

(2006) 03 AHC CK 0120

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 52186 of 2002

Gulshan Kumar Shondhi

APPELLANT

Vs

S.M.College,Chandausi,Moradabad

RESPONDENT

Date of Decision : 23-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Provincial Small Cause Courts Act, 1887 — Section 16, 25

Citation : (2006) 03 AHC CK 0120

Hon'ble Judges : S.P.Mehrotra, J

Final Decision : Disposed Of

Judgement

1. Civil Misc. Application No. 1432 of 2003

2. Civil Misc. Application No. 13612 of 2003

S.P. Mehrotra, J. By the order dated 9122002 passed on the Writ Petition, notice was directed to be issued pending admission. Further, eviction of the petitioner from the disputed shop was also stayed subject to certain conditions.

2. The said order dated 9122002 is reproduced below:

?Issue notice pending admission.

Notice will be issued to respondent fixing a date in the week commencing 20th January, 2003.

List this case in the week commencing 20th Jan. 2003.

Heard on the question of grant of interim relief.

Having considered the facts and circumstances of the case and the submissions made by the learned Counsel for the petitioner, it is directed that the petitioner will not be evicted from the disputed shop till 28th Feb. 2003 provided the petitioner deposits the entire decretal amount with rent/damages upto December, 2002 at the decreed rate within one month from today and further

continues to deposit rent/damages at the rate of Rs. 60/ per month with effect from Jan. 2003 by 7th of each succeeding month.

The amount, if any, already deposited by the petitioner will be adjusted. The amount so deposited by the petitioner may be withdrawn by the respondent without furnishing any security. In the event of default on the part of the petitioner in complying with any of the aforesaid conditions, the interim order will stand automatically vacated.?

2. The aforementioned Civil Misc. Application No. 1432 of 2003 (shown at SI. No. 1 above) was, thereafter, filed on behalf of the petitioner, inter alia, praying that the aforesaid interim order dated 9122002 be modified, and the petitioner be permitted to deposit rent/damages at the rate of Rs. 60 per month being the admitted rate of rent instead of that awarded by the trial Court.

3. An affidavit, sworn on 212003, was filed in support of the said application (shown at SI. No. 1 above).

4. It is, inter alia, stated in the said affidavit that a perusal of the plaint shows that the admitted rate of rent was Rs. 60/ per month; and that, however, the trial Court while decreeing the Suit had awarded damages @ Rs. 1,000 per month since March, 1994 till the date of judgment, i.e., 3051998, and thereafter @ Rs. 1,200 per month.

5. It is, inter alia, further stated in the said affidavit that the petitioner is a very poor man and his elder son died of Cancer; and that in the treatment of his elder son, the petitioner had spent the earnings of his entire life; and that the petitioner is doing printing work on an old machine from the disputed shop wherefrom he is hardly able to earn Rs. threefour thousand per month; and that the two remaining sons of the petitioner, both of whom are married and have their own children, are also totally dependent for their livelihood from the income from the printing business being carried out from the disputed shop; and that in such circumstances, the petitioner is unable to deposit the damages @ Rs. 1,000 per month from March, 1994 to 3051998 and thereafter @ Rs. 1,200 per month.

6. It appears that by the order dated 612003, the aforementioned Civil Misc. Application No. 1432 of 2003 (shown at SI. No. 1 above) was directed to be listed with previous papers on 1312003.

7. It further appears that while the aforementioned Civil Misc. Application No. 1432 of 2003 (shown at SI. No. 1 above) was pending, another application being Civil Misc. Application No. 13612 of 2003 (shown at SI. No. 2 above) was filed on behalf of the petitioner on 2412003.

8. The said application (shown at SI. No. 2 above) was accompanied by an affidavit, sworn on 2312003.

9. It was, inter alia, stated in the said affidavit that the aforementioned Civil Misc. Application No. 1432 of 2003 (shown at SI. No. 1 above) could not be

heard on 1312003 on account of Lawyers' strike; and that in the meantime, the Executing Court in Execution Case No. 18 of 1998 by its order dated 2012003 had issued writ of possession, and the petitioner was under imminent threat of dispossession.

