
(2011) 04 AHC CK 0259

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23584 of 2011

Gyan Prakash Mishra

APPELLANT

Vs

District Judge, Kanpur Nagar and others

RESPONDENT

Date of Decision : 22-04-2011

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 18, 25

Citation : (2011) 04 AHC CK 0259

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

RakeshTiwari, J.—Heard learned counsel for the parties and perused the record.

2. This writ petition has been filed challenging the validity and correctness of the order dated 26.03.2011by which the revisional Court has refused to grant stay in S.C.C. Revision No. 11of 2011: Gyan Prakash Mishra Vs. V.L. Verma & others.

3. The brief facts of the case are that respondents no. 2 to 4 filed J.S.C.C. Suit No. 83 of 1988 seeking relief of eviction and realization of arrears of rent on the ground that the petitioner has failed to make the payment of rent since 01.04.1986 to 31.12.1988. In the said suit it was also prayed that decree of ejectment against the petitioner be passed and the possession may be handed over to the plaintiffrespondents no. 2 to 4. The suit was contested by the petitioner by filing written statement denying plaint allegation. The Judge, Small Causes Court, Kanpur Nagar after considering the matter decreed the suit partially vide his order dated 20.01.2011directing that the house no. 120/192 Lajpat Nagar, Kanpur Nagar be vacated by the petitioner/defendant within a period of one month and the possession be handed over to the plaintiffs/respondent nos. 2 to 4. It was also directed that the defendant/respondent nos. 2 to 4 will be entitled to withdraw the amount of rent. In case of default the defendant will be entitled for Rs. 128/ per month as rent from the petitioner. Respondents no. 2 to 4 filed caveat application under Section 148A C.P.C. before the Court of District Judge, Kanpur Nagar.

4. The petitioner also preferred S.C.C. revision no. 11 of 2011 along with a stay application dated 10.3.2011 in revision before the District Judge, Kanpur Nagar, with the prayer to stay the operation of judgment and order dated 20.01.2011 till disposal of the revision. In the meantime execution proceedings were initiated by respondents no. 2 to 4 before the Court of Judge, Small Causes. The execution case was registered as Execution Case No. 18 of 2011: V.L. Verma Vs. Gyan Prakash. The revisional Court though admitted the revision, but rejected the application of the petitioner for stay dated 25.3.2011 vide its order dated 26.3.2011 on the ground that JSCC suit has been decided on merits and no case for interim order has been made out by the revisionist at the admission stage, hence notices be sent to respondent nos. 2 to 4 on the stay application. The order dated 26.3.2011 reads thus:

5. The petitioner is challenging the validity of genuineness of the order dated 26.03.2011 on the ground that since the respondents were already represented by their counsel namely, Sri Vishwa Prakash Katiyar, by means of caveat application, and as such the application dated 25.3.2011 filed by the petitioner should be decided on merits. More so ever when the revision has already been admitted by the revisional court vide its order dated 15.2.2011. It is stated that when the revisional court has refused to grant the interim order against the judgment and decree dated 20.01.2011, the serious civil consequences took place to the effect that the respondent no. 3 hastily filed an affidavit before the Judge, Small Causes Court, Kanpur Nagar in Execution Case No. 18 of 2011 to execute the judgment and decree and that since the order dated 26.3.2011 and the caveat filed by the plaintiff/respondents no. 2 to 4 amply proves that they have been served, and as such the District Judge, Kanpur Nagar was under a legal obligation to stay the effect and operation of the judgment and decree dated 20.1.2011 during the pendency of the revision. The petitioner has relied upon the judgment of the apex court in Mool Chand Yadav Vs. R.B. Sugar Co. Ltd. 1983 AWC 121, wherein it has been held that during pendency of appeal order, hearing, civil consequences must be suspended. More so when appeal is admitted, paragraphs 2 to 4 of the said judgment relied upon by the petitioner reads thus:

