

Bankey Lal Vs. Jamvant

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Court : Allahabad

Decided On : Apr-12-2006

Reported in : 2006(3)AWC2811

Judge : Anjani Kumar, J.

Acts : [Constitution of India](#) - Article 226; Uttar Pradesh Act, 1972 - Sections 21(1)

Appeal No. : C.M.W.P. No. 52507 of 2004

Appellant : Bankey Lal

Respondent : Jamvant

Advocate for Def. : R.K. Yadav, Adv.

Advocate for Pet/Ap. : R.K. Jain,; A.K. Singh and; M.S. Khan, Adv.

Disposition : Petition allowed

Judgement :

Anjani Kumar, J.

1. By means of present writ petition under Article 226 of the [Constitution of India](#), the petitioner-tenant has challenged the order passed by the prescribed authority under the provisions of the U.P. Act No. XIII of 1972 (in short 'the Act') dated 14th May, 2003 and the order passed by the appellate authority under the provisions of

the Act dated 23rd November, 2004, copies whereof are annexed as Annexures-3 and 7 respectively, to the writ petition.

2. The facts leading to the filing of present writ petition are that the respondent-landlord filed an application under Section 21(1)(a) of the U.P. Act No. XIII of 1972 for release of the accommodation in dispute, which is a shop, in favour of the landlord setting up his personal bona fide need to establish his sons in the business of electronic goods after the shop is released in his favour,

3. The petitioner-tenant contested the aforesaid release application before the prescribed authority. The prescribed authority vide its order dated 14th May, 2003, allowed the application filed by the respondent-landlord and directed release of the accommodation in dispute in favour of the landlord.

4. Aggrieved by the order dated 14th May, 2003, passed by the prescribed authority, the petitioner-tenant preferred an appeal before the appellate authority. During the pendency of the appeal before the appellate authority, petitioner-tenant filed two applications on 11th October, 2004 bringing to the notice of the appellate court that applicant-landlord since purchased building having three shops on the ground floor and three shops on the first floor, therefore the need, if any of the landlord now is fully satisfied with these additional shops, which have come in possession of the landlord because of the purchase of additional building. This application was filed along with an application seeking amendment in para 18 of the written statement and para 7 of memo of appeal. On 20th October, 2004, the appellate court allowed the amendment applications and the same were incorporated by way of amendment in both the written statement as well as in the memo of appeal. Ultimately the appellate authority vide its order dated 23rd November, 2004, dismissed the appeal filed by the petitioner-tenant, thus this writ petition.

5. Heard learned Counsel appearing on behalf of the parties.

6. Learned Counsel appearing on behalf of the petitioner-tenant advanced several arguments, but since petitioner-tenant could succeed only on first point itself, I need not go into several points raised in the writ petition. It is submitted by learned

Counsel for the petitioner-tenant that in view of the order dated 20th October, 2004, whereby the appellate authority allowed the amendment sought by the petitioner, as a consequence of the petitioner's filing the applications before the appellate authority on 11th October, 2004, the appellate authority ought to have considered the effect of the amendment and also the effect of purchase of the building which consists of three shops on the ground floor and three shops on the first floor. This admittedly has not been done, the order passed by the appellate authority deserves to be quashed. Learned Counsel for the petitioner-tenant further submitted that the subsequent facts ought to have been considered by the appellate authority, therefore the order passed by the appellate authority cannot sustain in the eye of law. After going through the order passed by the appellate authority, I find that the aforesaid aspect of the matter, which is a subsequent fact, has not been considered by the appellate authority while dismissing the appeal filed by the tenant. In support of his contention, learned Counsel for the petitioner has relied upon decision of Apex Court in Kedar Nath Agrawal (Dead) and Anr. v. Dharnraji Devi (Dead) by L. Rs. and Anr. 2004 (2) ARC 764, wherein the Apex Court has ruled as under :

11. The question then remains as to effect of subsequent event. It is not in dispute between the parties that during the pendency of the writ petition before the High Court, both the applicants died and their three daughters were brought on record. It is also not in dispute that all the three daughters are married and they are at their marital homes with their in-laws. In view of the said fact an argument was advanced on behalf of the tenants before the High Court that the said circumstance was an eloquent one and must be taken into account which had occurred during the pendency of the proceedings which would affect the final outcome. According to the tenants, in view of death of both the applicants, the requirement as pleaded by the applicants in the application did not survive and the application was liable into account subsequent event which emerged during the pendency of the writ petition and pass an appropriate order taking into consideration such development.

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.

7. Learned Counsel for the respondent-landlord in reply to the aforesaid contention raised on behalf of the tenant submitted that it is correct that the amendments brought by the order dated 20th October, 2004 and the facts stated in the application dated 11th October, 2004, have not been specifically dealt with by the appellate authority, but the appellate authority has considered the overall materials on record, including the purchase of the building during the pendency of the appeal. Learned Counsel for the landlord pointed out the relevant paragraph of the order passed by the appellate authority, but I find that the amendment brought by the order dated 20th October, 2004, passed by the appellate authority has not been considered and the fact of the amendment, which was relevant material ought to have considered by the appellate authority in view of the law laid down by the Apex Court in the case of Kedar Nath Agrawal (supra). In this view of the matter and in view of the above discussions, this writ petition deserves to be allowed.

8. In view of what has been stated above, this writ petition succeeds and is allowed. The order dated 23rd November, 2004, passed by the appellate authority is quashed. The matter is remanded back to the appellate authority to decide afresh the tenant-petitioner's appeal in the light of the observations made in the case of Kedar Nath Agrawal (supra) and in accordance with law on the basis of

materials available on record. Since the matter is old, the appellate authority is directed to decide the same within a period of three months from the date of presentation of a certified copy of this order before it on the basis of materials available on record.

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