10. Having regard to the averments made in the aforementioned application (shown at SI. No. 2 above) and its accompanying affidavit, the Court passed the following interim order dated 2412003:

?Sri M.K. Gupta, learned Counsel for the petitionerapplicant and Sri J.P.N. Singh holding brief of Sri P.S. Baghel, learned Counsel for the respondent are present.

Sri Gupta, learned Counsel for the petitionerapplicant submits that he has filed an application on 3rd Jan. 03 for modification of the order dated 9122002 passed in the aforesaid Writ Petition.

He further submits that the Execution Court is proceeding to execute the decree on the ground that the conditions incorporated in the order dated 9122002 passed in the said Writ Petition have not been complied with by the petitioner.

Sri J.P.N. Singh holding brief of Sri P.S. Baghel, learned Counsel for the respondent states that Sri P.S. Baghel is out of station today and as such, the matter may be taken up on 27th January, 2003.

In view of the aforesaid circumstances, it is directed the Execution Court will not proceed to execute the decree till 28th January, 2003. This application as well as the application for modification filed on behalf of the petitioner will be put up on 27th January, 2003, alongwith the record of the case.

A certified copy of this order shall be given to the learned Counsel for the parties on payment of usual charges today. ?

11. It further appears that the said interim order dated 241 2003 was extended from time to time.

12. In the meantime, counteraffidavit, sworn on 2322003, was filed on behalf of the respondent in respect of the aforementioned application (shown at SI. No. 1 above).

13. Rejoinder affidavit, sworn on 2822003, was filed on behalf of the petitioner in reply to the said counteraffidavit.

14. Further, Supplementary Affidavit, sworn on 812006, has been filed on behalf of the petitioner.

15. Supplementary Counter Affidavit, sworn on 1512006, has been filed on behalf of the respondent in reply to the aforesaid Supplementary Affidavit.

16. Shri M.M. Jain holding brief for Shri M.K. Gupta, learned Counsel for the petitioner states that he does not propose to file any Supplementary Rejoinder Affidavit in reply to the said Supplementary Counter Affidavit.

17. I have heard Shri M.M. Jain holding brief for Shri M.K. Gupta, learned Counsel for the petitioner and Shri Santosh Kumar Singh holding brief for Shri P.S. Baghel, learned Counsel for the respondent at length, and perused the record.

18. From a perusal of the said interim order dated 9122002, it is evident that eviction of the petitioner from the disputed shop has been stayed subject to the following conditions:

(1) The petitioner deposits the entire decretal amount with rent/damages upto December, 2002 at the decreed rate within one month from today.

(2) The petitioner further continues to deposit rent/damages at the rate of Rs. 60/ per month with effect from January, 2003 by 7th of each succeeding month.

19. It is, inter alia, further observed in the said interim order dated 9122002 that the amount, if any, already deposited by the petitioner will be adjusted.

20. From a perusal of the averments made in the aforementioned application (shown at SI. No. 1 above) and its accompanying affidavit, it is apparent that the petitioner seeks modification of condition No. 1, shown above, to the effect that the petitioner may be permitted to deposit rent/damages @ Rs. 60 per month even in respect of the decretal amount including rent/damages for the period upto December, 2002.

21. It appears that the respondent filed a Suit being SCC Suit No. 11 of 1994 against the petitioner for eviction, arrears of rent, damages, etc.

22. The trial Court (Judge, Small Causes Court, Chandausi, Moradabad) by its judgment and order dated 3051998 decreed the said Suit for eviction of the petitioner from the disputed shop. The Trial Court further, passed a decree for damages @ Rs. 1,000 with effect from 2131994 till the date of judgment (i.e., 3051998), and thereafter, @ Rs. 1,200/ per month till the date of delivery of possession by the petitioner to the respondent.

23. Against the said judgment and order dated 3051998, the petitioner filed Revision under Section 25 of the Provincial Small Cause Courts Act, 1887, which was registered as SCC Revision No. 40 of 1998.

