

(1979) 12 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4706 of 1978

Jalil Ahmad

APPELLANT

Vs

Fourth Addl.District Judge, Farrukhabad and others

RESPONDENT

Date of Decision : 21-12-1979

Acts Referred:

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

Constitution of India, 1950 — Article 226

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 21(1)(a), 21(1)(b)

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 — Rule 16(2)(a)

Citation : (1979) 12 AHC CK 0019

Hon'ble Judges : Murlidhar, J

Final Decision : Allowed

Judgement

Murlidhar, J.

This is a tenant's petition under Article 226 of the Constitution arising out of proceedings under Section 21 U. P. Act No. XIII of 1972 (hereinafter called the Act) for release of a shop.

In fact there are two adjacent shops. The total width is 24' 3". In 2/3rd portion the landlady's husband has been carrying on a watchrepair business. The other shop in the remaining 1/3rd portion has been under the tenancy of the petitioner since the time of his grandfather and he has been carrying on the business of selling kites in it. During summer he also keeps stock of ice. The landlady sought release on the ground that her two sons had come of age and were required to be set up in a business. According to her the existing shop was insufficient for the watch repair business itself, let alone the requirement of the sons to do some business. She asserted that the building was dilapidated and her intention was to demolish the two shops and reconstruct the premises into one large shop to serve the needs of the husband and the two sons. The Prescribed Authority rejected the application. During arguments reliance was placed on behalf of the

landlady in addition to Section 21 (10) (a) on Section 21 (10) (a.) on Section 21 (b) also. But the Prescribed Authority held that the application could not be read as covering the plea of requirement under Section 21 (1) (b). It went on to observe that in any case the provisions of Rule 17 essential for success of an application under Section 21 (1) (b) had not been complied with. The IV Addl. District Judge as appellate authority in an appeal filed by a landlady had bonafide requirement in the disputed shop in order to set up her sons in business and also that the test of comparative hardship was in her favour. It also held that the application under Section 21 should be read as covering both the grounds for release under Section 21 namely Section 21 (1) (a) as well as Section 21 (1) (b). Thereafter, it allowed certain additional evidence to be led (a) on the question of dilapidated character in the form of a commission for local inspection, (b) about an estimate of expenditure for the newly proposed construction in accordance with Rule 17 (ii) through an affidavit and (c) on the financial capacity of the landlord for the proposed construction as required by Rule 17 (iv) through affidavits on behalf of the landlady. After admitting this additional evidence the appellate authority recorded the finding that the building was dilapidated and all the requirements of Rule 17 had also been met and the landlady was entitled to release under Section 21 (1)(b) also. The application was therefore, allowed on both the grounds. These are findings challenged by this petition.

After having heard the learned counsel for the parties and perused the record, I have come to the conclusion that the order of the appellate authority is unsustainable. So far as the ground of release under Section 21 (1) (a) is concerned, the finding that the landlady bonafide requires the premises in order to set up her sons who had come of age in business may be accepted as a findings of fact, notwithstanding the position that even the particular business in which the sons are to be set up has not been spelled out. However, it seems to me that on the next step of comparison of hardship though the appellate authority has paid lip service to comparison in the light of Rule 16 (2) (a) its finding that the landlady's hardship is greater is vitiated by ignoring all relevant considerations. In this connection Rule 16 (2) (a) lays down that the greater the period since when the tenant had been carrying on his business in that building the less the justification for allowing the application. In the present case the tenant has been in the premises since the time of his grandfather so it is a three generations old shop. There is also the fact that the tenant is: petty businessman selling kites and also keeping stocks of ice to supplement his income during summer. There is also no alternative shop to which he can shift. As against these facts the observations of the appellate authority are merely (a) the carrier of the two unemployed sons of the landlady was more important, (b) The existing shop with the father provided meager income and was insufficient to accommodate the business of sons. Both these considerations do not even distantly amount to a good reason for departing from the guidelines in Rule 16 (2) (a) in this case where the provision is so clearly applicable. It is true that as has been often said Rule 16 (2) is merely a guide and not letter but due weight has to be given to

