courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 15/08/2026

(2015) 04 AHC CK 0109

In the Allahabad High Court

Case No : Rent Control No. 73 of 2011

Krishna Mohan Mahrotra — APPELLANT

Vs

Additional District Judge Court and Others — RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Citation : (2015) 4 ADJ 530 : (2015) 4 ALJ 773 : (2015) 111 ALR 88 : (2015) 2 RCR(Rent) 69

Hon'ble Judges : Aditya Nath Mittal, J

Bench : Single Bench

Advocate : Arif Khan and Aslam Khan, for the Appellant; Nirankar Nath Jaiswal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Aditya Nath Mittal, J.—Heard Mohd. Arif Khan, Senior Counsel assisted by Mohd. Aslam Khan learned counsel for the petitioner; Sri Nirankar Nath Jaiswal learned counsel for the respondent Nos. 3 and 4 and perused the pleadings of writ petition. This writ petition has been filed with a prayer to issue writ of certiorari quashing the order dated 17.5.2011 passed by the Additional District Judge, Court No. 3 Lakhimpur Kheri whereby the judgment dated 21.11.2009 passed by the Additional Chief Judicial Magistrate, Court No. 2, Lakhimpur Kheri has been upheld.

2. The brief facts of the case are that the respondents had filed an application under Section 21(1)(a) of the Act No. 13 of 1972 stating that he is the owner of the building and the petitioner is the tenant @ Rs. 200/- per month in his shop. There are two major sons of the landlord and the said shop is required for his sons as he has no alternate shop. The landlord had requested the tenant to vacate the shop but the said shop has not been vacated.

3. The tenant had contested the case and admitted that he is the tenant @ Rs. 200/- per month. The previous owner of the shop was Bankey Lal Gupta who had

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/krishna-mohan-mahrotra-appellant-…

given it on rent to Raman Lal Mehrotra in the year 1962 at about 35 years ago. The half of the shop was got vacated and after the death of Bankey Lal Gupta, the said shop was sold to the present landlord, who started his business in the said shop. The landlord is engaged in the business of preparation of ''Samosa'' and ''Namkeen'' at a large level and both his sons also remained busy in the said business. The tenant is running the shop of D.C.M. Cloths and he has a goodwill, therefore, it is not possible to vacate the said shop.

4. Both the parties had adduced then-evidence before the Court below and the Court below after appreciating the evidence on record had allowed the application on the ground that the landlord has the bona fide need. The said judgment was challenged by way of Rent Control Appeal No. 5 of 2009 before the Additional District Judge, Lakhimpur Kheri, which was dismissed by the judgment and order dated 17.5.2011.

5. Learned counsel for the petitioner has submitted that the opposite parties No. 3 and 4 have no bona fide or genuine need because they are carrying on the business of selling ''Samosa'' and ''Namkeen'' at a large scale with the help of their son. The opposite parties No. 3 and 4 are also carrying on their business on the accommodation available at the first floor and during the pendency of the case before the opposite party No. 2, the opposite party No. 3 had filed his affidavit specifically stating therein that he is ready to provide the accommodation on the first floor, which is in the shape of a room to the petitioner but that point has not been considered by the Court below. It has also been submitted that the Rule 16(D) has also not been dealt with in accordance with law and the application of the petitioner for issuance of commission was also rejected wrongly. It has also been submitted that in paragraph 17 of the grounds, the order-sheet has been mentioned in which the learned Additional District Judge has directed that there is no need to issue commission so far as the application for providing alternative accommodation is concerned and it will be appropriate to dispose of the application at the time of final hearing of the appeal and the point regarding hardship can be inferred thereon but while deciding the appeal, this point has not been considered. Therefore, the said judgment is perverse and is liable to be set aside.

