

(2005) 01 AHC CK 0162

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9608 of 2002

Maresh Chand

APPELLANT

Vs

**Additional Civil Judge (S.D.)/Prescribed Authority under U.P.
Act No. 13 of 1972 and Another**

RESPONDENT

Date of Decision : 28-01-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 1, Order 19 Rule 2
Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 21(1), 34

Citation : (2005) 1 ARC 558

Hon'ble Judges : Mukteshwar Prasad, J

Bench : Single Bench

Advocate : Ratnesh Kumar Pandey, for the Appellant; R.K. Pandey and S.K. Shukla, S.C., for the Respondent

Final Decision : Allowed

Judgement

Mukteshwar Prasad, J.—By means of this petition under Article 226 of the Constitution of India the tenant has prayed for quashing the impugned order dated 22.2.2002 passed by respondent No. 1 (Prescribed Authority) (Annexure-5 to the writ petition) whereby the authority rejected the application of the tenant for recalling the witnesses who had filed their affidavits in support of the application of the landlord for release of the shop in question u/s 21 (1) (a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act").

2. In brief, the petitioner's allegations are that he is tenant of the shop in question and respondent No. 2 is landlord. The landlord moved an application u/s 21 (1) (a) of the Act before the Prescribed Authority for release of the shop in dispute on the ground that he required the aforesaid shop to establish business of his sons Naveen Kumar and Ashok Kumar who wanted to start business of readymade garments. In P.A. Case No. 10 of 1987 Ram Kishore v. Mahesh Chand

the tenant appeared and filed his objection against the release application. The landlord in support of his case filed affidavits of Ram Autar Kaushik, Sanjay Verma, Mobin Ansari and Mukesh Kumar. Subsequently, the petitioner came to know that the witnesses who had filed their affidavits on behalf of the landlord had not come to Bulandshahar and they did not make their signature/thumb impressions on the register maintained by the Oath Commissioner for the aforesaid purpose. He, therefore, moved an application on 15.5.2000 supported with his own affidavit for summoning the deponents for their cross-examination. He further prayed for summoning the relevant register of Oath Commissioner. The landlord filed his objection on 25.5.2000 alongwith his own affidavits. Ram Autar Kaushik, who had filed his affidavit on behalf of landlord also moved an application on 24.5.2000 that he did not file any affidavit in support of the landlord's application and the alleged affidavit was not signed by him. After having heard learned Counsel for the parties, learned Prescribed Authority rejected the application of the tenant on 22.2.2002.

3. Heard Sri Ratnesh Kumar Pandey, learned Counsel for the petitioner, Sri R.K. Pandey, learned Counsel for respondent No. 2 and learned Standing Counsel for respondent No. 1 and perused the record.

4. Counter affidavit and rejoinder affidavit have been exchanged between the parties and are on record. With the consent of the parties, the petition was heard on merits and is being decided finally at this stage.

5. Learned Counsel for the petitioner has submitted that admittedly applications u/s 21 of the Act are decided by the Prescribed Authority on the basis of the affidavits filed by the parties. The parties had filed their affidavits before the Prescribed Authority. Section 34 of the Act empowers the authorities mentioned in the Section that they have the same powers as are vested in the civil Court under C.P.C. when trying a suit and that power includes power to summon and enforce the attendance of any person and examine him on oath and to receive evidence on affidavits. The petitioner came to know that the affidavits, which were filed on behalf of the landlord were not genuine and in fact the witnesses had not come to Bulandshahar to swear and verify the affidavits. Moreover, they did not sign/put their thumb impression on the register maintained by the Oath Commissioner and as such, he prayed to the Prescribed Authority for summoning them for the purpose of cross-examination and he further requested to summon the register of Oath Commissioner also. The petitioner filed his own affidavit alongwith the application. Besides, Ram Autar Kaushik, one of the four witnesses, also moved an application that in fact he had filed no affidavit and the affidavit in question was never signed by him. He never appeared before Oath Commissioner. Learned Counsel for the petitioner has further urged that under Order XIX, Rule 2 C.P.C. the Prescribed Authority is fully empowered to summon the deponents for the purpose of cross-examination and the learned Prescribed Authority erred in rejecting the application.

6. On the other hand, learned Counsel for the landlord-respondent supported the

impugned order and submitted that the signature or no signature of the deponents in the register of Oath Commissioner would make no difference at all on the decisions and Prescribed Authority committed no illegality. The witnesses came to the Court and filed their affidavits after putting their signatures. The tenant moved the application in question for the purpose of delaying the disposal of the release application and has been successful by filing this petition in this Court against rejection of his application by respondent No. 1.

7. Learned Counsel for the petitioner has placed reliance on the three decisions of this Court in Bholey Nath and Ors. v. The VIIIth Additional District Judge, Allahabad and Ors. reported in 1982 (2) ARC 456 Om Prakash Sharma v. Prescribed Authority and Anr., reported in 1985 (1) ARC 72 and a Division Bench decision in Khushi Ram Dedwal v. Additional Judge, Small Causes Court/ Prescribed Authority, Meerut and Ors., reported in 1997 (2) ARC 674.

8. I have considered the submissions made on behalf of the parties and perused the decisions relied upon by the petitioner's learned Counsel. Admittedly, the applications u/s 21 are decided on affidavits of the parties. Section 34 of the Act permits the authorities under the Act to receive evidence on affidavits and clause (a) further provides 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 under the Act have power to permit any party to cross-examine the deponent. The exercise of power to permit cross-examination should be on the principle as laid down under Order XIX, Rule 1 C.P.C. as amended in U.P. w.e.f. 1.1.1977. Thus, I find that the authority under the Act has power to summon the deponent for the purpose of cross-examination, if it is necessary. No doubt the Court/authority has discretion to permit for cross-examination but such discretion should be exercised only when cross-examination is found necessary. The necessity for cross-examination will depend upon the facts and circumstances of each case. In the instant case, the petitioner moved an application before the Prescribed Authority supported by his own affidavit that the deponents had not come to Bulandshahar to verify the affidavits. Moreover, they had not signed/affixed their thumb impressions on the register of the Oath Commissioner. It is noteworthy that one of the deponents also moved an application to the effect that he had not signed the affidavit, which was allegedly filed on behalf of landlord. In this view of the matter, I am clearly of the opinion that learned Prescribed Authority committed illegality and was wholly unjustified in rejecting the application of the petitioner for summoning the deponents for the purpose of cross-examination. I find merit in this petition and it must succeed.

9. In the result, the petition succeeds and is allowed. The impugned order passed by the Prescribed Authority, Bulandshahar on 22.2.2002 is hereby quashed. The Prescribed Authority is directed to summon the deponents for their cross-examination and relevant register of Oath Commissioner also and decide the application u/s 21 of the Act within a period of three months from the date of

production/receipt of a certified copy of this order.

10. There will be no order as to costs.