

(2002) 11 AHC CK 0052
In the Allahabad High Court
Case No : C.M.W.P. No. 48927 of 2002

Gupta National Radios and Electric House	APPELLANT
Vs	
Sagarmal Arora and Another	RESPONDENT

Date of Decision : 16-11-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 22

Citation : (2003) 2 AWC 965

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

Bench : Single Bench

Advocate : B.D. Mandhyan and S.C. Mandhyan, for the Appellant; A.N. Sinha and A.B. Sinha, for the Respondent

Final Decision : Partly Allowed

Judgement

S.P. Mehrotra, J.—This writ petition has been filed by the petitioner under Article 226 of the Constitution of India, inter alia, challenging the order dated 23rd October, 2002 (Annexure-4 to the writ petition) passed by the learned Additional District Judge, Court No. 1, Farrukhabad.

2. The dispute relates to a Shop No. 2/75 (New No. 2/74) situated in Mohalla Nltganj North City. Farrukhabad. The said shop has, hereinafter, been referred to as "the disputed shop".

3. From the allegations made in the writ petition, it appears that the respondent No. 1 filed a release application u/s 21 (1) (a) of the U. P. Act No. XIII of 1972 (in short "the Act") against the respondent No. 2 alleging the latter to be the tenant. The said release application was registered as P.A. Case No. 4 of 1997. A copy of the release application has been filed as Annexure-1 to the writ petition.

4. It appears that during the pendency of the release application before the prescribed authority, the petitioner was impleaded as opposite party in the said

release case by the order dated 14th October, 1997, a copy whereof has been filed as Annexure-2 to the writ petition.

5. By the judgment and order dated 26.4.2001. passed by the learned Civil Judge (Junior Division)/Prescribed Authority, Farrukhabad, the said release application filed by the respondent No. 1 was allowed.

6. Against the judgment and order dated 26.4.2001 passed by the learned Civil Judge (Junior Division)/Prescribed Authority, Farrukhabad, the petitioner filed an appeal u/s 22 of the Act. The said appeal filed by the petitioner was registered as Rent Control Appeal No. 30 of 2001. It further appears that the respondent No. 2 also filed a separate Rent Control Appeal. Both the said appeals were connected.

7. During the pendency of the Rent Control Appeal No. 30 of 2001 filed by the petitioner, the petitioner filed Application Nos. 14C-2, 9C-2 and 47C-2 before the appellate authority. By the Application No. 14C-, 2, the petitioner sought to bring on record certain papers as per list 15C-2.

8. By the Application No. 19C-2, the petitioner sought to bring on record five receipts dated 5.5.1979, 7.6.1979, 6.7.1979, 17.8.1979 and 7.4.1980.

9. By the Application No. 47C-2 which was supported by an affidavit No. 48C-2, the petitioner sought to bring on record the documents as per list 49C-2.

10. By the said order dated 23rd October, 2002, the learned Additional District Judge, Court No. 1, Farrukhabad (appellate authority) allowed the said Application Nos. 14C-2 and 19C-2 filed by the petitioner and papers filed as per lists 15C-2 and 21C-2 were taken on record. However, the learned Additional District Judge, Court No. 1, Farrukhabad, rejected the said Application No. 47C-2, by which the petitioner sought to file the documents as per list 49C-2.

11. Thereafter, the petitioner has filed the present writ petition.

12. I have heard Sri B.D. Mandhyan, learned counsel for the petitioner and Sri A.N. Sinha, learned counsel for the caveator-respondent No. 1.

13. Sri Mandhyan, learned counsel for the petitioner submits that the appellate authority acted illegally in rejecting the said Application No. 47C-2. It is submitted that the conditions laid down in Order XLI Rule 27 of the CPC were satisfied in regard to the documents sought to be filed by the said Application No. 47C-2, and the appellate authority ought to have allowed the said application.

14. Sri A.N. Sinha, learned counsel for the caveator on behalf of respondent No. 1 submits that the appellate authority has recorded finding that none of the conditions laid down in Order XLI, Rule 27 of the CPC was satisfied in respect of documents sought to be filed by the Application No. 47C-2, and the appellate authority did not commit any illegality in rejecting the Application No. 47C-2.

15. I have considered the submissions made by the learned counsel for the parties. Order XLI, Rule 27 of the CPC provides as follows :

"27. Production of additional evidence in Appellate Court.--(I) 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

"I(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.

