
(2016) 03 AHC CK 0022
In the Allahabad High Court
Case No : Misc. Single No. 2692 of 2016

Firm Bal Govind Kishori Lal Thru Partner & 6 Ors.	APPELLANT
Vs	
Additional District Judge Court No.2 Faizabad And Ors.	RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2016) 1 ARC 885

Hon'ble Judges : Anil Kumar, J.

Bench : Single Bench

Advocate : Triloki Nath Yadav, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Anil Kumar, J. - Heard Sri Triloki Nath Yadav, learned counsel for petitioners and perused the record.

2. Facts in brief of the present case are that respondent/Smt. Savitri Soniya filed an application under Section 21(a) of U.P. Act No. 13 of 1972 registered as P.A. Case No. 11 of 2001 in the Court of 11 of 2001 in the Court of Prescribed Authority/Civil Judge (Jr. Div.), Sadar, Faizabad, allowed by order dated 13.03.2014, challenged by filing Civil Appeal No. 1 of 2014 (Firm Bal Govind Kishori Lal v. Smt. Soniya) before respondent No. 1/Additional District Judge, Court No. 2, Faizabad.

3. During the pendency of appeal, an application under Order 41, Rule 27 CPC moved by the petitioner in order to file certain orders/documents rejected by order dated 19.11.2015.

4. Learned counsel for petitioner while challenging the impugned order dated 19.11.2015 submits that the appellate authority erred in dismissing the application moved by the petitioner under Order 41, Rule 27 CPC for taking the additional document on record as they are necessary for disposal of the controversy involved in the case.

5. It is further submitted by learned counsel for petitioner that while rejecting the petitioner's application under Order 41, Rule 27 CPC thereby not taking of the additional evidence on record they would suffer irreparable loss and injury which cannot be compensated in terms of money, so the impugned order is liable to be set aside.

6. I have heard learned counsel for petitioner and perused the record.

7. Section 34 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, reads as under:-

"Section 34 - Power of various authorities and procedure to be followed by them:- (1) The District Magistrate, the prescribed authority or any[appellate or revising authority] shall for the purposes of holding any inquiry or hearing [any appeal or revision] under this Act have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908 (Act No. V of 1908), when trying a suit, in respect of the following matters namely,--

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) receiving evidence on affidavits;

(c) inspecting a building or its locality, or issuing commission for the examination of witnesses or documents or local investigation;

(d) requiring the discovery and production of documents;

(e) awarding, subject to any rules made in that behalf, costs or special costs to any parts or requiring security for costs from any party;

(f) recording a lawful agreement, compromise or satisfaction and making an order in accordance therewith;

(g) any other matter which may be prescribed."

8. Further, Rule 22 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 provides as under:-

"Rule 22 - Powers under the Code of Civil Procedure, 1908 [Section 34(1)(g)]--- The District Magistrate, the prescribed authority or the appellate authority shall, for the purposes of holding any inquiry or hearing any appeal or revision under this Act, shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters namely,--

(a) the power to dismiss an application, appeal or revision for default and to restore it for sufficient cause:

(b) the power to proceed ex parte, and to set aside, for sufficient cause, and order passed ex parte:

(c) the power to award costs and special costs to any successful party against an unsuccessful party:

(d) the power to allow amendment of an application, memorandum of appeal or revision:

(e) the power to consolidate two or more cases of eviction by the same landlord against different tenants:

(f) the power referred to in sections 151 and 152 of the Code of Civil Procedure, 1908 to make any order for ends of justice or to prevent the abuse of process of the authority concerned."

9. Clause(b) of Section 34(1) proved for receiving evidence on affidavits and Rule 22 of the Rules framed under the Act provides that the District Magistrate, the Prescribed or the appellate, or Revising Authority shall, for purposes of holding any inquiry or hearing any appeal or revision under the Act, shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the matters enumerated therein. Rule(f) of Rules 1972 provides the power referred to in Sections 151 and 152 of the Code of Civil Procedure, 1908 to make any order for the ends of justice or to prevent the abuse of the process of the authority concerned.

10. Section 34 of the Act or Rule 22 of the Rules does not specifically provide that Order 41, Rule 21 of the Code of Civil Procedure will be applicable. As Section 34(1)(b) of the Act confers the power on the authorities concerned to receive additional documents on affidavits, the principle which is applicable under Order 47, Rule (1) of the Code of Civil Procedure can be made applicable which empowers the appellate court to take evidence on record.

11. Further, the court has been given power under the said proviso for taking additional evidence. If it is necessary. The provision itself it clear that the Court has discretion to do so and such discretion should be exercised only when is necessary. The necessity for taking additional documents will depend upon the facts and circumstances of each case. If an application is filed by a party for cross-examination of a deponent by an affidavit, he must give reasons why cross-examination is necessary.

12. A Division Bench of this Court in Assam Dass v. Prescribed Authority/Civil Judge, Mohanlalganj, Lucknow and another, 1996(2) A.R.C. 92, it was held that if the Prescribed Authority is satisfied that the cross-examine the deponent of an affidavit. The Court observed :

"In our view a conjoint reading of Rule 1 of Order XIX, Code of Civil Procedure and Section 34 of the Act makes it quite manifest that if the Prescribed Authority is satisfied that it is necessary for the ends of justice and to elicit truth that the deponent of the affidavit should be called upon to appear before it for the purpose of cross-examination, the Prescribed Authority has jurisdiction and power to ask such person to appear before it for that purpose."

13. Taking into consideration the above said facts as well as the provisions of Order 41, Rule 27 (1) CPC which on reproduction reads as under:-

"Rule 27- Production of additional evidence in Appellate Court-- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if--

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined."

14. Moreover, on plain reading of Sub-rule (1)(aa) of Order 41, Rule 27 , the position which emerges out is that when application is made at a late stage to put in evidence *res mover ad notitiant preventa*, one of the primary duties of the applicant is to show that it was owing to no want of diligence on his part that the matter/evidence was not discovered before, so he was not able to file the same before the court below and if a appellant fails to satisfy the said condition his application to produce the same at a belated stage is liable to be rejected.

15. The party seeking to produce additional evidence, whether oral or documentary additional evidence, is to establish that notwithstanding to exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed and in order to bring the additional evidence on record, the appellant should establish that he made application to get the certified copies prior to the disposal of the suit, and they were not available and adjournment was refused by the Court. Where it is not stated that the trial court refused to admit the documents or that the documents were not available at the time of trial, they cannot be admitted in the appellate court to fill up the gaps in the evidence or to better the case of the appellant.

16. Before a party is allowed to produce additional evidence he has to establish that the evidence was not in existence, was not within his knowledge or could not after the exercise of due diligence be produced by him at the time when the decree appealed against was passed.

17. Order 41, Rule 27 CPC is clearly not intend to allow a litigant who had been unsuccessful in the lower court to patch up the weak parts of his case and to fill up the omission in appeal. (See. *Arjan v. Kartar*, 1951 SCR 258, *Parsotim Thakur*

and others v. Lal Mohan and others, AIR 1931 P.C. 143).

18. Thus, in the above stated facts and the reasoning given by the appellate court while rejecting the petitioner's application for taking additional documents on record, I do not find any illegality or infirmity in the order dated 19.11.2015 passed by appellate court.

19. For the foregoing reasons, the writ petition lacks merit and is dismissed.

20. No order as to costs.