
(1996) 02 AHC CK 0008
In the Allahabad High Court
Case No : C.M.W.P. No. 31699 of 1995

Jagdish Chandra Chawla

APPELLANT

Vs

IVth Addl. District Judge and Others

RESPONDENT

Date of Decision : 12-02-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 14, Order 6 Rule 15, Order 6 Rule 2
Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(2), 21, 21(1), 34(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 14, 15, 15(1), 15(2)

Citation : (1996) 02 AHC CK 0008

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : B.D. Mandhyan, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This petition is directed against the order dated 12th September, 1995, passed by Respondent No. 1, whereby he permitted Respondent No. 3 to file application for amendment of the pleadings and the order dated 31.10.1995, allowing the amendment application.

2. The facts in brief are that the Petitioner is a tenant of shop situate in premises No. 16/18 Vivekanand Marg, Allahabad. Respondent No. 3 filed an application u/s 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the Act) on the ground that on the first and the second floor, of the premises No. 16/18 Vivekanand Marg, Allahabad Roxi Hotel is being run but the income from the hotel business is meagre. She wants to settle her son Kamlesh Narain who is an unemployed youth in the business of general merchandise in the shop in dispute. It was further alleged that the tenant has another shop bearing No. 17 on Viveka Nand Marg, Allahabad and if the Petitioner is evicted, he would not suffer any hardship. This application was

contested by the Petitioner. He alleged that the income from hotel business of Respondent No. 3 is sufficient. It was denied that he is in possession of shop No. 17 Viveka Nand Marg, Allahabad. The parties led evidence and the Prescribed Authority allowed the application vide its order dated 16.3.1992. Against this order, the Petitioner preferred Rent Control Appeal No. 132 of 1992 before the District Judge Allahabad.

3. During the pendency of the appeal, Respondent No. 3 filed an affidavit stating that the Petitioner has purchased shop No. 14/16 Viveka Nand Marg, Allahabad, adjacent to the shop in question in the name of his two sons, namely, Pradumn Kumar Chawla and Sushil Kumar Chawla both aged about 25 years and 19 years respectively. This affidavit was accepted by the appellate authority by order dated 23rd December, 1993. The Petitioner filed writ petition No. 3564 of 1994 in this Court. The writ petition was dismissed by this Court on 17th May, 1994 and the Petitioner was permitted to file counter affidavit to the affidavit filed by Respondent No. 3. At the time of final hearing, an objection was taken that there was no pleading giving the material facts and the affidavits filed in the case cannot be relied upon. The Court considered the circumstances of the case and directed Respondent No. 3 to file application for amendment, of the application by order dated 12.9.1995. The Petitioner filed objection to the said application and on 31.10.1995 the Respondent No. 1 has allowed the application for amendment of the application. This order has been challenged in the present writ petition.

4. Learned counsel for the Petitioner urged that the Court had no jurisdiction to direct any party to make application for amendment and secondly, the Court acted illegally in allowing the application filed for amendment of the pleadings filed by Respondent No. 3.

5. The application was filed on the ground that Respondent No. 3 is running Roxi Hotel in premises No. 18, Viveka Nand Marg, Allahabad. This premises was taken on rent by Respondent No. 3. During the pendency of the proceedings, the business of Roxi Hotel was closed as the landlord of Respondent No. 3 evicted her from that premises in proceedings u/s 21 of the Act.

6. Respondent No. 3 had filed an affidavit before the appellate authority intimating that the Petitioner has purchased adjacent shop No. 14/16 Viveka Nand Marg, Allahabad, during the pendency of the appeal. This affidavit was accepted by Respondent No. 1. The Petitioner filed writ petition against the said order and the writ petition has been dismissed. The amendment application was filed basically to add two facts firstly, the Respondent No. 3 was evicted from the premises in which she was carrying on hotel business in the name of Roxi Hotel and secondly, the Petitioner has purchased building No. 14/16 Viveka Nand Marg, Allahabad, in the name of his two sons, namely, Pradumn Kumar and Sushil Kumar aged about 25 years and 19 years respectively. The Petitioner filed objection to this application which was allowed by Respondent No. 1 on 31.10.1995.

7. Rule 15(1) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (hereinafter referred to as the Rules) provides that every application for release u/s 21(1) shall specify the ground or grounds on which the tenant is sought to be evicted. Sub-rule (2) provides that the application or its reply shall be signed and verified in the manner prescribed under Rules 14 and 15 of Order VI of the 1st Schedule to the Code of Civil Procedure. The word "ground" in Webster Dictionary means a basis for action or belief, motive and sound reason. Section 21(1) envisages the various grounds when a landlord can file the application u/s 21 of the Act. A landlord may file the application for his need for residential purpose or for commercial purpose. The need may be for his own occupation or for his family members. It may also be for the purpose of demolition and new construction. Sub-section (2) of Section 20 of the Act provides that the suit for eviction of a tenant from a building may be instituted on one or more of the grounds specified in that subsection. The word "ground" cannot be equated with the material facts as contained under Order VI of the Code of Civil Procedure.

