SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Kamal Kumar Vs. Hari Shankar

Kamal Kumar Vs. Hari Shankar

SooperKanoon Citation : sooperkanoon.com/491263

Court : Allahabad

Decided On : Feb-27-2006

Reported in : 2006(4)AWC3450

Judge : Anjani Kumar, J.

Acts : Constitution of India - Article 226; Uttar Pardesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1) and 22

Appeal No. : C.M.W.P. No. 11753 of 2006

Appellant : Kamal Kumar

Respondent : Hari Shankar

Advocate for Def. : B. Dayal and ;Vishnu Sahai, Advs.

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

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. By means of present writ petition under Article 226 of the Constitution of India, the petitioner-tenant of shop in dispute has challenged the order dated 26.10.2004, passed by the prescribed authority under the provision of U. P. Act

No. 13 of 1972 (In short 'the Act') and the order dated 16.2.2006, passed by the appellate authority under 'the Act', whereby the appellate authority dismissed the appeal filed by the petitioner-tenant against the order of the prescribed authority by which release application filed by the respondent-landlord was allowed, the copies whereof are annexed as Annexures-7 and 9, respectively to the writ petition.

2. The brief facts are that initially father of the petitioner, namely Banarsi Das was tenant of the accommodation in question, which is a shop, which was let out by the father of the respondent, namely Lala Ram Gupal. The landlord Lala Ram Gupal had earlier filed an application under Section 21(1) (a) of the U. P. Act No. XIII of 1972 (In short 'the Act'), against said Banarsi Das in the year 1986. During the pendency of the aforesaid application before the prescribed authority, both the landlord and the tenant died and their heirs have been substituted in their place. The substitution was allowed by the order dated 25.5.1989. Against the order dated 25.5.1989, the petitioner and one of his brother filed an appeal before the appellate authority, which was allowed vide order dated 1.2.1990. The order dated 1.2.1990, was challenged by the present respondent-landlord and other heirs of deceased Lala Ram Gupal before this Court in the year 1990. It is further stated that during the pendency of writ petition before this Court, a family partition took place and the accommodation in dispute has come in the share of present landlord. This matter was brought to the notice of this Court during the pendency of earlier writ petition. This Court directed the present landlord that he may file fresh application. Since after partition of the Firm all movable properties have been divided among all the five brothers and shops have been partitioned between the two brothers in which these brothers and their sons are carrying on their business. The present landlord was unemployed, therefore in this circumstance, he took a shop on rent, which was only five sq. mtr. in area and started the business of money lending (sahukar) and the sons of landlord are also helping the landlord in this business. That due to inadequate income in the business of sahukari, goldsmith business has also been started by landlord in same rented shop. The landlord further stated that he has searched a bigger shop, but failed to get the same. It is further contended that his elder son Vivek after completing his engineering degree in the year 1995 was employed with M/s. Synthetic and Chemicals Factory, Bareilly, but in the year 2000 the said factory was closed

down. In the year 2001 the landlord took agency of pot polish etc. so that his son may be engaged in this agency business. For the purposes of storing these items, there is no place as Godown and therefore he filed application under Section 21(1) (a) of 'the Act' before the prescribed authority for release of the shop in dispute in his favour on the ground that for the reasons, as already stated above, the shop in dispute is a perfect place where person who are in the business of Factory and chemical for their purchase are visiting daily. It is further contended that in the shop in dispute the tenant is running his business of supply of goods outside. Thus, the landlord requires a shop situated in the market where he can do his business which cannot be done anywhere. The petitioner-tenant denied the allegations made in the application for release filed by the landlord and stated that after the death of Lala Ram Gupal, father of the landlord and Banarsi Das, father of the tenant, all the heirs of deceased inherited the tenancy of tenant and landlord and since date of partition has not been given by the landlord anywhere, therefore the present application is liable to be rejected as all the heirs of deceased Lala Ram Gupal landlord are not Impleaded. The petitioner-tenant further contended that in the accommodation in question, earlier the mother, father, sisters brothers and family of the landlord were residing, but now they have shifted as either they have constructed their own house or they have purchased their own houses, therefore the landlord has sufficient accommodation in the house where he is residing which can be utilised by the son who can run his business of chemical and other materials very well in the accommodation where the landlord Is residing. If the landlord in fact requires a shop, he would not have let out the other shop which was available to landlord when one Hari Shankar Jai Shankar who has been given possession by the landlord when the said shop was vacated by Laxmi Narayan. The tenant further contended that he has two sons, one daughter-in-law, two grand daughters, including his wife and since the present business is only livelihood of their family, therefore he will face Irreparable loss and more hardship than the landlord, as the landlord Is rich man who has many business including the brick kiln and other business, therefore the requirement alleged by the landlord is not only false, but also concocted, therefore the present application is liable to be rejected.

