
(2008) 02 AHC CK 0170
In the Allahabad High Court
Case No : C.A.W.P. No. 8027 of 2008

Mahesh Chand Agarwal

APPELLANT

Vs

Prescribed Authority/Judge Small Causes Court, Agra and
another

RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 34

Citation : (2008) 02 AHC CK 0170

Hon'ble Judges : Dilip Gupta, J

Final Decision : Dismissed

Judgement

Dilip Gupta, J.

1. The petitioner who is the tenant of the shop in dispute has filed this petition for setting aside the order dated 17.1.2008 passed by the prescribed authority by which the application filed by the tenant for cross examination of landlord respondent No. 2 Mahesh Dutt Kashyap was rejected.

2. The records indicate that the landlord had filed an application under section 21 (1) (a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act") for release of the shop in question. It was, inter alia, stated in the application that his eldest son Manoj Kumar Kashyap was sitting idle due to the closure of the pathology shop of Dr. Rajendra Narain Sharma where he was employed; that Manoj Kumar Kashyap was married and was finding it difficult to maintain his family and that he wanted to establish himself in business relating to gift items. It was, therefore, prayed that the shop be released for the bona fide need of the eldest son Manoj Kumar Kashyap and the landlord was also likely to suffer greater hardship in case the release application was rejected.

3. A written statement was filed by the tenant. Subsequently an application was moved by the tenant on 30.7.2007 with a prayer that he may be permitted to

cross-examine respondent No. 2 Mahesh Dutt Kashyap who had filed his affidavit in support of the release application. It was stated that it was necessary to cross-examine Mahesh Dutt Kashyap, the landlord on the affidavit filed by him.

4. The Court below has rejected the application holding that there was no necessity to cross-examine the landlord in the summary proceedings under section 21 (1) (a) of the Act.

5. Learned Counsel for the petitioner submitted that the prescribed authority committed an illegality in rejecting the application since section 34 of the Act permits cross-examination in exceptional circumstances even in the proceeding taken under section 21 (1) (a) of the Act and in support of his contention he has placed reliance upon the Division Bench judgment of this Court in *Khushi Ram Dedwal v. Additional Judge, Small Causes Court/Prescribed Authority, Meerut* and other 1998 (32) ALR 60.

6. The question as whether a party has a right to cross-examine the deponent of an affidavit filed in proceedings under the Act was referred to a larger Bench of this Court in view of the conflicting opinions expressed in certain decisions. The Division Bench in *Kushi Ram Dedwal* (supra) answered the reference by making the following observations:

"Section 34 (1) (b) of the Act permits the authorities under the Act to receive evidence on affidavits and Clause (a) confers power on the authorities for summoning and enforcing the attendance of any person and examining him on oath. The cross-examination of a deponent of an affidavit is thus not excluded. The authorities have power to permit any party to cross-examine the deponent of the affidavit. The exercise of power to permit cross-examination should be on the principle as laid down under Order XIX, Rule 1 of the Code of Civil Procedure, as amended by U.P. Act No. 57 of 1976 which came into force on 1.1.1997.

The Court has been given power under the said proviso for production of the deponent for cross-examination, if it is necessary. The provision itself is clear that the Court has discretion to permit for cross-examination and such discretion should be exercised only when cross-examination is necessary. The necessity for cross-examination will depend upon the facts and circumstances of each case. If an application is filed by a party for cross-examination of a deponent by an affidavit, he must give reasons why cross-examination is necessary. It is not in every case that once an application is filed for cross-examination it has to be permitted as a general rule. It is true that the veracity of averments made in affidavits can be tested by cross-examination but unless it is established that the veracity of facts stated in the affidavit is necessary to be tested by cross-examination, the party must give reasons as to which particular fact and under what circumstances and for what reasons such cross-examination is necessary in the context and facts and circumstances of the case. U.P. Act No. 13 of 1972 applies for determining certain rights of the landlord, tenant and such other persons who claim the benefit under provisions of the said Act. This Act

itself provides the manner in which the evidence is to be taken by the parties concerned. The purpose of the enactment of any of the provisions has to be taken into account while permitting a party to crossexamine the deponent of an affidavit.

When crossexamination is necessary, it has to be decided in the context of factual backdrop of the case and in the context of nature of the proceedings under Act. The application under section 21 (1) of the Act is to be decided expeditiously. Rule 15 (3) of the Rules framed under the Act lays down that every application under section 21 (1) of the Act shall, as far as possible, be decided within two months from the date of its presentation. The legislature did not provide that oral evidence to be adduced in support of the case as contemplated under Order XVIII, Rule 4, C.P.C. But the facts are to be proved on affidavits. If unnecessary crossexamination is permitted, that will only hamper the expeditious disposal of the cases. The Hon'ble Supreme Court emphasised this aspect in the case of State of Jammu and Kashmir (supra). Considering this provision Hon'ble R.M. Sahai, J. as he then was in the case of Radha Krishna v. Vth Additional District Judge, Jalaun at Orai and others 1985 (1) ARC 427, observed that the primary objective of Act No. 13 of 1972 is expeditious disposal of the cases. It may be hindered if the parties are permitted to lead oral evidence. In the case of Smt. Culaicha Devi (supra), the following observation was made:

"If oral evidence was contemplated to be filed and if the deponent or every affidavit was permitted to be crossexamined then it would not be possible to decide the release application under section 21 (1) of the Act within a period of two months."

It may be that when the case is being decided a party files an application for crossexamination only to delay the proceedings. The Court has to examine in each case as to whether on the facts and circumstances of the case, crossexamination is necessary and the application filed for crossexamination is bona fide. If the matter relates as to the extent of the accommodation or the matter which could be verified on inspection the crossexamination will be hardly relevant. If the question arises regarding title of the property which can be decided on the basis of the documentary evidence, the crossexamination will not be relevant as the fact can be proved by documentary evidence which can be annexed with the affidavit."

(Emphasis supplied)

7. It is in the light of the observation made by the aforesaid Division Bench in Khushi Ram Dedwal (supra) that the dispute in the present case has to be examined.

8. The landlord had come out with a specific case that his eldest married son Manoj Kumar Kashyap was unemployed and the shop was bona fide required for setting up a business for him. In support of this contention the landlord filed his

own affidavit but the tenant denied this fact. The application for cross-examination had been filed by the tenant stating that since this fact had been denied by the landlord in his affidavit, he should be permitted to cross-examine the landlord. The Division Bench in *Khushi Ram Dedwal* (supra) observed that the authorities have the power to permit any party to cross-examine the deponent of an affidavit in view of the provisions of section 34 of the Act but specific reasons have to be given by a party for cross-examination and cross-examination cannot be permitted as a general rule. The Court further observed that if the matter relates to the extent of the accommodation or the matter can be verified on inspection, cross-examination will not be relevant as these are facts which can be proved by documentary evidence. Thus, in view of the decision of this Court in *Khushi Ram Dedwal* (supra) there is no infirmity in the order passed by the Court below.

9. The writ petition is, accordingly, dismissed.