24. By the judgment and order dated 22112002 passed by the learned Additional District Judge, Chandausi, Moradabad (Revisional Court), the said SCC Revision No. 40 of 1998 was dismissed, and the judgment and decree dated 3051998, passed by the trial Court in SCC Suit No. 11 of 1994, was confirmed.

25. Thereafter, the petitioner has filed the present Writ Petition wherein the said interim order dated 9122002 has been passed.

26. Having regard to the facts and circumstances of the case and having considered the submissions made by the learned Counsel for the parties, I do not find any sufficient reason for modifying the said interim order dated 9122002.

27. Prima facie, there is decree of the trial Court awarding damages at the rates mentioned above, and the same has been confirmed by the Revisional Court.

28. The question as to whether there is any illegality in awarding damages at the aforesaid rates relates to the merit of the case, and the same will be gone into at the stage of final disposal of the Writ Petition. There is no occasion to examine the said question at this stage.

29. It is further noteworthy that on the aforementioned application (shown at SI. No. 2 above), an interim order dated 2412003 was passed whereby the Execution Court was restrained from proceeding with the execution of the decree.

30. The said interim order dated 2412003 has remained in operation since then. Therefore, in case, the petitioner was facing any financial problem in January, 2003, the same loses its significance now after a lapse of more than 3 years.

31. In any case, the facts and circumstances mentioned in the above affidavit accompanying the aforementioned application (shown at SI. No. 1 above) are not sufficient for modifying the said interim order dated 9122002 passed in the Writ Petition.

32. However, in view of the facts and circumstances, it will be in the interest of justice to grant reasonable time to the petitioner for complying with condition No. 1, mentioned above, as contained in the said interim order dated 9122002.

33. It may be mentioned that as per the averments made in paragraph 8 of the aforesaid Supplementary Counter Affidavit, sworn on 1512006, filed on behalf of the respondent, the petitioner is complying with condition No. 2, mentioned above, as contained in the said interim order dated 9122002.

34. In view of the above, the prayer for modification of the said interim order dated 9122002 made in the aforementioned Civil Misc. Application No. 1432 of 2003 (shown at SI. No. 1 above) is liable to be rejected.

35. In view of the rejection of the prayer made in the aforementioned application (shown at SI. No. 1 above), the interim order dated 2412003 passed on the aforementioned Civil Misc. Application No. 13612 of 2003 (shown at SI. No. 2 above) is also liable to be vacated.

36. However, as noted above, even though there is no occasion for modifying condition No. 1, mentioned above, as contained in the said interim order dated 9122002, it is in the interest of justice that reasonable time be granted to the petitioner for complying with the said condition No. 1.

37. Accordingly, the following directions are given:

(A) The petitioner is granted time upto 3182006 for complying with condition No. 1, mentioned above, as contained in the said interim order dated 9122002, namely, regarding deposit of the entire decretal amount with rent/damages upto December, 2002 at the decreed rate.

(B) In case, the petitioner makes the said deposit, mentioned in (A) above, by 3182006 and further continues to make deposits as per condition No. 2, mentioned above, as contained in the said interim order dated 9122002, the petitioner will not be evicted from the disputed shop until further orders of the Court.

(C) As regards rest of the terms, conditions and directions, as contained in the said interim order dated 9122002, the same will continue to remain in operation.

(D) Subject to the directions contained in (A), (B) and (C) above, Civil Misc. Application No. 1432 of 2003 (shown at SI. No. 1 above) is dismissed.

(E) Further, subject to the directions contained in (A), (B), (C) and (D) above, the interim order dated 2412003 passed on the aforementioned Civil Misc. Application No. 13612 of 2003 (shown at SI. No. 2 above) is vacated.

As the counteraffidavit and rejoinder affidavit have already been exchanged in the main Writ Petition, the case will now be listed for admission/final disposal before the appropriate Bench. The case will not be treated as tiedup with me.

Disposed of.