

Dinesh Kumar Agarwal Vs. Xiith Additional District Judge and ors.

Dinesh Kumar Agarwal Vs. Xiith Additional District Judge and ors.

SooperKanoon Citation : sooperkanoon.com/486692

Court : Allahabad

Decided On : Sep-12-2003

Reported in : 2004(2)AWC1034

Judge : N.K. Mehrotra, J.

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

Appeal No. : Writ Petition No. 33 (R/C) of 1994

Appellant : Dinesh Kumar Agarwal

Respondent : Xiith Additional District Judge and ors.

Advocate for Def. : Munawar Sultan, ;Safiq Mirza and ;Mohd. Arif Khan, Advs.

Advocate for Pet/Ap. : B.K. Saxena and ;K.K. Saxena, Advs.

Disposition : Petition allowed

Judgement :

N.K. Mehrotra, J.

1. This is a writ petition under Article 226 of Constitution of India for issuing a writ in the nature of certiorari quashing the impugned judgment and order dated 3.3.1994 passed by the XIIth Additional District Judge, Lucknow in Rent Appeal

No. 24 of 1993. Smt. Rashida Khatoon v. Dinesh Kumar Agarwal allowing the appeal against the judgment and order dated 27.3.1993 passed by the Prescribed Authority under Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter to be referred as 'Act').

2. Heard the learned counsel for the petitioner and the opposite party No. 3.

3. The petitioner is the tenant in a shop in House No. 261/64-Billauch Pura Road, Sarai Agha Meer, Lucknow belonging to the opposite party No. 3. The opposite party No. 3 filed an application for release under Section 21 (1) (a) of the Act. The case of the opposite party No. 3 as stated in the release petition is that Izhar Ahmad the elder son of the landlady, the opposite party No. 3 is a trained person. He having a training of two years for repairing electronic equipments from Ravi Electronics is totally unemployed. He wants to establish an Institute for repair and training of the electronic equipments but there is no accommodation available with her. It is alleged by the opposite party No. 3 that the petitioner is a very big businessman having his shop at Nadan Mahal Road, Lucknow and have a very huge godown at Koila Mandi near Chhedi Lal Dharamshala, Lucknow, in addition to the accommodation in question which is used by the tenant only as a godown for storing the cement. It was also alleged that the husband of the landlady has a shop of welding and kharad at Nadan Mahal Road, Lucknow but the same is insufficient to meet the expenses of the growing family of the applicant. The petitioner filed written statement alleging therein that the applicant has concealed various business accommodations available with her family members. It was contended that House No. 281/64, situated at Billouchpura, Lucknow is a very spacious building consisting of 11 shops and business accommodations wherein several accommodations are lying vacant and made available to the applicant or her family members for business purpose. The applicant and her family members have been letting out the business accommodations of the said building situated at Billouchpura, Lucknow from time to time within a period of two years to several tenants. The husband of the applicant is having a very big and specious shop in House No. 253/46 Kha, Nadan Mahal Road, Lucknow which is used by the applicant along with her husband. The applicant's husband himself stated in the P.A. Case No. 108 of 1983 that he is having a flourishing business.

4. Both the parties led evidence in support of their contentions. The learned prescribed authority held that the requirement of the landlady is mala fide and is not genuine. On the basis of the comparative hardship, the learned prescribed authority held that the petitioner-defendant will suffer greater hardship than the landlady if, the shop is vacated. The landlady, the opposite party No. 3 filed a rent appeal under Section 22 of the Act. During the pendency of the appeal, the petitioner brought evidence on record that the opposite party No. 3 has obtained possession of another big business accommodation under the tenancy of one Shah Saheb in which the National Printing Press was running. The appellate court allowed the appeal and released the premises in question in favour of the opposite party No. 3 vide judgment dated 3.3.1994.

5. It is against the aforesaid judgment and order passed in rent appeal, this writ petition has been filed.

6. After hearing the learned counsel for the parties and perusal of the documents on record, I find that in the release application Annexure-1, the case of the opposite party No. 3 is that her son Izhar Ahmad is totally unemployed and wants to establish an institution for repair and training of electronic equipments and as no accommodation was available to him for the said purpose, he is without business. The petitioner filed the copy of the affidavit of Irshad Ali, the husband of the opposite party in P.A. Case No. 108 of 1983 which is Annexure-4.

7. After seeing this affidavit, the opposite party No. 3 Smt. Rashida Khatoon filed an affidavit before the prescribed authority, a copy of which is Annexure-3. In this affidavit Smt. Rashida Khatoon, the opposite party No. 3 took a different stand. She stated that her son Izhar Ahmad is doing T.V. Part manufacturing business since the last ten years and has got a very good experience in the said business. He has ability to assemble the whole kit of the T.V. Sets. As such he is doing independent business of his father. The learned prescribed authority after considering the evidence of both the parties and after comparing the comparative hardship held that the tenant will suffer a greater hardship if, the shop is vacated in comparison to landlady if, the shop is not vacated. The learned appellate court did not take into consideration this contradictory stand of the landlady in the release

application and the affidavit filed by her. The learned appellate court has overlooked the fact that the opposite party No. 3, the landlady has stated a case in the release petition that her son is unemployed and in the affidavit, she has given a different version by saying that her son is busy in business for the last ten years. Instead, the learned appellate court has observed that every landlord has right to enlarge his business and to engage his children in the business. After recording this finding that the disputed shop is required for engagement of the son of the landlady, he allowed the appeal. I find that there is an error in the judgment of the appellate court by overlooking the fact that the case of the landlady for the bona fide need of her unemployed son is not there. Actually, it is admitted fact that the son of the landlady is engaged in the business for the last ten years and has got a very good experience in the said business. I may refer here para 16 of the affidavit of Rashida Khatoon, the opposite party No. 3 (Annexure-3). Since the appellate Judge has ignored the material evidence on record, the findings recorded by the learned appellate Judge are perverse and can be interfered in this writ petition.

8. In view of the above, the writ petition is allowed and the impugned judgment dated 3.3.1994 passed by the XIIth Additional District Judge, Lucknow in Rent Appeal No. 24 of 1993, Smt. Rashida Khatoon v. Dinesh Kumar Agarwal, is set aside.