6. In support of his arguments, learned counsel for the petitioner has relied upon M/s. Jawahar Lal Ratan Chand Nagar and another v. VIIth Additional District Judge, Varanasi and others, 1988 (2) ARC 348 , wherein the Hon''ble Single Judge of this Court relying upon the case of Jivram Ranchhoddas Thakkar and Another Vs. Tulshiram Ratanchand Mantri and Others, AIR 1977 SC 1357 : (1977) 3 SCC 517 : (1977) 9 UJ 295 , has held that

"adopting the same principle it appears to be just and proper to partition this shop in dispute also half and half between the landlord and the tenant. The parties through their counsel have given their consent that in the circumstances of the case they are agreeable to the partition of the disputed shop half and half between them so that both parties may be able to carry on their business in the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/krishna-mohan-mahrotra-appellant-…

half portion falling on their shape."

7. Learned counsel for petitioner has further relied upon Anil Kumar and others v. IXth Additional District Judge, Kanpur Nagar and another, 1999 (2) ARC 289, in which the Hon''ble Single Judge of this Court has held as under:

"In the result, the writ petition is partly allowed. The tenant shall vacate the disputed accommodation provided the petitioner given vacant possession of the first floor accommodation marked by me by letters EFGH MNOP and IJKL. Respondent No. 2 shall give a notice to him. On giving such a notice, the tenant shall vacate the disputed accommodation within one month and will handover the disputed accommodation to the landlord-respondent. If there is any dispute in regard to the exchange of the accommodation, an application can be filed before the Prescribed Authority, who will execute the order in accordance with the observations and directions given by me. Considering the facts and circumstances of the case, the parties shall bear their own costs the rent of the accommodation will be same which is being paid by the tenant at present."

8. He has further relied upon Pratap Narain Tandon Vs. Abdul Mukatadir, (2005) 1 ARC 555 : (2005) 1 AWC 921 , wherein it has been held as under:

"A perusal of the orders of Prescribed Authority as well as the Appellant Authority demonstrates that neither the Prescribed Authority nor the Appellate Authority considered the question of part release of the accommodation. Therefore, in the interest of justice, without entering into the merits of the rival contentions, I remand back the matter to the Appellate Authority to be decided the matter after consideration of question of part release also in accordance with law."

9. Learned counsel has further relied upon Swaraj Kumar Vs. Arvind Kumar and Another, (2008) 4 AWC 3922 , in which the Hon''ble Single Judge of this Court has considered the aspect of the release of the part of the accommodation for the purpose of landlord and tenant both and remanded the matter back to consider the question of part release.

10. Learned counsel for the opposite parties No. 3 and 4 has submitted that during the pendency of the case, they were ready to provide the alternate accommodation but the petitioner has refused to accept the said alternate accommodation. Therefore, now he cannot take the benefit of that offer. It has also been submitted that there is no perversity or illegality in the judgment of the Court below and there are concurrent findings of fact by the Courts below, which cannot be inferred by this Hon''ble Court in exercise of writ jurisdiction under Article 226 of the Constitution of India. It has also been submitted that Article 226 do not permit re-appreciating the evidence on record.

11. In support of his arguments, learned counsel for the respondent Nos. 3 and 4 has relied upon Mohd. Shahnawaz Akhtar and Another Vs. Ist ADJ Varanasi and Others, (2002) 8 JT 69 , in which the Hon''ble Apex Court has held as under:

"We have carefully perused the judgement of the trial Court and the orders of

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/krishna-mohan-mahrotra-appellant-…

learned Additional District Judge as also of the High Court. The High Court, we are constrained to observe, has acted like an appellate Court and re-appreciated the evidence and thereby exercised a jurisdiction which it did not have. The High Court has nowhere arrived at a finding that there was any error of jurisdiction committed by any of the Courts below or the finding of the fact impugned before it suffered from perversity. In our opinion, in exercise of writ jurisdiction, the High Court ought not to have entered into re-appreciation of evidence and dislodged the finding of fact recorded by the trial Court and maintained in revision by the learned Additional District Judge. To satisfy our own conscience we have gone through the record. In our opinion, the findings arrived at by the trial Court are such as could have been reasonably arrived at and are well-reasoned and therefore, they are not open to interference. The learned Additional District Judge rightly affirmed those findings. In as much as the order of the Courts below were not liable to be interfered with in exercise of the writ jurisdiction by the High Court, the impugned order of the High Court dated 30-04-1997 cannot be sustained and is set aside. The order of the trial Court, as upheld by the learned District Judge, is restored. No order as to the costs."

