered at all. It is the power and duty of the Court to consider changed circumstances. A Court of law may take into account subsequent events inter alia in the following circumstances.

(i) The relief claimed originally has by reason of subsequent change of circumstances become inappropriate; or

(ii) It is necessary to take notice of subsequent events in order to shorten litigation; or

(iii) It is necessary to do so in order to do complete justice between the parties.

11. Thus the contention of the petitioner that subsequent additional need cannot be looked into cannot be accepted.

12. The next contention urged by the petitioner is that the appellate authority did not record any finding on the sufficiency of accommodation, nor did it upset the finding of the Prescribed Authority on this question, its judgment is vitiated. It is not in dispute that the shop in dispute in occupancy of the petitioner and the shop of the landlord-respondent No. 2 were adjoining. Both the shops were of the same size. The frontage of both shops was 2.20 metres. The landlord had set up the case that the frontage was very less and, therefore, he could not set up his showroom for carrying on business of cloth. However, if the shop in dispute was released he could combine both the shops into one thereby having a larger frontage of about 4.40 metres (approx 14-15 feet) and in that a reasonable

showroom could be established. In the alternative the landlord could have set up a new business for his son Piyush Kumar in the shop in dispute, in which event also a frontage of 2.20 metres was not very large. In any case there could not be a possibility of splitting a frontage of 2.20 metres either for running a new business or for cloth business or even the business which petitioner was carrying on. The Appellate Authority even if it did not specifically deal with this aspect its judgment would not be vitiated, as part release would frustrate the need/requirement of both sides. The Counsel for the petitioner has relied upon the case of Chhetriya Sri Gandhi Aashram, Meerut v. IInd Additional District Judge, 1998 (2) ARC 373 for the proposition that sufficiency should have been looked into and if part release would suffice then equities ought to have been adjusted. This case cannot be of any help as it has already been held that part release would not help either party.

13. The learned Counsel for the petitioner has next vaguely contended that the judgments referred to before the Appellate Authority have not been correctly applied. On a careful perusal of the judgment I am unable to agree with this contention of the petitioner.

14. It has been next urged by the petitioner that there is a major difference in expanding an existing business and setting up a new business. According to the petitioner the landlord having pleaded both in the alternative, clearly indicated that the need was not genuine. It was also stressed that in order to establish new business there should have been clear statement of necessary finances available for the setting up new business and even in a case of expansion of business the source and availability of funds should have been disclosed and proved to the satisfaction of the authorities.

15. Learned Counsel for the respondent has contended that all the requirements under law had been fulfilled by the landlord to establish his bona fide need. The appellate authority after examining all aspects had recorded specific findings in this regard.

16. The other contention of the petitioner with regard to agricultural income having been wrongly considered itself goes to show that the Appellate Authority considered the availability of funds for expanding the business or for setting up

new business. This contention also, therefore, fails.

17. The judgment of the Appellate Court does not suffer from any infirmity. The findings recorded by the appellate Court are based upon appraisal of material available on record, The findings have not been assailed on the ground that material evidence on record has been ignored or misread or misconstrued. The findings are bonafide need and comparative hardship being findings of fact cannot be interfered with in writ jurisdiction.

18. The petitioner therefore, lacks merit and is accordingly dismissed.

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