
(2013) 10 AHC CK 0137
In the Allahabad High Court
Case No : C.M.W.P. No. 32385 of 2013

Manoj Kumar and Others

APPELLANT

Vs

Addl. District Judge, Court No. 11 and Others

RESPONDENT

Date of Decision : 30-10-2013

Acts Referred:

Citation : (2014) 102 ALR 538

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Judgement

Ran Vijai Singh, J.—Heard Sri V.K.S. Somwanshi, learned Counsel for the petitioners and Sri Kshitij Shailendra, holding brief of Sri Manish Tandon, learned Counsel for the respondents. This writ petition has been filed for issuing a writ of certiorari quashing the orders dated 26.5.2011 passed by the Prescribed Authority/Civil Judge (Senior Division), Kanpur Nagar in Rent Case No. 32 of 2008, Smt. Roshan Jahan v. Raj Kumar and others and orders dated 24.5.2013 and 25.5.2013 passed by the learned Additional District Judge, Court No. 11, Kanpur Nagar in Rent Appeal No. 126 of 2011, Raj Kumar v. Roshan Jahan.

2. Vide order dated 26.5.2011, the release application filed by the respondent/landlord has been allowed, whereas, by the subsequent order dated 24.5.2023, adjournment application of the applicants/petitioner has been rejected and vide order dated 25.5.2013, the appeal itself has been dismissed for non-compliance of the order passed by this Court in Writ (A) No. 53950 of 2012, Roshan Jahan v. Additional District Court No. 8 Kanpur Nagar and others.

3. It appears the respondent landlord has filed release application seeking release of the accommodation in dispute in the tenancy of the petitioners. The said case was numbered as P.A. Case No. 32 of 2008. It was allowed on 26.5.2011 after contest.

4. Aggrieved by the above order, the petitioners have filed an appeal which was numbered as Appeal No. 126 of 2011. In the appeal, an interim protection was

given to the petitioners on the condition of deposit of Rs. 500/- per month rent till the disposal of the appeal by 7th day of every calendar month. It was also observed that in case of default of payment in rent, the stay order shall stand automatically vacated.

5. It appears that the respondent/landlord has filed Writ (A) No. 53950 of 2012 seeking expeditious disposal of the appeal with the allegation that the tenant is not complying with the interim order granted by the Lower Appellate Court for depositing Rs. 500/- per month towards rent. This Court vide order dated 12.10.2012 has disposed of the writ petition with the following observation:

Writ petition is disposed of with the directions that in case condition attached with the stay order granted by the Lower Appellate Court has not been complied with, the Prescribed Authority shall at once evict the tenants respondents. It is further directed that on the next date Lower Appellate Court shall direct tenants to deposit all the cost by the next date failing which they must not be permitted to participate in the proceedings of the appeal. It is further directed that all efforts must be made to decide the appeal very expeditiously preferably before 31.5.2013. Absolutely no un-necessary adjournment shall be granted to any of the parties. If the Court below is inclined to grant any adjournment in any form to any of the parties, then it shall be on very heavy cost, which shall not be less than Rs. 300/- per adjournment payable before the next date failing which defaulter party shall not be permitted to participate in the proceedings of the appeal.

6. It appears after the order dated 12.10.2012, on one occasion, the petitioners have sought an adjournment which was allowed on payment of cost of Rs. 300/- with the direction to pay the same by the next date fixed. The petitioners did not deposit the cost. Consequently, vide order dated 24.5.2013, the petitioners' right to participate in the appeal has been closed. Thereafter vide order dated 25.5.2013, the appeal of the petitioners has also been dismissed only on the ground of non-deposit of cost as directed by this Court in Writ A No. 53950 of 2012.

7. Aggrieved by this order, petitioners have filed present writ petition. This writ petition had been entertained with the following direction:

Considering the facts, execution of the judgment and decree passed by the prescribed authority as well as Lower Appellate Court shall remain stayed subject to the conditions that petitioners deposit entire amount of cost with the prescribed authority within four weeks from today and shall also go depositing a sum of Rs. 700/- as rent determined by the Court below while granting interim order month to month every month for use and occupation of the premises in dispute with effect from May, 2013. The damages shall be deposited by 15th of every succeeding month. The respondent-landlady shall be entitled to withdraw the amount so deposited.

In case of default, this order shall stand automatically vacated and the decree

shall be liable to be executed through process of Court.

8. It is submitted by Sri Somvanshi that the order dated 31.5.2013 is being complied with in letters as well in spirit. Sri Kshitij Shailendra, learned Counsel for the respondents has not disputed this fact. Now only controversy is with regard to the dismissal of the appeal on account of non deposit of cost of Rs. 300/- imposed by the Appellate Court in lieu of granting adjournment to the petitioner, Normally this matter ought to have been heard by His Lordship Hon"ble justice S.U. Khan who has passed the order dated 12.10.2012 in Writ A No. 53950 of 2012 but in view of the circular issued by Hon"ble the Chief Justice, since Hon"ble S.U. Khan, J, has been transferred to Lucknow Bench of this Court, this matter is being entertained by me being the appropriate Court.

9. Having heard learned Counsel for the petitioner and learned Counsel for the respondents, I find that by now the petitioners have complied with all the orders passed by this Court as well as Appellate Court except depositing the cost of Rs. 300/-. Further this Court has nowhere recorded that for non-deposit of the amount of cost for adjournment, the appeal itself be dismissed without looking into its merit. The Apex Court in 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.

10. 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.

11. It may be noticed that although the petitioners have failed to deposit the cost, but this Court while passing the order dated 12.10.2012 has nowhere directed to dismiss the appeal for non-deposit of cost, it has only restrained the defaulting party from participating in the future proceeding. I am of the considered opinion that on account of non-participation in the proceeding, the Court below could not wash of its hand from deciding the appeal on merit.

12. The Apex Court in A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by Its President etc., has held that the entire journey of a judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of justice delivery system.

13. Again in Dalip Singh Vs. State of U.P. and Others, has been observed that truth constitutes an integral part of the justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the Courts irrespective of the consequences. However, post-independence period has been drastic changes in our value system.

14. In Maria Margarida Sequeria Fernandes and Others Vs. Erasmo Jack de

Sequeria (Dead) through L. Rs., , this Court has observed that truth alone has to be foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty.

15. Here I find that the Court below has acted in haste and failed to discharge its duty to impart substantial justice to the parties. I further find that the order dated 12.10.2012 has been passed on the misinterpretation of the order passed by this Court in Writ Petition No. 53950 of 2012. Therefore, it cannot be sustained in the eye of law.

16. The writ petition succeeds and is allowed. The order dated 25.5.2013 Annexure-7 to the writ petition is quashed. The Additional District Judge Court No. 11 Kanpur Nagar or any other Judge to whom the matter is assigned by learned District Judge is directed to decide the Appeal No. 126 of 2011 by 31st March, 2014 on merit after hearing all concerned on the deposit of Rs. 1000/- plus 300 earlier cost within two weeks from the date of receipt of certified copy of this order. The remaining condition imposed by this Court while passing the order dated 12.10.2012 shall remain operative till the decision of the appeal.