"2. The matter discloses a battle of wits rather than of any legal substance or injured rights. There is one room in Hari Bhawan which at present is occupied by a gentleman called Mool Chand Yadav who is described as General Manager of U.P. State Sugar Corporation Ltd., Rampur Unit (Corporation for short). The dispute going on is whether Hari Bhawan is a property which has vested in the Corporation and whether the Corporation is entitled to occupy it and whether a part of it can be used by the General Manager of the Corporation. In a suit filed by respondents an injunction was granted restraining the present appellants or their officers from occupying Hari Bhawan against which an appeal was filed by the present appellants which is pending. Subsequently, an application was made alleging flouting of the Court's order and the Court was invited to hold the Corporation and its officers in contempt and to punish them for the same. Thjs

application resulted in the following order:

"Accordingly the application Exhibit IV1 is being accepted. One month's time is being granted to defendant, Mool Chand Yadav, to vacate the disputed room and if he does not do so all the movable property of defendant Nos. 2 and 3 will be attached in compliance with the order of temporary injunction passed on 2.11.1979".

3. An appeal from this order was preferred being F.A.F.O. No. Nil of 1982. We are told that appeal was admitted and notice of motion was taken out for suspension of the order under appeal. But the Division Bench of the Allahabad High Court declined to grant stay. Hence, this appeal by Special Leave Petition.

4. We heard Mr. S.N. Kacker, learned counsel for the appellants, and the respondents appeared by Caveat through Mr. Manoj Swarup, Advocate. We are not inclined to examine any contention on merits at present, but we would like to notice of the emerging situation if the operation of the order under appeal is not suspended during the pendency of the appeal. If the F.A.F.O. is allowed, obviously Mool Chand Yadav would be entitled to continue in possession. Now, if the order is not suspended in order to avoid any action in contempt pending the appeal, Mool Chand Yadav have to vacate the room and handover the possession to the respondents in obedience to the Court's order. We are in full agreement with Mr. Manoj Swarup, learned advocate for respondents that the Court's order cannot be tolerated. But if orders are challenged and the appeals are pending, one cannot permit a swinging pendulum continuously taking place during the pendency of the appeal. Mr. Manoj Swarup may be wholly right in submitting that there is intentional flouting of the Court's order. We are not interdicting that finding. But judicial approach requires that during the pendency of the appeal the operation of an order having serious civil consequences must be suspended. More so when appeal is admitted. Previous history of litigation cannot be overlooked. And it is not seriously disputed that the whole of the building, Hari Bhawan, except one room in dispute is in possession of the Corporation. We accordingly suspend the operation of the order dated 6th August, 1982 directing the appellants to handover the possession of the room to the respondents till the disposal of the first appeal against that order pending in the High Court of Allahabad. Mr. Manoj Swarup requests that both the earlier and later appeal should be heard together as early as possible. We order accordingly and request the High Court if it considers proper in its own discretion to hear both the appeals as expeditiously as possible in order to avoid the continuance of the boiling situation. The appeal stands dispose of. There shall be no order as to costs."

6. After hearing learned counsel for the petitioner, it is apparent that the Judge Small Causes Court has recorded a finding against the petitioner holding that he without taking permission of the landlord changed the user of the accommodation in dispute for entirely different business by subletting it Sri Shree Narain, a mechanic who is working in the garage for repairs of another

vehicles whereas the shop had been tenanted to the petitioner for business of scooter parts by this and that by act of the petitioner the value of the shop has decreased. It is apparent that vacancy was declared by the competent authority on 12.10.1984 and although the order was quashed but the petitioner did not deposit the full amount of rent. He only deposited Rs.2171 towards rent up to August 1985 and also did not pay water tax and sewer tax.

7. It is lastly held that the mechanic to whom the petitioner had sublet the shop later on vacated it due to personal efforts of the landlord and since then the shop in dispute is kept closed by the tenant and as the landlord have proved validity of Section 20 of U.P. Act No. 13 of 1972 and subletting, it is sufficient basis for order of vacation of the shop in dispute. The Court also held that the accommodation in question was used for illegal work. The Court below by order dated 26.3.2011 has come to the conclusion that for proper adjudication of the case granting stay in favour of the petitioner, notice was necessary to be sent to the respondent and subsequently notice was sent for 15.4.2011.

8. In view of what has been stated above and also in view of the concurrent finding recorded by the Judge, Small Causes Court below against the petitioner, the revisional court has rightly ordered for consideration of the application for interim relief after hearing the parties. There is no illegality or infirmity in the order dated 26.3.2011.

9. The writ petition is, accordingly, dismissed. No order as to costs.