12. Learned counsel has further relied upon Prakash Chandra Gupta v. District Judge, Unnao and others, 2005 (23) LCD 336, in which the Hon''ble Single Judge of this Court has held as under:

"so for as issue of commission is concerned, the same, as argued by the learned counsel for the tenant, was sought for finding out feasibility whether the landlord could satisfy his need by getting a shop constructed for himself on the upper floor with a stair case adjacent to the shop in question. Learned counsel for the landlord rightly placed reliance on the judgment of this Court in Sarla Ahuja Vs. United India Insurance Company Limited, (1998) 8 AD 63 : AIR 1999 SC 100 : (1998) 3 CTC 679 : (1998) 7 JT 297 : (1999) 121 PLR 805 : (1998) 5 SCALE 674 : (1998) 8 SCC 119 : (1998) 2 SCR 390 Supp : (1999) 1 UJ 95 : (1998) AIRSCW 3451 : (1998) 8 Supreme 133 , wherein it has been observed that tenant has not to suggest terms to the landlord as to how he can adjust himself without possession of tenanted premises. Thus, the said question is totally out of contest and in case need of the landlord is genuine and comparative hardship lies in his favour then tenant has not to suggest that landlord should get his need fulfilled by getting another accommodation constructed."

13. Further in the case of Janki Prasad Vs. Kashi Nath Mishra, (2006) 7 ADJ 698 : (2007) 1 AWC 961 , the Hon''ble Single Judge of this Court has held as under:

"It is evident that both the Courts below, after appraisal of evidence of both the parties, have given concurrent finding of fact that the need of the landlord is greater than the tenant and that the tenant has got another shop adjacent to shop in dispute where he may shift his business.

In Harbans Lal v. Jasmohan Saran, 1986 ALJ 84, it has been held that a writ in

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/krishna-mohan-mahrotra-appellant-…

the nature of certiorari may be Issued only if the order of the Inferior Court suffers from the error of jurisdiction or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach finding of fact contrary to those rendered by an inferior Court. When High Court proceeds to do so, it acts plainly in excess of its powers.

In the instant case, counsel for the petitioner could not establish that the orders of the Courts below suffer from the error of jurisdiction or from a breach of the principles of natural justice or vitiated by a manifest or apparent error of law. Thus, it would be inappropriate in the circumstances for High Court to reappraise the evidence without sufficient reason in law and reach finding of fact contrary to those rendered by the Courts below."

14. Learned counsel has further relied upon Ram Narayan Singh Vs. Additional District Judge/Special Judge, E.C. Act and Another, (2010) 1 AWC 371 , in which the Hon''ble Single Judge of this Court has held as under:

"The Apex Court has ruled on the question of comparative hardship in the case of Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada, AIR 2003 SC 2713 : (2003) 1 JT 438 : (2003) 1 SCALE 147 : (2003) 2 SCC 320 : (2003) 1 SCR 329 : (2003) 1 UJ 726 : (2003) AIRSCW 3307 : (2003) 1 Supreme 653 . Failure of the tenant to search an alternative accommodation after institution of the release application is good enough reason to decide the question of hardship against the tenant and refuse comparison of likely hardship on this ground alone. Similar view was adopted in the case of Azamuddin v. Malika Bono (Smt.), 2008 (3) ARC 570 . In the case of Siddalingamma and Another Vs. Mamtha Shenoy, AIR 2001 SC 2896 : (2001) 9 JT 268 : (2001) 7 SCALE 345 : (2001) 8 SCC 561 : (2001) AIRSCW 4345 : (2001) 7 Supreme 870 , the Apex Court was of the view that since the Rent Control Act is basically meant for the benefit of the tenants and provisions of the release on the ground of bona fide need is the only provision which treats the landlord with some sympathy and, therefore, if the tenant is satisfied that the accommodation in which he is living since very long time thus it should not be released on the asking of the landlord. This leniency cannot be allowed. The Courts, if during the proceedings come to a conclusion that comparison of relative hardship caused to the landlord and tenant is a step-in-aid and beneficial to the tenant, therefore, comparison of hardship is necessary. However, if the tenant fails to establish its bona fide that during continuation of the proceedings the tenant did make an effort to search for an alternative accommodation but failed to do so only then a view in favour of the tenant is possible in such an event. If the tenant fails to establish this, the Courts are well within their rights to refuse comparison of hardship."

