

(2001) 01 AHC CK 0030

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 101016 of 2000 in C.M.W.P. No. 36316 of 1996

Bundi and Others

APPELLANT

Vs

IInd A.D.J., Saharanpur and Others

RESPONDENT

Date of Decision : 12-01-2001

Acts Referred:

Constitution of India, 1950 — Article 215, 226

Citation : (2001) 01 AHC CK 0030

Hon'ble Judges : A.K.Yog, J

Final Decision : Dismissed

Judgement

A.K. Yog, J.

Jameel Ahmad son of Chhotey, identified by Shri Virendra Kumar, Advocate before Court as Pairokar of the Petitioners. Sri Virendra Kumar, Advocate states that he is husband of Petitioner No. 8 also. All the Petitioners are closely related (being legal heirs/legal representatives of deceased tenant Buddhan):

(1) The facts, which have come to the notice of this Court after perusing application under Article 215, Constitution of India filed on behalf of Padam Singh Applicant/Respondent No. 3 this Court is constrained to observe that entire judicial proceedings under Article 226, Constitution of India have been made to look a mockery. The learned Counsels for the parties, however, joined in making request for not taking any further action and to save them from harassment and further consequences. On the request of the parties I pass following order exercising my jurisdiction under Article 226, Constitution of India in the interest of justice and save this Court as well as executing Court from further exploitation

(a) The judgment and order dated 22nd April, 2000 is being recalled since it was passed in ignorance of the fact that Respondent No. 3 had died on 12th January, 1998 and, thus, hearing of the petition could not take place on the said date without deciding Substitution Application.

(b) The Substitution Application, as stated by Shri Virendra Kumar, Advocate, learned Counsel for the petitioner, being filed in Registry on 17th February, 1998 after service on the Office of Shri Rajesh Tandon, Advocate (as he then was) on 12th February, 1998 is not on record, a copy of the same is being supplied by Shri Virendra Kumar, Advocate, which shall be kept on record.

(c) Office is directed to substitute the names of legal representatives of deceased Padam Singh, after striking off the name of deceased Respondent No. 3 (Padama Singh) and make a notice to the said effect. The legal representatives of deceased Respondent No. 3 have filed a Vakalatnama along with application under Article 215, Constitution of India. Hence no notice need be given to the newly substituted Respondent Nos. 3/1 to 3/7.

(d) Considering the fact that legal representatives have wrongly put in appearance in the execution proceedings (instituted on the basis of the judgment and order impugned in the present petition) in absence of proper and adequate legal advice, I direct the execution proceedings to remain stayed. On perusing the contents of the counteraffidavit (filed by the Petitioner in reply to the application under Article 215, Constitution of India) I am convinced that Petitioners have taken a false alibi of compromise in execution proceedings in order to circumvent judgment and order dated 22nd April, 2000 passed by this Court earlier. Petitioners (judgment debtors) cannot be permitted to enjoy fruits of an order obtained without disclosing necessary facts of death of Respondent No. 3 and thereafter wreck up frivolous plea based on concocted and fabricated documents of compromise solely with the purpose to perpetuate their illegal possession over the accommodation in question. This is grossest abuse of process of law, it fact, Petitioners have rendered themselves liable for payment of damage to the tune of Rs. 25,000 under this Court's order dated 22nd April, 2000. However, taking into account the fact that legal representatives of deceased Respondent No. 3 were not impleaded, this Court takes a lenient view and does not, at this stage saddle the Petitioners with the consequences under order dated 22nd April, 2000 and the same, as noted above, has been recalled to avoid any future technical objection.

(e) Shri Virendra Kumar, Advocate, learned Counsel for the petitioners submits that the Petitioners, including their Pairokar, who is present in Court today, have authorised him to give an undertaking on the same terms and conditions as contained in this Court's order dated 22nd April, 2000 as subject to appropriate modifications.

(2) In view of the above, the Writ Petition stands dismissed on same terms and conditions as contained in my order dated 22nd April 2000 as indicated below:

(a) The above Pairokar undertakes to file an affidavit containing his undertaking to ensure compliance of this order passed today.

(b) I, accordingly, direct the Petitioners:

(bi) The tenantpetitioners shall file before concerned Prescribed Authority on or before 22nd January, 2001, an application along with their affidavit giving unconditional undertaking to comply with all the conditions mentioned hereinafter:

(bii) TenantPetitioners shall not be evicted from the accommodation in their tenancy for six months i.e. up to 28th February, 2001 (as prayed by Shri Virendra Kumar, Advocate of their own Counsel). Tenantpetitioner, her representative/assignee etc., claiming through her or otherwise, if any shall vacate without objection and peacefully deliver vacant possession of the accommodation in question on or before 28th February, 2001 to the landlord or landlord's nominee/representative (if any, appointed and intimated by the landlord) by giving prior advance notice and notifying to the landlord by Registered A.D. post (on his last known address or as may be disclosed in advance by the landlord in writing before the concerned Prescribed Authority), time and date on which Landlord is to take possession from the tenant.

(biii) Petitioner shall on or before 22nd January, 2001 deposit entire amount due towards rent etc. up to date i.e. entire arrears of the past if any, as well as the rent for the period ending on the 28th January, 2001, any amount deposited earlier towards the aforesaid due shall be duly adjusted.

(biv) Petitioners and everyone claiming under her undertake not to "change" or "damage" or transfer/alienate/assign in any manner, the accommodation in question.

(bv) In case tenants (petitioners) fail to comply with any of the conditions/or direction/s contained in this order, landlord shall be entitled to evict the tenantpetitioner forthwith from the accommodation in question by seeking police force through concerned Judge Small Causes Court.

(bvi) if there is violation of the undertaking of anyone or more of the conditions contained in this order, the defaulting party shall pay Rs. 50,000 (Rupees Fifty thousand only) as damages to the other party besides rendering himself/herself liable for committing grossest contempt of the Court.

(3) The above order is being passed on the express agreement of the learned Counsels for the parties today.

(4) No other point has been raised or pressed before this Court.

(5) It is also made clear that since the matter has been finally decided with the consent of the parties by this Court, again (after legal representatives of deceased have been brought on records the question of execution proceedings being prosecuted on the basis of judgment and orders impugned in the present Writ Petition does not arise. The execution proceedings shall be consigned to record.

(6) Before parting with the case, I would like to say that in case any of the

parties found defaulting in complying with this judgment and order, this court will be constrained to take stringent action against it so as to protect the Court from uscrupulous litigants.