the direction shown by the guide and the same is not to be dismissed by the peremptory observation that the duration is off set by the need of the landlady. Were that so the duration would become meaningless and Rule 16 (2) (a) multified because it is only when botafiae requirement has been found that the stage for comparison of hardship is reached. The appellate authority was itself somewhat conscious of the shaky reasoning because it went onto observe that perhaps the needs of both may be treated as equal and in that case in such a balanced situation the landlord's need must be preferred. Here there is a flagrant neglect of Rule 16 (2) (a) because if the. needs are equal the long duration of the tenant in the premises must tilt scales in his favour if Rule 16 (2) is to have any meaning at all. I am, therefore, of the opinion that the finding on the question of comparative hardship is vitiated because due weight has not been given to Rule 16 (2) (a) and the alleged grounds of need have been arbitrarily held to create a greater hardship for the landlord than that to the tenant without in any way attempting to assess the tenant's hardship.

On the question of application of Rule 21 (1) (b) also in my opinion of the appellate authority must be quashed. I am unable to agree with the view of the appellate authority that the application under Section 21 in this case should be read as covering both the grounds of Section 21 (1) (a) and Section 2 The application is found as Annexure 1 to the petition. In para 4 the landlady has emphasised the need for business of her two sons who had come of age am had no shop. Para 5 which is the pertinent one mentions that the aforesaid two shops being old and dilapidated the landlady intends to demolish the same and reconstruct a new bigger shop which may accommodate the business of h husband and the two sons on a better scale. It has to be remembered that in came of an application under Section 21 (1) (b), the tenant has a right t have the reconstructed premises hired out to him and, therefore there can b question of the landlord necessarily getting ths premises after reconstruction. Reading the application as a whole one cannot escape the conclusion that claim for demolition and reconstruction as inseparable from the fact that to reconstructed premises would be available for landlady's husband and her two sons. Therefore, it is not possible to read an alternative claim under Section 21 (a) (b) in this application as was claimed at the stage of arguments before the Prescribed Authority. This view is fortified by the circumstances that evidence was led before the Prescribed Authority about any estimate of expenditure as required by Rule 17 (ii) or the financial capacity of the landlord as required by Rule 17 (iv). Assuming however, that the ground of Section 21 (1) (b) can be treated to be covered by the application, it must be held that 1 aonellate authority acted illegally in admitting additional evidence to fill up to gaps in proof of the ground of Section 21(1) (b). There is no doubt that under Section 10 (2) of the Act, the appellate authority has power to admit addition evidence. The Act or the rules do not lay down any conditions nor provide any guidelines as to the circumstances in which additional evidence may be admitted. Broadly, therefore, the principles underlying an Order 41, Rule 27 C. P. C. which governs the admission of additional evidence in appeal

under the Civil Procedure Code may be applied. Now it is settled that the additional evidence under order 41, Rule 27 C. P. C. will not be admitted to fill up lacuna in proof of the party who has been unsuccessful before the lower authority. Unless of course, the matter falls within Order 41, Rub 27 (b) and the Court requires the additional evidence for pronouncing judgment or for any other substantial cause. Clearly where insufficient evidence has been led about certain ingredients necessary for success of the particular ground and no reason is advanced for such omission, admission of additional evidence in order to supplement the evidence earlier led is not permissible unless the Court finds such evidence necessary in order to allow it to decide the case justly of that there can be no question in the present case because the primary claim was for the bona fide requirement under Section 2 1(1) (a) for decision of which the whole evidence was already on record. I would, therefore hold that the finding of the appellate authority that the application should be allowed under Section 21 (1) (b) also deserves to be quashed.

In the result the petition is allowed. Order dated 1441978 of the appellate authority is quashed and the appellate authority is directed to decide the appeal afresh in accordance with law in the light of the observations made in this judgment of considering the question of comparative hardship expeditiously.