15. Lastly learned counsel for the opposite parties No. 3 and 4 has relied on Keshar Bai Vs. Chhunulal, (2014) 1 AD 409 : AIR 2014 SC 1394 : (2014) AIRSCW 960 : (2014) 1 JT 379 : (2014) 1 SCALE 170 , wherein the Hon''ble Supreme Court has held as under:

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/krishna-mohan-mahrotra-appellant-…

"It is well-settled by a long line of judgments of this Court that the High Court should not interfere with a concurrent finding of fact unless it is perverse. (See: Deep Chandra Juneja, Yash Pal and Firojuddin). In this case, for the reasons which we shall soon record, we are unable to find any such perversity in the concurrent finding of fact returned by the Courts below warranting the High Court''s interference."

16. From the perusal of the aforesaid judgments, the legal position is crystal clear that if the order of the Court below suffers from error of jurisdiction or breach of the principles of natural justice or is vitiated by a manifest or apparent error of law, it may be set aside. It is also settled position that High Court cannot reappraise the evidence without sufficient reasons and reach finding of fact contrary to those rendered by the Court below. The Hon''ble Apex Court has held that where there are concurrent findings of fact, the High Court should not interfere unless the findings are perverse.

17. Learned counsel for the petitioner has mainly emphasised that the provisions of Rule 16(1)(d) of U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Rules 1972 have not been considered by the Court below because the respondent Nos. 3 and 4 had specifically mentioned in their affidavit that they are ready to provide alternate accommodation to the petitioner. Therefore, the findings of the learned Court below are perverse.

18. I do not find any substance in the submissions of the learned counsel for the petitioner because the trial Court while deciding the issue No. 2 has specifically dealt with the said affidavit in which the offer was given for alternate accommodation. The learned Court below has come to the conclusion that the petitioner himself has neither accepted the said offer of the landlord nor has shown any willingness to accept the said offer and he has not come forward that he is ready to take the alternative accommodation. On the contrary, the tenant has given suggestion to the landlord that the said portion may be utilized by his sons.

19. It is settled preposition of law that the landlord is the best judge of his needs and it cannot be decided by the tenant that where the landlord or his family members will reside or carry on their business. Accordingly, the provisions of Rule 16(1)(d) of the Rules have been dealt with specifically. Therefore, the law cited by the learned counsel for the petitioner has no relevance.

20. It has also been submitted that the application for commission was rejected by the trial Court without any sufficient grounds. Therefore, the learned Court below has committed jurisdictional error because under the provisions of Section 34, the prescribed authority has the powers of Civil Court. The application for commission was moved on 25.7.2009, a copy of which has been filed as annexure 4, in which it was requested that Amin Commissioner be directed to inspect the shop of the landlord and the portion of the first floor. In the main suit, the shop of the landlord or the portion of the first floor of the building was

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/krishna-mohan-mahrotra-appellant-…

not in dispute. The trial Court has rejected the said application by order dated 3.8.2009 holding that there was no dispute regarding the location of the shop in question and the landlord has himself stated in the application that he is doing the business of ''Samosa'' and ''Namkeen'' and the portion of the first floor has also been described.

21. As far as the provision of Section 34(1)(g) and the Rule 22(f) are concerned, the commission may be issued by the Court, if it is not able to arrive at a just conclusion or where the Court feels that there is some ambiguity in the evidence of the parties, which can be clarified by making local inspection or inspection through commission.

22. Local inspection or issue a commission by the Court cannot be claimed as of right by any party. Such inspections are made to appreciate the evidence already on record and Court is not expected to visit the site for collecting evidence. (See: Randhir Singh Sheoran v. 6th Additional District Judge, 1997 (2) JCLR 860 , Radhey Shyam v. A.D.J., Court No. 13, Lucknow and others, 2010 (2) ADJ 758 and Sonpal v. 4th Additional District Judge, Aligarh and others, 1992 (2) ARC 596).

