
(1999) 09 AHC CK 0240
In the Allahabad High Court
Case No : C.M.W.P. No. 25524 of 1998

Krishi Utpadan Mandi Samiti, Khurja, Bulandshahr	APPELLANT
Vs	
IVth Additional District Judge, Bulandshahr and others	RESPONDENT

Date of Decision : 14-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(8), 22

Citation : (1999) 4 AWC 3475 : (1999) AWC 3475

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : B.D. Mandhyan and Satish Madhyan, for the Appellant;

Final Decision : Dismissed

Judgement

A. K. Yog, J.—Krishi Utpadan Mandi Samiti. Khurja (petitioner) is the tenant of Ground Floor accommodation of Building No. 372, Qasba Khurja [district Bulandshahr] (for short called accommodation in question) at the rate of Rs. 450 per month. The accommodation in question, admittedly, belongs to Smt. Prabha Sharma (respondent No. 2), who is the landlady of the said tenant petitioner of the accommodation in question.

2. Smt. Prabha Sharma (respondent No. 3) filed an application u/s 21 (8), U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. 1972 (U. P. Act No. XIII of 1972) (for short called "the Act") praying for enhancement of rent as contemplated under the Act.

3. The landlady claims that rent may be fixed by treating valuation of the accommodation in question at Rs. 17,48,000 (i.e. Rs. 1,74,800, annual rent for a year). Landlady filed report of a Chartered Engineer, who fixed the valuation of the building in question was Rs. 12,23,700.

4. The tenant/petitioner contested application for enhancement of rent and filed

objections.

5. Both the landlady (respondent No. 3) and the tenant (Petitioner) led evidence and the Prescribed Authority vide judgment and order dated 16th January 1998 (incorrectly typed as 16th January 1997 (Annexure-6 to the writ petition) (particular page 38 of the Writ Paper Book) held, after discussing evidence and documents on record that valuation of the accommodation In question as indicated by the Deputy Director (Construction) (an employee of the tenant petitioner itself) could be accepted as the correct valuation and held that rent should be enhanced to Rs. 6,075 per month.

6. Tenant challenged the said order by filing Rent Appeal No. 2 of 1998.

7. Tenant filed two applications 1. Application praying for additional evidence :

Application praying for additional evidence (Paper No. 17 Ga) (S. A. 1 copy of which has also been filed Annexure-4 to the counter-affidavit). Landlady filed objection. Paper No. 23 Ga (Annexure-5 to the counter affidavit). The said application has been rejected by the appellate court vide impugned judgment dated 26th May. 1998 (Annexure-1 to the writ petition) (particular page 15 of the Writ Paper Book).

8. A perusal of the Application 17 Ga (S.A. 1) praying for admitting additional evidence at the appellate stage shows that there is not even a whisper as to why the documents annexed along with this application (and sought to be brought on record by way of additional evidence) were not filed before the Prescribed Authority when the said documents were within knowledge and possession of the tenant himself. The Application 17 Ga merely recorded that Prescribed Authority had not considered the plan of the building and enhancement of rent was not correct. It is further alleged in the said application that landlady, Smt. Shashi Prabha, was aware of the condition of the accommodation in question as was evident from the document wherein full description of the building has been given and that for appreciation of the Court existing actual condition of the building will be brought on record and for that purpose it was necessary to bring on record these documents. The documents enclosed with the said application 17 Ga are in the shape of correspondence between the landlady and tenant show that house was In a bad shape and that landlady had even received a notice from the local body for dismantling the accommodation in question and in case it was not vacated, it may end up in some accident of which tenant shall be responsible .

9. In the said application or otherwise on record there is nothing to show that tenant had exercised due diligence and/or new evidence sought to be brought by way of additional evidence was not within his knowledge or could not be produced at the time when the order under appeal was passed.

10. The appellate authority rejected Application (17 Ga) by means of the Judgment and order dated 26th May. 1998 (Annexure-1 to the Writ Petition

particular page 16 of the Writ Paper Book).

11. The appellate authority relied upon the decision reported in 1997 (1) ARC 36, Mukesh Kumar v. XI Additional District Judge, Meerut, and observed that the principle enshrined under Order LXI. Rule 27, CPC will be attracted while deciding the question of allowing evidence in respect of proceedings under the Act. the appellate authority noted that tenant had not given explanation as to why the documents annexed along with application for additional evidence were not filed before the Court below and that no ground was made out for accepting those documents as additional evidence at appellate stage.

12. In the decision in 1997 8 RD 127 the learned single Judge, while noting the provisions of Order XLI, Rule 27 has held that additional evidence cannot be allowed to be accepted unless conditions under Order XLI. Rule 27 (1) (a), (appellate authority), (b) are made out.