8. A landlord may file an application u/s 21 of the Act on the grounds mentioned by him. He has to further state the material facts upon which the Court can come to the conclusion that those grounds on which the application has been filed, exist. The tenant may file a reply to the facts stated by the landlord. It is however, not necessary to state the evidence by which the allegations contained in the application are to be proved. Order VI, Rule 2 of the CPC itself envisages that every pleading shall contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence which they are to prove. If the landlord states that he bona fide requires an accommodation and has given the necessary facts in his application, it is not necessary that the evidence which he produces is to be contained in the pleadings. A tenant who has purchased the property which establishes that he has alternative accommodation or where the landlord has acquired another property which indicates that there is no need, such documentary evidence or the affidavit can be accepted and the Court will not be Justified in declining to accept such documents simply on the ground that there is no averment in the pleadings of the parties. Sub-rule (1) of Rule 15 only contains the grounds on which an application u/s 21(1) has been filed. If, however, a party relies upon certain facts which itself constitute an evidence, the Court should grant time to file affidavit or reply to the affidavits or material which is taken on record submitted by a party. The basic purpose is that no one should be prejudiced by any document or material which is brought on record. The Court has to examine everything in a broad perspective. The strict rule of pleadings cannot be applied in the proceedings u/s 21(1) of the Act. Sub-rule (3) of Rule 15 provides that the application u/s 21 of the Act should be decided as far as possible within two months from the date of its presentation. This purpose will be wholly frustrated if the Court wastes its time in directing the parties to amend the pleadings and thereafter to proceed in the matter. The Court has to

consider as to whether material facts have been stated in the application u/s 21 of the Act which constitute the grounds for eviction and if the grounds have been mentioned and there are material facts in the pleadings, the Court can examine various facts brought before it on production of evidence which may justify the grounds on which the application has been filed.

9. Respondent No. 3 had filed application stating that she was running Roxi Hotel in the tenanted premises and during the pendency of the proceedings, the landlord of the said premises got vacated the said premises. The ground for filing the application was that Respondent No. 3 was carrying on Hotel business but the landlord of the premises in which business was being run filed application for the release of the said premises. Subsequently, she is alleged to have been evicted. It was only the question of evidence as to whether the hotel business is being carried on and the son of Respondent No. 3 is employed in the said business. It was open to Respondent No. 3 to state these facts on affidavit and it was not necessary to amend the pleadings. Similarly, Respondent No. 3 can place the necessary material to show that the Petitioner has purchased any property which could establish that he would not suffer any great hardship. In every matter, it was not necessary to state all these facts by way of amendment in the application filed u/s 21 of the Act. The Court has to draw a distinction between the material facts as stated in the application constituting the grounds of eviction or defence by opposite party and the evidence produced in the case which proves the grounds taken in the application or defence taken in the objection. If the facts are stated in the affidavit or documents are produced, the opposite party has right to file counter affidavit and to produce evidence in rebuttal. It was not necessary for Respondent No. 1 in these circumstances to direct the Respondent No. 3 to file an application for amendment of the pleadings. Respondent No. 3 filed affidavit disclosing certain facts which came into existence during the pendency of the case. Respondent No. 1 should have granted time to the Petitioner to submit a counter affidavit to the facts or the evidence produced by Respondent No. 3.

10. In the present case, however, on the basis of the order passed by Respondent No. 1 dated 12th September, 1995, Respondent No. 3 has filed application for amendment of his application filed u/s 21 of the Act. The said application has been allowed on 31st October, 1995. As the application has already been allowed and the Petitioner has been granted opportunity to file additional written statement, it is otherwise not a fit case for interference under Article 226 of the Constitution of India.

11. In *Smt. Tara Devi v. IIIrd Additional District Judge, Allahabad and Ors.* 1995 (1) ARC 273, wherein the tenant did not file any written statement but filed only a counter affidavit, the Court held that the counter affidavit cannot be treated as written statement which contains defence pleas. The Court placed reliance upon Sub-rule (2) of Rule 15 of the Rules framed under the Act which provides that the application or its reply shall be signed and verified in the manner prescribed

under Rules 14 and 15 of Order VI of the Ist Schedule to the CPC (emphasis supplied). This provision contemplates that there must be an application and if anybody wants to contest it, he has to file its reply. The affidavit is only a piece of evidence in support of the objection or reply. The Prescribed Authority can permit a party to file affidavits as evidence u/s 34(1)(b) of the Act. In that context, the Court held that a counter affidavit cannot be treated as a reply to the application filed by the landlord as the evidence can be produced in support of reply. In the present case, there is no dispute that the application u/s 21 has been filed and the Petitioner has submitted its reply. The only question is whether certain facts which support the ground can be accepted by the Court when the matter comes before it. In view of the discussions made above, the Court can accept the evidence in support of the grounds already mentioned in the application without asking for amendment in the pleading.

The writ petition is accordingly dismissed.