23. In the case of Smt. Shamshun Nisha v. Ist Additional District Judge, Lucknow and others, 1992 (1) ARC 423, it is held as under:

"By means of the present writ petition, the petitioner challenges the order, dated 13.5.1991, passed by Ist Additional District Judge, Lucknow, contained in Annexure 6 by which the petitioner''s request for local inspection was rejected by the appellate Court. The appellate Court pointed out that the petitioner had been given sufficient opportunity to rebut the evidence of the expert. However, the fact is not disputed that the appeal is still pending and in appeal only an application for local inspection of the site by the Advocate Commissioner has been rejected. Therefore, in my opinion, the said order cannot be challenged in the writ petition."

24. The aforesaid view was further reiterated by this Court in the case following cases:

(i) Avinash Chandra Tewari Vs. A.D.J., Court No. 3, Unnao and Others

(ii) Smt. Radha Rani Mehrotra and Others Vs. Learned Prescribed Authority/Civil Judge S.D. and Others

(iii) Radhey Shayam and others v. Additional District Judge, Lucknow and others, 2010 (2) ADJ 758 (LB)

25. Further to go for local inspection or issue of commission for the proper disposal of the controversy pending is a sole prerogative of the Court to decide whether to move the same or not.

26. Accordingly, it is a sole domain of the Court to issue a commission or not and the local inspection or commission cannot be claimed as a matter of right by a

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/krishna-mohan-mahrotra-appellant-…

party, so arguments as advanced by the learned counsel for petitioner for issuing commission having no force and is liable to be rejected.

27. As the situation and location of the shop in dispute was not in controversy and the landlord has also specified his shop as well as the portion of the first floor, therefore, in the facts and circumstances of the case, there was no ambiguity regarding the location and situation of the shop in question. Thus, the application for commission has also been rightly rejected.

28. Learned counsel for the petitioner has further emphasised that in the order dated 8.6.2010, the learned Additional District Judge, Kheri has observed that there is no need to issue commission. So far as the application for providing alternate accommodation is concerned, it will be appropriate to dispose of this application at the time of hearing of the appeal and the point regarding the hardship can be inferred thereon, but the learned Additional District Judge Kheri has not dealt with this point while deciding the Rent Control Appeal. I do not find any substance in the submission of the learned counsel for the appellant because the said point has been discussed at length at page 11 and 12 of the judgment of the appellate Court dated 17.5.2011 wherein the Court has come to the conclusion that the landlord cannot be compelled to make available the rooms at the first floor.

29. Both the learned Courts below have considered the bona fide need and the comparative hardship of the parties and have come to the conclusion that the landlord has the bona fide need and the comparative hardships is also in favour of the landlord because the shop in question is required for his sons who have now become major. The findings of both the Courts below are concurrent and I do not find any good ground to interfere with the findings. I do not find any error of jurisdiction or perversity in the impugned judgment.

30. This writ petition has been filed under Article 226 of the Constitution with a prayer to issue a writ of certiorari. The judicial order of the Courts below have been challenged.

31. Hon''ble Apex Court in a recent judgment in Radhey Shyam v. Chhdbi Nath, (2015) 0 Supreme 158 (SC), has held that a writ of certiorari is not available against the judicial order of a competent Court because the Court could not violate the fundamental rights. It has further been held that even incidental violation cannot be held to be violative of fundamental rights. It has further been held that an order of Civil Court could be challenged under Article 227 and not under Article 226.

32. Present writ petition has been filed under Article 226 of the Constitution of India with a prayer to quash the order dated 17.5.2011 passed by the Additional District Judge, Court No. 3 Lakhimpur Kheri. Thus, the writ petition is also not maintainable to this aspect of the matter. Accordingly the writ petition is dismissed. The interim order dated 31.5.2011 stands vacated. The petitioner is directed to vacate the premises in question within a period of two months from

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/krishna-mohan-mahrotra-appellant-…

today.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/krishna-mohan-mahrotra-appellant-…