
(2006) 07 UK CK 0052

In the Uttarakhand High Court

Case No : Writ Petition No. 1334 and 1367 (M/S) of 2004

Kishan Kumar @ Munna Lal

APPELLANT

Vs

The District Judge, Nainital and Others

RESPONDENT

Date of Decision : 31-07-2006

Acts Referred:

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

Citation : (2007) 1 UC 82

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Sri P.C. Kandpal, for the Appellant; Sri Amish Tiwari for Respondents No. 3 to 6 and Learned Standing Counsel For Respondent No. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Rajesh Tandon, J.—Heard Sri P.C. Kandpal, Counsel for the Petitioner, Sri Amish Tiwari, Counsel for the Respondent No. 3 to 6 and Standing Counsel for the Respondent No. 1 & 2.

2. By the present writ petition, the Petitioner has sought the review of the order passed on 18-05-2006. I have passed the following order:

Petitioner is allowed time to vacate the premises up to 31st May, 2007 after giving the undertaking by 31st July, 2006 to the following effect:

(a) that he shall pay the entire rent damages due by 31st July, 2006 at the rate of Rs. 500/--p.m. and continue to pay the same during the period of use and occupation.

(b) that he shall vacate the premises by 31st May, 2007 before the P.A.

(c) in case of failure to abide by the aforesaid, the landlord will be entitled to execute the decree forthwith.

Subject to the aforesaid in writ petition No. 1334 of 2004, both the writ petitions are dismissed. No order as to costs.

3. Review application has been filed on 1-07-2006 stating therein that the application u/s 21(1)(a) of the U.P. Act No. 13 of 1972 was not maintainable, in view of the fact that the parties have entered into an agreement on 21-01-2006 by which it was agreed by the parties that rent shall be enhanced to Rs. 1500/- and after three years, it shall be revised to 20%. Paragraph 4 of the Review application is quoted below:

That it is submitted that as per the rent deed and receipt of rent for the month of February, 1999, which have been relied upon by the Respondent No. 3 and were duly exhibited, the rent has been shown 1,500/- per month and 1,800/- per month from 01-01-1999 after 20% increase in every, three years. It is submitted that again after three years i.e. 01-01-2001 on 20% increase, the rent became payable @ 2100/- per month. The application for release of the premises u/s 21(1)(a) of U.P. Act was filed on 25-02-2002 and at that time the rent was payable at the rate of 2,100/- per month therefore the property does not come under the purview of rent Act and no proceedings could be entertained under the said Act.

4. I have perused the agreement which reads as under:

5. From a perusal of the agreement, it appears that it does not provide any such condition by which the application u/s 21 of the Act was not maintainable. Moreover, there can not be any such condition of prohibiting the landlord not to file the application u/s 21(1)(a) of the Act. In fact, the Petitioner has agreed that he will vacate the premises and will not raise any objection when asked to vacate the premises.

6. A perusal of the application under 21 (1)(a) of U.P. Act No. 13 of 1972 shows that the application was filed simply on the ground that the premises is required for his own bonafide need for establishing the sons. A perusal of the written statement (annexure 5) shows that the Petitioner has denied the release of the premises for the requirement of the landlord. There is no averment in the written statement regarding existence of any agreement between the parties. Neither in the written statement nor in the additional pleas, there is any mention regarding the agreement. On behalf of the Petitioner, various affidavits were filed, there is no mention in any of the affidavits regarding the said agreement or the payment of Rs. 1500/--at any point of time on the basis of agreement.

7. I have also perused the grounds" of appeal, it also does not show the existence of the agreement between the parties. Moreover, the Petitioner has also not argued at any stage, either before the Prescribed Authority, Appellate Authority or in the writ petition.

8. Another writ petition has been filed by the landlord namely Mohan Chandra Lakchaura v. The District Judge, Nainital Uttaranchal and Anr. being W.P. No.

1334/2004 (M/S). The Counter affidavit has been filed by the Petitioner in that writ petition. There is no mention about the agreement of payment of Rs. 1500/-- in accordance with the agreement.

9. Under these circumstances I do not find any ground to review the order. It appears that the alleged agreement if any was never acted upon between the parties. Petitioner has not taken any such averments either before the Prescribed Authority or before the Appellate authority even during the arguments.

10. So far as maintainability of the application is concerned, the application has been filed in year 2002, after the alleged agreement but the pleadings are silent to that effect and therefore, the Prescribed Authority has jurisdiction to decide the dispute. Now at the stage of review no such plea can be taken when the Petitioner has not taken the plea either before the Prescribed Authority or the Appellate Authority at any stage of proceedings.

11. In my order dated 18-05-2006, I have granted time to vacate the premises by 31-05-2007 on the undertaking, to be given by 31-07-2006. However, the Petitioner has prayed for extending the time for furnishing the undertaking, the same is extended by 15th Aug. 2006. Deposit of the two years rent of any adjustment of the rent will not come in the way of the landlord in executing the decree for eviction.

12. So far as review in W.P. No. 1334/2004 is concerned, it is made clear that on depositing the two years rent by the landlord, the same shall be paid to the tenant after adjustment of the arrears of rent.

13. However, in case of failure to give undertaking the landlord shall proceed with the execution of the order.

14. Subject to the above, both the applications for review are rejected.