

(2008) 10 AHC CK 0068
In the Allahabad High Court
Case No : Writ Petition (R.C.) No. 8 of 1994

Bibi Begum

APPELLANT

Vs

Awadhesh Narain and others

RESPONDENT

Date of Decision : 13-10-2008

Acts Referred:

Citation : (2008) 10 AHC CK 0068

Hon'ble Judges : Rakesh Sharma, J

Final Decision : Allowed

Judgement

Rakesh Sharma, J.

1. Heard Sri Ritu Raj Awasthi, learned counsel for the petitioner and Sri H.S. Sahai, holding brief of Sri Deepak Seth, learned counsel for the opposite parties.

2. Through the instant writ petition, the petitioner an old widow lady has assailed the order of the courts below whereby her application for release of the shop for settlement of her unemployed son has been rejected by the Prescribed Authority as well as Appellate Authority.

3. It appears that the petitionerlandlord moved an application for release of the rented premises situate at No. 10 Faizabad Road, Daliganj, P.S. Hasanganj, Lucknow, which is occupied by the opposite partyDr. Awadhesh Narain, who is running a medical clinic there. The petitioner is an old widow lady and she has three sons. Out of her three sons (Mohd. Arif Khan, Mohd. Yunus Khan and Mohd. Aris Khan) one son, namely, Mohd Yunus Khan has settled himself in a portion of shop, which is in possession of his brother Mohd. Arif Khan and he had opened his studio there but the youngest son Mohd. Aris Khan was still jobless and he intends to start his business in the premises in question. The said release application moved by the petitioner was opposed by opposite partyDr. Awadhesh Narain by saying that the petitioner had got three other shops, one of which was in the tenancy of Nanak Ram, which has been let out to Ramesh, after the death of Nanak Ram in 1980; second shop, which was rented to Annamal has also been

given to Ramesh in the year 1979 where he is doing the Chat business; and third shop, petitioner's two sons are doing the business of watch repairing and photography, while the youngest son Mohd. Aris is engaged in a watch repair shop in Nishatganj. The Prescribed Authority after considering material on records rejected the petitioner's application by the order dated 19.12.1987, holding that the premises was not bonafidely required for running the Hotel business of her son Mohd. Aris, besides the tenant is a reputed and established Doctor, who will suffer great hardship in case he is asked to vacate the premises. Being aggrieved, the petitioner preferred an appeal and the appellate authority, vide order dated 14.10.1993, reversed the findings recorded by the Prescribed Authority but dismissed the appeal by holding that through the need of the landlady is genuine, it cannot be released as the tenant will suffer greater hardship. Being aggrieved, the petitioner preferred the instant writ petition inter alia on the grounds that the petitioner's son Mohd. Aris being totally jobless and as such, the Court below erred in law in recording its findings that the petitioner will suffer no hardship while making the comparative hardship between the petitioner and the opposite party No.1.

4. I have gone through the judgment rendered by the Prescribed Authority as well as Appellate Authority. The Appellate Authority has failed to see the relevant provisions of U.P. Act XIII of 1972 and the Rules made thereunder. Right from Apex Court to this Court, the law is settled that on submission of a release application, the tenant must look for alternative accommodation/residential premises. Even as per the latest rent laws, the goodwill of a shop keeper or businessman would not play any dominant role because the good will is like fragrance, which can travel any where, like flower's scent and the customers will go to the new location. This Court has dealt with this issue in Writ Petition No.21 of 1999 (R/C), Bata Shoe Company and another v. VIIth Additional District Judge, Faizabad and others, which, as per learned counsel for the petitioner, has been by the Apex Court.

5. It appears that the appellate Court has not taken into consideration the modern developments in the rent laws. As far as the need of the landlord to settle her young son in his life is concerned, due consideration has to be given to the need of the young son seeking some employment.

6. Recently, the Apex Court has held in a rent matter relating to tenancy of shops situated in the posh area of Connaught place in the Capital City New Delhi that dealing with the bona fide need of the landlord, his interest cannot be ignored giving some special preference to a tenant. The need of the landlord is to be construed more liberally, if suitable alternative accommodation is available to the tenant. This Court has dealt with this point and recorded a finding in a case reported in AIR 2003 SC 2713: 2005 (2) ARC 899, B.C. Bhutada v. G.R.Mundada and recent decisions of this Court as reported in 2005(1) ARC 394, Jogendra Singh Bajaj (Dr.) and others v. IVth Additional District Judge, Saharanpur and another and 2006 (1) ARC 93, Braham Kumar and dothers v. Raja Ram and

others, Kafeel Ahmad v. Smt. Satvindra Kaur, (2006 (24) LCD 402), Sidh Nath Shukla v. Judge, Small Causes (Prescribed Authority), Lucknow and others (2007 (25) LCD 1475), Javed Jameel v. District Judge, Lucknow and others (2006 (24) LCD 1134), Sarju Prasad v. The Additional District Judge, Faizabad and others, (2006 (24) LCD 1201, Seth Bashir Ahmad Bhatti v. Additional district Judge, Court No.9, Lucknow and another, (2006 (24) LCD 1189), Shyam Lal Sahu v. Smt. Phoolmati Devi and others, (2006 (24) LCD 1479), Krishna Prasad Arora v. 10th Additioonal District Judge, Varanasi and others, (2007 (25) LCD 159) and Mullan Yadav v. Additional District Judge, Court No.9, Varanasi and others, (2007 (25) LCD 306).

7. In these days, several shopping areas, malls, new markets are coming up and even in small cities, new market construction are being raised by the development authorities, which are working hard to provide residential and commercial accommodation to the urban population. The tenants on learning about the submission of release application can look for an alternative accommodation. In fact, the process of law is abused and the tenants take advantage of the delay which takes place in adjudication of rent matters.

8. The release application was submitted on 25.10.1983. Thereafter, the tenant had to search for alternative accommodation. The Appellate Authority ought to have considered the point regarding the honest efforts of the tenant to search for some other shop. No effort has been made in this case and this point was dealt with.

9. One more important aspect has been left by the Appellate Court that a meagre rent of Rs.55/ was being paid by the tenant, while the shop was situated at Faizabad Road, Daliganj in the city of Lucknow. As per learned counsel for the petitioner, now the shop in question may be tetchd Rs.5000/ monthly rent. Applying the principles of Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. as reported in (2005) 1 SCC 705, it is the duty of the rent Court to consider as to what should be the adequate rent to be paid for use and occupation of the residential/building or shop. The Appellate Court has ignored that the release application was filed on 25.10.1983 and the said application had remained pending for about four years, which itself is a very long time. A young man of 49 years old has almost lost its prime youth, which could be put in establishing his business. Now, according to the learned counsel for the petitioner, he is 52 years old, meaning thereby that his prime youth and active age has gone in awalling decision. The Rules also provide a timelimit, to be kept in mind by the Rent Courts.

10. In view of above discussion, the writ petition is allowed and the order passed by the appellate Court dated 14.10.1993 is quashed. The matter is remanded to the Appellate Authority for deciding it afresh. This Court is of the view that the Appellate Authority should give a fresh look to the appeal taking into account the latest rent laws, which have been spelt out in the present judgment and other judgments which may be placed by the contesting parties including tenant and

form its opinion based on law and after considering all these points, the Appellate Authority shall deliver its judgment. The appeal shall be decided within two months from the date of presentation of a certified copy of this order. It is made clear that unnecessary adjournments shall be avoided.

(Petition allowed)