(2) Whenever additional evidence is allowed to be produced by an appellate court, the Court shall record the reason for its admission."

16. As regards the Application No. 47C-2, the appellate authority in the impugned judgment and order dated 23rd October, 2002, has held that the documents sought to be filed by the said Application No. 47C-2 as per list 49C-2, were not such documents as had not been admitted by the lower court (in the present case, the prescribed authority).

17. In view of this finding of the appellate authority. Clause (a) of Order XLI, Rule 27(1) of the CPC is not attracted to the present case. No interference is called for with the conclusion of the appellate authority with regard to Clause (a) of Sub-rule (1) of Order XLI, Rule 27 of the Code of Civil Procedure.

18. The appellate authority in the impugned judgment and order dated 23rd October, 2002, has further held that the documents sought to be filed by the said Application No. 47C-2 as per list 49C-2, were not such documents which could not, after the exercise of due diligence, be produced by the petitioner before the lower court (in the present case, the prescribed authority).

19. In view of this finding of the appellate authority, Clause (aa) of Order XLI, Rule 27(1) of the CPC is also not attracted to the present case.

20. In do not find any ground for interference with the said conclusion of the appellate authority with regard to Clause (aa) of Sub-rule (1) of Order XLI, Rule 27 of the Code of Civil Procedure. However, while considering the said application No. 47C-2 in order to decide the question of applicability of Clause (b) of Order XLI Rule 27(1) of the Code of Civil Procedure, the appellate authority has not considered as to whether the documents sought to be filed by the said application No. 47C-2 were required to be produced to enable the appellate authority to pronounce the judgment or as to whether there was any other

substantial cause for taking the said documents on record. In fact, while considering the said application No. 47C-2 from the point of view of applicability of Clause (b) of Order XLI Rule 27 of the Code of Civil Procedure, the appellate authority has observed that only Photo-stat copies of paper Nos. 4 and 6 had been filed before the lower court, and the originals, were not filed, and further that the petitioner had not exercised due diligence to produce the said documents before the lower court. These considerations, in my opinion, were relevant for deciding the question of applicability of Clause (aa) of Order XLI Rule 27(1) of the CPC but these were not relevant for deciding the question of applicability of Clause (b) of Order XLI Rule 27(1) of the Code of Civil Procedure. Therefore, I am of the view that the appellate authority has not considered the question of applicability of Clause (b) of Order XLI Rule 27(1) of the CPC in regard to the documents sought to be filed by the application No. 47C-2 on relevant considerations. Instead, the appellate authority has proceeded on irrelevant considerations in deciding the applicability of Clause (b) of Order XLI Rule 27(1) of the Code of Civil Procedure. Therefore, the impugned judgment and order dated 23rd October, 2002, in so far as it has rejected application No. 47C-2 cannot be sustained and is liable to be quashed to that extent.

21. At this stage, Sri Sinha, learned counsel for the caveator-respondent No. 1 has stated that in order to avoid any delay in the disposal of the appeal, he concedes that the documents sought to be filed by the petitioner through application No. 47C-2 as per list 49C-2 may be admitted on the record of the appeal without prejudice to the rights and contentions of the parties, and reasonable time may be fixed for disposal of the appeal pending before the appellate authority.

22. In view of the said statement made by Sri. A.N. Sinha, learned counsel for the caveator-respondent No. 1, it is not necessary to remand the matter to the appellate authority for re-consideration of the application No. 47C-2, and the said application may be allowed by this Court on the basis of the said statement made by Sri. A.N. Sinha, learned counsel for the caveator respondent No. 1.

23. In view of the aforesaid discussion, this writ petition is allowed to the extent that the judgment and order dated 23rd October, 2002, on the application No. 47C-2 (with regard to the papers as per list 49C-2) is quashed. The said application No. 47C-2 is allowed, and the documents mentioned in the list 49C-2 are directed to be taken on record of the said Rent Control Appeal No. 30 of 2001 without prejudice to the rights and contentions of the parties.

24. It is further directed that the learned Additional District Judge, Court No. 1, Farrukhabad, will endeavour to decide the said Rent Control Appeal No. 30 of 2001 expeditiously, preferably within a period of two months from the date of production of a certified copy of this order before the appellate authority.