
(2007) 04 AHC CK 0275

In the Allahabad High Court

Case No : C.M. Application No. 47055 of 2007 in C.M.W.P. No. 63670 of 2005

Basso Begum and Others

APPELLANT

Vs

Rent Control and Eviction Officer (IV) and Others

RESPONDENT

Date of Decision : 11-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 5 ADJ 85 : (2007) 6 AWC 6038

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : B.D. Mandhyan, S.C. Mandhyan, Kumar Ashish, Satish Mandhyan and Om Prakash Lohia, for the Appellant; Mukhtar Alam and Sanjay Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Sri B. D. Mandhyan, senior advocate assisted by Sri Kumar Ashish for the Petitioner and Sri Mukhtar Alam, counsel for the Respondents on the application for withdrawal of the writ petition.

2. It is opposed by Sri Mukhtar Alam, counsel for the Respondents on the ground that by an interim order of this Court dated 3.11.2006 rent/compensation has been increased and in order to circumvent the aforesaid order the Petitioner has filed this withdrawal application.

3. Sri B.D. Mandhyan submits that revision is already pending against the release order and in the meantime, this Court has passed an interim order on 3.11.2006 by which rent/compensation of the accommodation has been enhanced and an order to reduce multiplicity of proceedings this application for withdrawal has been filed.

4. The counsel for the Respondents has relied upon the following rulings in support of his above submission:

1. R. Rathinavel Chettiar and Anr. v. Sivaraman and Ors. 1999 (17) LCD 896: 1999 (2) AWC 1531 (SC).

2. K.S. Bhoopathy and Ors. v. Kokila and Ors. AIR 2000 SC 2132 and 3. Mirza Qazim Raza Beg and Others Vs. IVth A.D.J. and Another,

5. In R. Rathinavel Chettiar's case (supra), the Apex Court has considered the question of withdrawal of suit at the appellate stage where the rights which have come to be vested in parties to the suit under the decree cannot be taken away by withdrawal of suit at that stage unless very strong reasons are shown that the withdrawal would not affect or prejudice anybody's vested rights.

6. Similarly in K.S. Bhoopathy's case (supra), it has been held by the Apex Court that it is the duty of the Court to feel satisfied about existence of proper grounds/ reasons for granting permission for withdrawal of the suit and it has to see that the Defendants in suit are not prejudice.

7. This Court in Mirza Qazim Raza (supra) has held in paragraph 8 of the judgment that:

As far as withdrawal of suit under Order XXII, Rule 1, Code of CPC in appeal is concerned, a Plaintiff whose suit has been dismissed cannot be permitted to withdraw the suit in appeal if some finding on merit has been recorded in favour of the tenant.

8. From the ratio laid down in the aforesaid judgments by the Court it appears that where the rights of the parties are affected or prejudice the Courts may not grant permission to withdraw the suit or writ application.

9. Admittedly, vacancy has been declared against which revision has been filed by the Petitioners, after order dated 3.11.2006 has been passed by this Court in the writ petition, hence they are liable to pay compensation after the release order and if the writ petition is permitted to be withdrawn it would amount to circumvent the order of this Court dated 3.11.2006 by which the rent/ compensation for use and occupation of the building has been enhanced.

10. In my opinion, once the release order was passed in favour of the landlord the Petitioner-tenant had no legal right to continue in occupation of the building. It appears that after the interim order of this Court dated 3.11.2006 the Petitioner has filed revision and in order to circumvent the order of this Court dated 3.11.2006 the Petitioner has filed this withdrawal application on the ground that revision has been filed against the order declaring vacancy in favour of the landlord.

11. The landlord is now vested with the right in the accommodation as the release order has been passed in his favour by the prescribed authority and further a right under order dated 3.11.2006 by which rent/ compensation has been enhanced from November 2006 month to month. If the application for withdrawal is allowed it would seriously prejudice the rights of the Respondents.

The application made of mala fide and has been filed to circumvent the order dated 3.11.2006 passed by the High Court in the petition.

12. The counsel for the Petitioner as well as counsel for the Respondents have stated that the order dated 3.11.2006 has not been complied with by the tenant who had not paid the enhanced rent. In the circumstances, the arrears of rent as enhanced by this Court vide order dated 3.11.2006 shall be realized by the authority within a period of two months from today from the Petitioner as arrears of land revenue and be paid to the Respondents forthwith.

13. For the reasons stated above, the withdrawal application is rejected.