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Court : Allahabad

Decided On : Nov-13-2007

Reported in : 2008(1)AWC416

Judge : S.U. Khan, J.

Appellant : Punit Kohli

Respondent : Vinod Kumar Jain (D) by L.Rs. and ors.

Disposition : Petition allowed

Judgement :

S.U. Khan, J.

1. This is landlord's writ petition arising out of eviction/release proceedings initiated by him against tenant respondent No. 1 on the ground of bona fide need under Section 21 of U. P. Urban Buildings (Regulation of Letting. Rent and Eviction) Act, 1972 in the form of P.A. Case No. 18 of 1992 on the file of prescribed authority, Bijnore. Property in dispute is a shop dimensions of which are 19 feet x 19 feet and the rent is Rs. 500 per month. (An amount of Rs. 50 per month is also paid by the tenant as water tax). It was stated in the release application that landlord had failed in B.A. final examination in the year 1991 and he intended to establish the business of selling spare parts of machinery from the shop in dispute. Prescribed authority/1st Additional Civil Judge (S.D.), Bijnore allowed the release application

through order dated 22.5.1995. Landlord was directed to pay Rs. 7,500 (15 months rent) as compensation to the tenant. Against the said judgment and order tenant-respondent No. 1 filed Misc. Appeal No. 5 of 1995. 1st Additional District Judge, Bijnore through judgment and order dated 4.9.1995 allowed the appeal, set aside the Judgment and order of the prescribed authority and dismissed the release application of the landlord. Through this writ petition landlord has challenged the said order of the appellate court. Prescribed authority had held that plaintiff had failed in B.A./B.Sc. Examination. Appellate court held that landlord had appeared in the Final Year Examination in the subsequent year also hence version of the landlord that he required the shop in dispute to do business as he had failed in graduation level examination was false. This view of the appellate court is utterly erroneous in law. If a person wants to do business then it is wholly immaterial as to whether he has passed B.A./B.Sc. or has failed therein. Even after passing B.A./B.Sc. Examination a person can very well choose to do business. Probably the lower appellate court was of the view that educated persons should not do business.

2. Appellate court further held that a commercial complex belonging to father or mother of the landlord was available to the landlord and if he had been serious then he would have started the proposed business in one of the shops available in the complex. Ashwani Kumar one of the witnesses of the tenant gave an affidavit to the effect that the said complex was half constructed. Similar affidavit was given by the other witness Puneet Rastogi as well as tenant Vinod Kumar Jain. Amin also reported the same thing after inspection of the said complex. Even if some commercial accommodation is available to the father or mother of the landlord still it is no ground to reject the release application filed by the landlord in respect of his own shop. A son may use the property of his father or mother only as a licensee and not as owner. Moreover Amin reported that in the alleged complex only one shop was let out. It is also important to note that all the witnesses stated that the complex was incomplete. No one can be compelled to carry on the business in an incomplete building. Appellate court further held that landlord's father was having agricultural land and as landlord was living alongwith his father hence he must be looking after the said agricultural land. The Supreme Court in *Sushila v. A.D.J.* : AIR 2003 SC780 and *Rishi Kumar Govil v. Maqsoodan and Ors.*

: (2007)4SCC465 , has held that no one can be compelled to participate in family business. Moreover having agricultural land is no ground to reject release application for a shop.

3. The prescribed authority found that tenant had got several other commercial properties available to him and he was also doing cement business. Tenant admitted that he had taken a shop but his version was that he had taken it to settle his grandson. The prescribed authority also found that tenant's son was having a factory of garments in the Industrial Estate and that in front of Vardhman Degree College Sahitya Bihar, Najibabad Road, Bijnore tenant had purchased one godown and four shops. It was also found that tenant had about 800 sq. meters of land in which he had constructed a house.