3. Before the prescribed authority after the exchange of the pleadings and the evidence on record, the prescribed authority found that the need of the landlord is bona fide and that the tilt of the comparative hardship is in favour of the landlord. The prescribed authority therefore vide order dated 26.10.2004, allowed the release application filed by the landlord and directed the shop in dispute to be vacated by the petitioner-tenant.

4. Aggrieved by the order passed by the prescribed authority dated 26.10.2004, the petitioner-tenant preferred an appeal under Section 22 of 'the Act' before the appellate authority. The appellate authority vide order impugned in the present writ petition dated 16.2.2006, have affirmed the findings arrived at by the prescribed authority regarding bona fide need of the landlord and also with regard to the comparative hardship and dismissed the appeal filed by the petitioner-tenant and maintained the order passed by the prescribed authority, thus this writ petition.

5. Learned Counsel for the petitioner-tenant submitted that the findings arrived at by the prescribed authority and affirmed by the appellate authority surfer from the manifest error of law, but has failed to demonstrate that the findings arrived at by the prescribed authority and affirmed by the appellate authority with regard to bona fide need and the comparative hardship of the landlord in any way either perverse, or are suffering from the manifest error of law. Learned Counsel for the petitioner-tenant further submitted that the view taken by the prescribed authority and affirmed by the appellate authority are such on which no reasonable person can come. The aforesaid contention of learned Counsel for the tenant cannot be accepted in view of the law laid down by the Apex Court in the case in Ranjeet Singh v. Ravi Prakash : AIR 2004 SC3892 , wherein the Apex Court has held that High Court will not appreciate evidence like an appellate court by re-appreciating or re-evaluating the evidence while exercising supervisory jurisdiction under Article 226 of the Constitution. In this view of the matter, this writ petition has no force and is liable to be dismissed.

6. Lastly it is submitted by learned Counsel for the petitioner-tenant that since the tenant is carrying on business in the shop in dispute, therefore he may be granted reasonable time to vacate the same. Considering the facts and circumstances of

the case as also in the interest of justice, I direct that the petitioners-tenant shall not be evicted from the shop in dispute pursuant to the impugned orders for a period of one year from today, provided :

(1) petitioner-tenant furnishes an undertaking before the prescribed authority within one month from today that he will hand over peaceful vacant possession to the landlord on or before one year from today ; and

(2) petitioner-tenant pay to the landlord or deposit the entire arrears of rent/damages, if not already paid to the landlord or deposited before the prescribed authority, at the rate of rent till date within one month from today and continues to pay or deposit the same by first week -of every succeeding month so long he remains in possession or for a period of one year from today, whichever is earlier. The landlord will be entitled to withdraw the amount so deposited by the petitioners-tenant.

(3) In the event of default of any of the conditions referred to above, it will be open to the respondent-landlord to get the order executed.

7. With the aforesaid observation, this writ petition Is dismissed. The Interim order. If any, stands vacated. However, there will be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com