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Court : Allahabad

Decided On : Jan-08-2008

Reported in : 2008(2)AWC1287

Judge : S.U. Khan, J.

Appellant : Avinash Chandra and ors.

Respondent : Viith Additional District Judge/Appellate Authority and ors.

Disposition : Petition allowed

Judgement :

S.U. Khan, J.

1. Heard learned Counsel for both the parties in the first writ petition and only the learned Counsel for the petitioner in the second writ petition as tenants respondents of the said writ petition did not appear in spite of sufficient service.

2. Both the writ petitions have been filed by same landlords against different tenants. Properties in dispute in both the writ petitions are different but adjacent to each other. The tenant in the writ petition of 1998 was Om Prakash respondent No. 3, who died during pendency of proceedings before the courts below and was

substituted by his legal representatives, who are contesting respondents. Shop in dispute in the said writ petition is shop No. 174, which consists of four portions total frontage is 20 feet and 7 inches and depth is about 40 feet. Exactly an equal area is in possession of the tenants respondents in the 2003 writ petition (original tenant was deceased Panna Lal), which is numbered as Shops No. 171 and 173 and both the portions are adjacent to each other. Map is given on page No. 131 of supplementary-affidavit filed in 2003 writ petition and also on page 22 of the said petition. Shops No. 171 and 173 are on the northern side and Shop No. 174 on the southern side. In both the case release applications filed by the landlords against the tenants were dismissed by both the courts below.

3. In the first writ petition, release application was registered as P.A. Case No. 55 of 1987 and was dismissed on 14.6.1989 by Prescribed Authority/Vth Additional Civil Judge, Ghaziabad. Against the said judgment and order Misc. Appeal No. 141 of 1989 was filed, which was dismissed by Viith A.D.J., Ghaziabad on 13.2.1998. In the second writ petition, release application was registered as P.A. Case No. 9 of 1996 and was dismissed by Prescribed Authority/IIIrd Additional Civil Judge (Senior Division), Ghaziabad on 24.5.2002. Against the said order, R.C. Appeal No. 96 of 2002, was filed, which was dismissed on 27.11.2003 by A.D.J./Special Judge, C.B.I., Ghaziabad.

4. Rent of each tenanted accommodation is Rs. 87.50 per month.

5. The need set up by the landlords, who are four in number, was that landlord-applicant No. 1 was doing business from a tenanted shop in Nawyug Market alongwith his father and applicants No. 2 to 4 were without any business or job. It was also stated that earlier also release application was filed against the Panna Lal, which had been dismissed, however due to changed circumstances, second release application was maintainable. It was also stated that applicants No. 2 and 3 proposed to start the business of manufacturing and exporting ready-made garments in shop Nos. 171 and 173. Shop No. 174 was required for other two landlords. Earlier release application against Panna Lal (filed in 1985) was dismissed only on the ground that landlord were doing business of Metal Traders and fabricators and Artisan Export Corporation and M. M. Steel.

6. The courts below mainly rejected the release applications giving rise to the instant petitions on the ground that landlords could not prove that they had experience, qualification or financial capacity to do the proposed business. Courts below also held that two shops of 8 feet x 7 feet were available to the landlords and a shop in between the said two shops was in possession of another tenant Nanak Chand and in case landlords had applied for release of the said shop, then it would have been released. Courts below heavily placed reliance upon dismissal of earlier release application against Panna Lal. In respect of comparative hardship, landlords had pleaded that tenant was doing other business also and had let out some shops. The courts below held that no documents in regard thereto could be filed by the landlords.

7. Appellate court also held that during pendency of appeal landlord had sold two shops. However, those shops were sold to the tenants of the said shops, who were continuing in possession since long. One shop was sold to the sitting tenant himself and another to the sons of sitting tenant. The tenants-respondents are carrying on business of food-grains from the shops in dispute.

8. None of the courts below found that applicants No. 2, 3 and 4 were doing any independent separate business. Having share in family business is not much important for deciding the release. Applicant No. 1 is doing business from a tenanted shop. The Supreme Court in *G.K. Devi v. Ghanshyam Das* : [2000]1SCR193 and *Dhannalal v. Kalawatibai* : [2002]SUPP1SCR19 , has held that tenanted shop available to the landlord cannot be taken into consideration while deciding bona. fide need. Two very small shops available to the landlords cannot be taken into consideration. Availability of less suitable occupation is no ground to reject release application for more suitable accommodation vide *Chandrika Prasad v. Umesh Kumar Verma* : AIR 2002 SC108 .

9. In the following authorities, Supreme Court has held that neither it is necessary for the landlords to show prior experience of a particular business nor it is necessary to show that landlords have sufficient financial capacity to start the proposed business.

1. *Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkune* : [1999]2SCR912 :

2. G.C. Kapoor v. N.K. Bhasin : AIR 2002 SC200 .

10. It is also quite strange that on the one hand, tenants asserted that landlords were quite rich and on the other hand questioned their financial status to start the proposed business.

