
(2013) 11 AHC CK 0042

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11261 of 2006

Kishan Lal Singhanian

APPELLANT

Vs

India City Properties Ltd. and Others

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

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

Citation : (2013) 11 ADJ 359 : (2014) 102 ALR 83 : (2014) 1 AWC 235

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : M.K. Gupta and Pankaj Agrawal, for the Appellant; Vipin Sinha, Aditya Singh, Devesh Rathore and S.C., for the Respondent

Judgement

Ran Vijai Singh, J.—Heard Sri Pankaj Agarwal, learned counsel for the petitioner and Sri Devansh Rathore, learned counsel for the respondent.

This writ petition has been filed for issuing a writ of certiorari quashing the order dated 9.11.2005 passed by the Additional Civil Judge (Senior Division), Court No. 3, Kanpur Nagar by which the petitioner's restoration application No. 14/74 of 2002 has been rejected.

It appears the respondents have filed a release application u/s 21(1)(a) of U.P. Act No. 13 of 1972 which was numbered as P.A. Case No. 54 of 1987. The said release application was allowed ex parte on 29.10.1998. The present petitioner has filed an application for setting aside the ex parte order dated 29.10.1998 which was numbered as Misc. Case No. 1/74 of 1999. The said application was dismissed on 1.9.2000. The petitioner filed another application being Misc. Case No. 36/74 of 2000 on 6.11.2000 for recall of the order dated 1.9.2000 which was again dismissed on 24.5.2002.

Seeking recall of the order dated 24.5.2002 an application was filed which was numbered as Misc. Case No. 14/74 of 2002. The said application has been

rejected on the ground that the petitioner has through out been negligent as earlier on two occasions it was allowed to be dismissed for default and it is the third application which amounts to nothing but an abuse of the process of the Court.

2. It is submitted by the learned counsel for the petitioner that the pairkar of the petitioner was present in the Court and when the case was called out on 24.5.2002 he went away to call his counsel and in the meantime the case was dismissed in default and on the same date restoration application was filed. He further submitted that absence of the petitioner and his counsel was not deliberate, therefore, the impugned order deserved to be quashed.

Refuting the submissions of the learned counsel for the petitioner, Sri Rathore, learned counsel for the respondent submitted that the petitioner has throughout been negligent which is evident from the narration of the fact given in the impugned order as the case was allowed to be dismissed on two occasions earlier in default. In his submission the learned prescribed authority has rightly rejected the restoration application and the writ petition deserves to be dismissed.

3. I have heard the learned counsel for the parties and perused the records. From the perusal of which it is apparent on the face of record that the case was dismissed for default on earlier two occasions. It is stated in the restoration application that although the Pairkar of the applicant was present in the Court but when the case was called out he went away to call his counsel and in the meantime the case was dismissed for default. The Court below although noted the contents of the restoration application while passing the impugned order dated 9.11.2005 but has swayed away by the conduct of the petitioner in allowing the restoration application to be dismissed for default on two occasions without analysing the fact that the restoration application was filed on the same date with the positive averments that the client has gone to call his counsel. It is common knowledge that the cases are represented through counsel and when the cases are called out and the lawyers are not present the clients or their clerks are supposed to call their counsel. It was not an abnormal reason for not attending the case. Therefore absence on that very moment cannot be said to be deliberate particularly in the circumstances where the restoration application was filed on the same date. The Court below should have taken a pragmatic approach while considering the restoration application as the Courts are meant to impart substantial justice to the parties. Further it ought to have been born in mind that the release application was allowed ex parte and the case of the present petitioner is that he was never served, therefore, in case an application seeking setting aside the ex parte order allowing the release application is allowed to be executed in this manner it may cause serious irreparable injury to the petitioner. Therefore, the Court below should have taken liberal view in considering the restoration application although the inconvenience caused to the other side could have been compensated by imposing cost.

The Apex Court in the case of Collector, Land Acquisition, Anantnag and Another

Vs. Mst. Katiji and Others, , has held that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. In The State of Uttar Pradesh Vs. Mohammad Nooh, , the Apex Court has observed that justice should be administered in our Courts in common sense, liberal way and be broad based on human values rather than on narrow and restricted considerations hedged round with hair splitting technicalities. This Court also in Hindalco Industries Limited. Vs. Brijesh Kumar Agarwal and Another, and Smt. Muneshra Devi and Others Vs. Smt. Chandrawati Devi @ Chanara Devi and Another, has taken the same view.

Taking note of the law laid down in the aforesaid cases, I am of the considered opinion that one more opportunity should be given to the petitioner to pursue his application seeking setting aside the ex parte release order. The writ petition succeeds and is allowed. The impugned order dated 9.11.2005 passed by the Additional Civil Judge (Senior Division), Court No. 3, Kanpur Nagar is hereby quashed. The remaining two orders dated 1.9.2000 and 24.5.2002 are also quashed in the interest of justice. However, the inconvenience caused to the other side is compensated by imposing a cost of Rs. 5,000/- upon the petitioner which is to be deposited before the learned Prescribed Authority alongwith the certified copy of the order of this Court. The cost so deposited may be withdrawn by the other side. Thereafter the Prescribed Authority shall decide the petitioner's restoration application No. 1/74 of 1999 within a period of three months from the date of production of a certified copy of the order before him in accordance with law without granting any adjournment to the petitioner's counsel. In case any adjournment is sought that can only be allowed after imposing cost with the direction to deposit the cost on or before the next date fixed. In case cost is not deposited the right to participate in the future proceeding be closed of the defaulting party.