

(2006) 02 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23597 of 1987

Abdul Rahman, Wali Mohammad and Abdul Ali

APPELLANT

Vs

Special Judge (E.C. Act), Judge Small Cause Court (Munsif III) and Shri Azim Bux

RESPONDENT

Date of Decision : 20-02-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2(2), 30

Citation : (2006) 2 AWC 2046

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : R.C. Srivastava, Pradeep Chandra and M.C. Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

S.U. Khan, J.—This is landlords' writ petition arising out of suit for eviction initiated by landlords against tenant respondent No. 3 Azeem Bux in the form of SCC Suit No. 1 of 1975 on the file of JSCC / Munsif III, Jalaun. In the plaint of the suit, it was asserted that as building in dispute was constructed in the year 1969, hence U.P Act No. 13 of 1972 was not applicable thereupon. The said plea was found proved by the trial court hence suit was decreed on 31.3.1977. Revision filed against the said judgment and decree was also dismissed by the District Judge, Jalaun. The said judgments were challenged before this Court through writ petition No. 5408 of 1979. The said writ petition was decided on 2.7.1980. The Supreme Court in Ratan Lal Shinghal Vs. Smt. Murti Devi, decided on 21.8.1979 had held that U.P Act No. 13 of 1972 would apply to every building, which was constructed before the enforcement of the said Act i.e. July 1972. On the basis of the said authority of Supreme Court, the earlier writ petition filed by the tenant (writ petition No. 5408 of 1979) was allowed on 2.7.1980 and matter was remanded to the trial court. The occasion to direct the

remand arose due to the fact that the trial court had not recorded a clear finding regarding "the exact point of time when the building might have been said to be constructed within the meaning of Section 2(2) of the Act." Thereafter it was observed as follows:

If it is found that the building was constructed prior to the coming into force of the aforesaid Act, it is obvious that the petitioner would be protected by the provisions of the said Act.

2. After remand the trial court held that even though building was constructed in the year 1969, however it was assessed for the first time for the purposes of house tax on 1.4.1970 hence that would be the date of first hearing. In respect of default trial court held that even before the notice dated 27.9.1974 tenant had sent the rent through money order to the landlord which had been refused hence he had deposited the same u/s 30 of the Act. Trial court further held that even after receiving the notice rent was again sent through money order which was again refused by the landlord and the same was also deposited u/s 30 of the Act hence tenant was not defaulter. The suit was therefore dismissed on 27.3.1982. Against the said judgment and decree plaintiff petitioner filed SCC Revision No. 33 of 1982. Special Judge (E.C Act) / ADJ, Jalaun through judgment and order dated 4.8.1987, dismissed the revision hence this writ petition.

3. The revisional court in Para 7 of its judgment clearly held that "sole point argued on behalf of revisionist is that U.P. Act No. 13 of 1972 is not applicable to the disputed shop". Question of default was not challenged before the revisional court hence it is not necessary to decide the same in this writ petition. Even otherwise I do not find any fault in the findings of the trial court in respect of default. Trial court rightly held that deposit of rent u/s 30 of the Act by the tenant was valid hence he was not defaulter.

4. Even though the Supreme Court authority of Ratan Lal was later on overruled by larger bench of Supreme Court reported in Bishan Chand Vs. Vth Additional District Judge, Bulandshahr (Uttar Pradesh) and Another, decided on 5.3.1982, however the courts below were bound to follow the remand order of this Court dated 2.7.1980. In the said remand order, it was clearly held that in case building was constructed prior to July 1972, U.P Act No. 13 of 1972 would be applicable thereupon. Even though the authority of Supreme Court on the basis of which remand order was passed was later on overruled by the Supreme Court however remand order was binding upon the courts below irrespective of overruling of the authority on which it was based. This question is squarely covered by the judgments of the Supreme Court reported in Vallapally Plantations Pvt. Ltd. Vs. State of Kerala, V. Plantations v. State of Kerala. Para 2 of Authorized Officer's authority is quoted below:

Para 2: According to the appellant once the judgment on the basis of which the High Court had directed to dispose of the dispute relating to the excess land had been reversed by this Court, the Authorized Officer was justified in following the

judgment of this Court instead of the judgment of the High Court. It need not be pointed out that the order passed by the High Court attained finality as it was not challenged before the Supreme Court. The order passed by the High Court directing the Authorized Officer to examine the dispute in the light of the judgment of the High Court in the case of *Naganatha Ayyar v. Authorized Officer* 84 LW 69 became final although the judgment on which the grievance had to be examined itself was reversed later by this Court. We find no fault with the reasoning of the High Court. It is well settled that even orders which may not be strictly legal become final and are binding between the parties if they are not challenged before the superior courts. In the result the appeal fails and it is dismissed. No cost.

5. Similarly I also at this stage cannot reverse the judgments of the courts below on the ground that they are in fact based upon a judgment of the Supreme Court, which was later on overruled. While hearing a matter against the orders passed in pursuance of earlier remand order the same court cannot go behind its earlier remand order. It is only the jurisdiction of the higher court i.e. the Supreme Court in the instant case. By virtue of explanation to Order 47 Rule 1 C.P.C "the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other case shall not be a ground for the review of such judgment." In view of this explanation the earlier order of remand can not even be reviewed.

6. Accordingly even though I am of the considered opinion that the earlier remand order is bad in law in view of the aforesaid Supreme Court authority of *Om Prakash*, however I cannot do anything in this regard. In the impugned orders, challenged in this writ petition, the courts below have simply followed the earlier remand order of this Court hence this Court can not reverse those judgments because it will amount to reversing the earlier remand order passed by this Court which is neither permissible nor appropriate. In one case a learned Judge of Kerala High Court also felt similar helplessness and it was approved by the Supreme Court in *K. Pillai v. P. Pillai* 2004 AIR SCW 106. Third sentence of Para 4 of the said authority of the Supreme Court is quoted below:

The learned Judge of the High Court entertained serious doubts about correctness of the view taken by the learned single Judge in the earlier order of the High Court remanding the case to the trial court but felt bound and helpless by the observation and the directions made in the earlier judgment and rightly so.

7. Accordingly, writ petition is dismissed.

8. I have held in *Khursheeda v. A.D.J* 2004 (2) ARC 64 and *H.M. Kichlu v. A.D.J* 2004 (2) ARC 652 that while granting relief to the tenant against eviction in respect of a building covered by Rent Control Act or while maintaining the said relief already granted by the courts below, writ court is empowered to enhance the rent to a reasonable extent.

9. Property in dispute is a shop situate in Jalaun. Existing rent of Rs. 15/- per month is virtually as well as actually no rent.

10. Accordingly, it is directed that with effect from March 2006 onwards, tenant respondent shall pay rent to the I landlord petitioner at the rate of Rs. 700/- per month.