4. In respect of other commercial properties available to the tenant, the tenant pleaded that there was a partition in between him and his sons (which was also recognised through a Court decree) and the other commercial properties had gone in the share of his son. (In fact partition decree included only residential house). It is very strange that in respect of shops in front of Vardhman College tenant pleaded that the said shops in the partition had gone to the share of his son and it was further pleaded that a shop wherefrom business of selling garments was being carried out which was situate in City Palace had also gone in the share of tenant's son Ajai Kumar, however in order to rebut the need of the landlord it was asserted by the tenant that the landlord could use the property of his father or mother. Appellate court did not specifically set aside the findings of the prescribed authority in respect of availability of several other commercial accommodation to the tenant. It only said that as landlord had failed to prove his bona fide need hence it was immaterial that tenant possessed other commercial properties.

5. During arguments in this writ petition, learned Counsel for the tenant confined his arguments only to the availability of a first floor commercial accommodation to the landlord which was got constructed by the landlord during pendency of the writ petition on the roof of the shop in dispute and on the roof of other adjoining property of the landlord. Learned Counsel for the tenant further pleaded that the tenant was ready to take the said first floor accommodation on rent at the rate of

Rs. 4,000 per month. However, learned Counsel for the landlord argued that his first floor accommodation was constructed in the year 1999 with the financial help of M/s. Kuber Group of Companies and as a part of the said agreement the said accommodation was let out to M/s. Kuber Group of Companies. According to the tenant the said first floor accommodation was let out to M/s. Kuber Group of Companies in the year 1996-97. However, M/s. Kuber Group of Companies vacated the said accommodation in the year 2000. Thereafter it was given to some computer agency which also vacated the same and at present it is in tenancy occupation of L.G. Electronics. Tenant has filed a supplementary-counter-affidavit; in this writ petition sworn on 10.8.2000. In para 6 of the said affidavit it has been stated that the Computer Agency was inducted as tenant in the first floor accommodation about a week or so before filing of the said supplementary-counter-affidavit and that the said accommodation was not offered to the tenant even though in the earlier counter-affidavit it had been stated that tenant was ready to take the said first floor accommodation on rent. In supplementary-counter-affidavit-II sworn on 22.2.2004 it was stated In paragraphs 6 and 7 that the first floor accommodation again became vacant in December, 2003 and tenant approached the landlord number of times for the said accommodation but no heed was paid. However, it has not been stated that any written request was made by the tenant.

6. In my opinion, landlord's failure to use the newly constructed first floor commercial accommodation is not such a circumstance, which disproves his need. A retail shop is not normally situate on first floor unless it is multi-storeyed commercial complex. Landlord cannot be compelled to provide the said accommodation to the tenant for the reason that tenant himself has got several other commercial accommodations at his disposal. At this juncture Rule 16 (2) (b) of the Rules framed under the Act may also be quoted:

16(2)(b).-Where the tenant has available with him, suitable accommodation to which he can shift his business without substantial loss there shall be greater justification for allowing the application.

7. Accordingly, it is held that landlord fully proved his bona fide need. Balance of hardship also lies in favour of the landlord.

8. Accordingly writ petition is allowed. Judgment and order passed by the lower appellate court is set aside. Judgment and order passed by the prescribed authority is restored.

9. Tenant-respondent is granted six months time to vacate provided that:

1. Within one month from today tenant files an undertaking before the prescribed authority to the effect that on or before the expiry of aforesaid period of six months he will willingly vacate and hand over possession of the property in dispute to the landlord.

2. For this period of six months, which has been granted to the tenant to vacate, he is required to pay Rs. 12,000 (at the rate of Rs. 2,000 per month) as rent/damages for use and occupation. Out of this amount of Rs. 12,000 tenant shall deposit only Rs. 4,500 after adjusting the amount of Rs. 7,500 awarded by the prescribed authority as compensation to the tenant. This amount shall also be deposited within one month before the prescribed authority and shall immediately be paid to the landlord. In case undertaking is not filed or amount of Rs. 4,500 is not deposited within one month then tenant shall be evicted through process of Court after one month and shall also be liable to pay damages at the rate of Rs. 5,000 per month since after one month till the date of actual vacation.

10. Similarly, if after filing the aforesaid undertaking and depositing Rs. 4,500 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.

11. It is needless to add that this direction is In addition to the right of the landlord to file contempt petition for violation of undertaking and initiate execution proceedings under Section 23 of the Act.