11. By virtue of Rule 18(2) of Rules framed under the Act after one year of dismissal of earlier release application, a fresh release application can be filed.

12. It appears that earlier release application was mainly rejected on the ground that landlords were participating in the family business. In the release application giving rise to the instant petitions landlord asserted that even the family business, i.e., of their father Ravindra Prakash (Metal Traders and Artisan Experts) had come to an end. Moreover Supreme Court in *Sushila v. A.D.J.* : AIR 2003 SC780 and *Rishi Kumar Govil v. Maqsoodan and Ors.* : (2007)4SCC465 , has held that every landlord is entitled to have independent separate business and he cannot be compelled to participate in the family business. It is important to note that tenants could not show that each of the four landlords was having any independent separate business.

13. As far as comparative hardship is concerned, tenants did not show that what efforts they made to search alternative accommodation, hence question of comparative hardship had to be decided against them in view of Supreme Court authority in *B.C. Bhutada v. G.R. Mundada* : [2003]1SCR329 . Moreover for such big shops as tenanted ones situate in Ghaziabad, the current rent may not be less than Rs. 25,000 per month. By paying less than Rs. 100 per month rent, which is virtually no rent, tenants must have saved a lot of money. Money saved is money earned. They should have made sincere efforts to purchase or take on good rent another accommodation, which they did not do.

14. The shops were let out to the, original tenants by the grandfather off the applicants-petitioners when applicants were not even born. In the release application filed against Om Prakash, which is subject-matter of the first writ petition, it was stated that for the adjoining shop, i.e., Nos. 171 and 173, in occupation of Panna Lal, release application was pending (i.e., the earlier release

application filed against Panna Lal being Case No. 56 of 1985). It was further stated that as each of the four landlords intended to start said business, hence apart from shop Nos. 171 and 173, the shop in occupation of Om Prakash-tenant being Shop No. 174 was also required. So that each tenant landlord could have his independent separate business.

15. Accordingly, in my opinion, on the facts found by the courts below, the need of the landlords was fully proved for both the shops and balance of hardship also lay against tenants.

16. Accordingly, both the writ, petitions deserve to be allowed.

17. Normally, when both the courts below have rejected the release application of the landlord and the writ court finds the judgments erroneous, the matter is either remanded to the prescribed authority or permission to file fresh release application is granted to the landlord. However, in certain circumstances, particularly when no new enquiry into facts is to be made ultimate final relief may be granted to the landlord in writ petition itself, even though both the courts below may have rejected the release application. I have discussed this aspect in detail in the authority Mohd. Arif v. A.D.J. 2005 (2) ARC 793 : 2006 (2) AWC 1075. For the said proposition, I placed reliance upon G.C. Kapoor v. Nand Kumar Bhasin : AIR 2002 SC200 . where the Supreme Court outrightly allowed the release application of the landlord, which had been rejected by the prescribed authority and the order of the prescribed authority had been affirmed by A.D.J. in appeal and High Court in writ petition.

18. Prior to the said authority, I was either remanding or granting liberty to file fresh application to the landlords in the writ petitions filed by them against rejection of their release applications by both the courts below. One of such judgments delivered by me was reversed by the Supreme Court which is in Ram Kumar Barnwal v. Ram Lakhan 2007 AIR SCW 3250 : 2007 (3) AWC 2866 (SC).

19. In the instant writ petitions, on the facts found by the courts below, release applications deserve to be allowed. In view of Supreme Court authorities discussed in the body of this judgment, particularly Ghanshyam and Shushila.

20. Accordingly, both the writ petitions are allowed. Both the judgments of the prescribed authority and both the judgments of the lower appellate court are set aside. Both the release applications of the landlords are allowed.

21. Tenants-respondents are granted six months time to vacate provided that:

1. Within one month from today tenants file an undertaking before the prescribed authority to the effect that on or before the expiry of aforesaid period of six months they will willingly vacate and handover possession of the property in dispute to the landlords-petitioners.

2. For this period of six months, which has been granted to the tenants-respondents to vacate each set of them is required to pay Rs. 15,000 (at the rate of Rs. 2,500 per month) as rent/damages for use and occupation. This amount shall also be deposited within one month before the prescribed authority and shall immediately be paid to the landlords-petitioners.

22. In case of default in compliance of any of these conditions tenants-respondents shall be evicted through process of Court after one month. It is further directed that in case undertaking is not filed or Rs. 15,000 are not deposited within one month then tenants-respondents shall be liable to pay damages at the rate of Rs. 5,000 per month since after one month till the date of actual vacation.

23. Similarly, if after filing the aforesaid undertaking and depositing Rs. 15,000 the accommodation in dispute is not vacated on the expiry of six months then damages for use and occupation shall be payable at the rate of Rs. 5,000 per month since after six months till actual vacation. It is needlessness to add that this direction is in addition to the right of the landlord to file contempt petition for violation of undertaking and file execution application under Section 23 of the Act.