13. Referring to the decision Mukesh Kumar (supra), reference may be made to Paragraphs 17 and 19 of the said judgment. The learned single Judge therein approved the principle that additional evidence cannot be allowed unless the party seeking to file additional evidence proved that he exercised due diligence and it was not within his knowledge when the decree under appeal was passed or made. Learned single Judge, however, noted that even in case above condition was not satisfied under amended provision, the appellate court is under an obligation to consider and apply its mind to the contents of the document and to the question as to whether the same is decisive and conclusive in character on the facts involved in the case and/or necessary for enabling the Court to pronounce judgment or for any other substantial cause contemplated under law. It is further observed that clauses (a) to (e) of sub-rule (1) of Rule 27 are independent. Therefore, even if. the said evidence could not be permitted to be produced under clause (a) or (aa) or (b) it was obligatory upon the Court to see as to whether the said documents were necessary to enable it to pronounce judgment or for any other substantial cause as the purpose of procedural law is to advance the cause of justice and not to defeat the same. There can be no dispute on the ratio and the principle laid down by this Court as well as Apex Court laying down norms for allowing additional evidence.

14. In the instant case it is found that tenant did not make necessary averments so as to warrant exercise of power of appellate court for granting additional evidence. In the instant case appellate court had applied its mind and observed that tenant has not been able to explain as to why documents were not filed before the Court below. Appellate court had applied its mind and observed that market value of the building had to be ascertained even if building be dilapidated. And to that extent it observed that documents were not relevant in the light of the evidence already brought before the Court below. On that basis application for filing additional evidence 17 Ga has been rejected. The only ground in the present petition for challenging said order is contained in Ground (C) and perusal of the said ground as well as averment contained in the petition

before this Court again do not make out a ground for allowing additional evidence. It is true that rule laying down procedure are made for an achievement hence object of advancing justice and these rules cannot be interpreted in a straight-Jacket formula, but at the same time a party cannot be allowed to act negligently and carelessly and put his opponent at a way. Rendering time of the Court as well as others and energy to be wasted.

15. In view of the above, I find that the said order rejecting application 17 Ga is not vitiated and suffer from manifest error apparent on the face of record warranting Interference under Article 226. Constitution of India.

II-Application/or Seeking Interim Stay :

16. Tenant-petitioner filed also application (Paper No. 10 Ga) for seeking interim stay of the operation of the order dated 16th January 1998 (Annexure-6 to the writ petition). Copy of the order has also been filed as (Annexure-2 to the writ Petition) (particular page 17 of the Writ Paper Book) (certified copy of which has also been annexed). Landlady filed objection (24 Ga) against the said application. After hearing parties appellate court rejected the said application by observing that rent was enhanced on the basis of valuation given by the tenant himself and, on the other hand the tenant had filed even before appellate court for giving reference of any evidence of material as to show that market value of the building was otherwise.

17. The appellate court, on the basis of aforementioned observations that there was no valid basis for staying operation of the said order dated 16th January, 1998.

18. I find no permissible ground to interfere in exercise of my jurisdiction under Article 226. Constitution of India.

19. The legal grounds are contained in Grounds (A) to (H) [except Ground (G)].

20. Before advertng to the legal ground contained in the petition it may be mentioned that petitioner has not filed copy of the memorandum of appeal for perusal of this Court to appreciate the scope of appeal before the appellate authority. The petitioner has also not filed original application filed by landlady for enhancement of rent nor objection filed by the said tenant against the same. The grounds mentioned for challenging the said order (Annexure-2 to the writ petition) do not make out permissible grounds on the face of record and rather they require appraisal of evidence.

21. Before closing the judgment. I would like to record that one single writ is not maintainable for challenging two orders. Practice of filing single petition against, two or more orders is to be deprecated as It leads to confusion and cannot be said to be in order, as also held in 1963 ALJ 731 FB .

22. Entertainment of this petition should not be taken as precedent. Matter having been already heard or merit, case is being decided ignoring above defect.

23. Half of the amount deposited before Courts below under interim orders passed by this Court in the present Writ Petition shall be allowed to be withdrawn by Respondent No. 2 (Smt. Prabha Sharma) subject to furnishing security (other than cash and Bank Guarantee) to ensure refund, if she fails finally. Balance amount may be withdrawn by her without furnishing security.

24. The writ petition is devoid of merit and is, accordingly, dismissed with costs, quantified at Rs. 2,500 (Rupees two thousand five hundred only), which may be deposited by the tenant-Petitioner before the appellate court within two months from the date of this judgment and it shall be paid to respondent No. 3, Smt Prabha Sharma. If costs are not deposited, petitioner will not be permitted to participate before Court below. Appellate court shall decide the appeal as expeditiously as possible.