

(2001) 12 AHC CK 0099
In the Allahabad High Court
Case No : C.M.W.P. No. 43303 of 2001

Mata Sukh Devi Sansthan and Another	APPELLANT
Vs	
VIIth Addl. District Judge and Another	RESPONDENT

Date of Decision : 18-12-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Societies Registration Act, 1860 — Section 6, 7
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 21(8)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 — Rule 25, 25(1)

Citation : (2002) 5 AWC 4202

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

Bench : Single Bench

Advocate : P.N. Khare, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

A.K. Yog, J.—Mata Sukh Devi Sansthan, Uttar Pradesh, Lucknow, a registered Society through its Secretary Anand Prakash Dixit and one Sukh Devi Vidya Mandir, Junior High School through its Manager, Anand Prakash Dixit, seek to challenge the judgment and order dated 3.9.2001 (Annexure-1 to the petition) through this writ petition under Article 226, Constitution of India.

2. The Respondent No. 2, Jagat Bahadur Singh is the landlord owner of the premises in question (namely, ground floor accommodation of House No. 104-A/151, Rambagh, Kanpur Nagar). Petitioner No. 1, a registered Society which runs and manages a recognised educational institution-Sukh Devi Vidya Mandir, Junior High School (Petitioner No. 2), is the tenant of the premises in question.

3. The landlord filed an application u/s 21(8) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, U.P. Act No. XIII of 1972 (hereinafter referred to as "the Act"), claiming enhancement of rent from Rs.

219 to Rs. 3,479 per month.

4. The tenant contested the same. Parties filed evidence as they desired.

5. The Additional District Magistrate (Finance and Revenue)/ Rent Control and Eviction Officer, after considering the material on record came to the conclusion that the rent was liable to be enhanced from Rs. 219 to Rs. 1,200 per month vide judgment and order dated 15.9.1990.

6. Feeling aggrieved, the tenant filed Rent Appeal No. 181 of 1990. The landlord also preferred Rent Appeal No. 166 of 1990. Both these appeals are still pending before Respondent No. 1/VIIth Additional District Judge, Kanpur Nagar.

7. During the pendency of the appeals, landlord Respondent No. 2 filed an application for amendment (Paper 53-Kha) and another amendment application (Paper No. 54-Kha), both dated 16.1.1995. The amendment applications were allowed on 4.3.1995, requiring the landlord to incorporate requisite amendment within a week ; i.e., 11.3.1995. The landlord, however, failed to incorporate the amendments within the said time.

8. The tenant, being aggrieved from aforementioned order dated 4.3.1995 (allowing amendment) filed Writ Petition No. 6868 of 1995 before this Court and vide interim order dated 21.3.1995, proceedings in Rent Appeal No. 166 of 1990 were stayed.

9. Parties exchanged counter and rejoinder-affidavits in the aforesaid writ petition. During the pendency of the said writ petition, Pt. Shri Nath Dixit, Secretary-cum-Manager of the registered Society died. An application for substituting Anand Prakash Dixit in the writ petition, in place of late Shri Nath Dixit, was filed on 26.10.1998, which was allowed by this Court on 7.12.1998. As a consequence thereof, Anand Prakash Dixit, Secretary-cum-Manager of the Registered Society was substituted in place of aforementioned Pt. Shri Nath Dixit, the then Secretary-cum-Manager.

10. The above petition was dismissed on 12.12.2000 by this Court. The order dated 4.3.1995 was affirmed.

11. An application dated 12.11.1998 was filed on behalf of the tenant intimating the appellate court that the then Secretary-cum-Manager of the registered Society and the Committee of Management of the recognised college, had died on 16.9.1998 and in his place, Anand Prakash Dixit was the existing Secretary-cum-Manager (Annexure-2 to the writ petition).

12. The Petitioner filed an application along with affidavit of Jagat Bahadur Singh dated 6.7.2001 filed by landlord-Appellant before the appellate court with the prayer to permit the Appellant to incorporate certain amendments in the Memo of Appeal including the prayer to delete the name of (late) Sri Nath Dixit and to incorporate the name of Anand Prakash Dixit (Annexure-IV and v. to the petition). This application was actually filed before the appellate court on

7.7.2001 vide para 19 of the writ petition.

13. Landlord/Respondent No. 2 filed an application dated 7.7.2001/Annexure-3 to the petition (Paper No. 77-Ga) in Rent Appeal No. 166 of 1990 with the prayer to dismiss the appeal as infructuous on the ground of non-impleadment of Anand Prakash Dixit, the present incumbent of the office of Secretary-cum-Manager.

14. The tenant filed objection dated 21.7.2001 (Annexure-6 to the petition) with the prayer to dismiss the said amendment application dated 6.7.2001, as not maintainable and dismiss the appeal as having abated and infructuous. The tenant had also filed counter-affidavit dated 18.7.2001 (Annexure-7 to the petition) whereas the landlord filed rejoinder-affidavit dated 28.7.2001 (Annexure-8 to the petition).

15. Learned Counsel for the Petitioner Sri P. N. Khare made a statement before this Court that he is confining his challenge only to the impugned judgment and order dated 3.9.2001 (Annexure-1 to the petition) to the extent it allowed the application of the landlord (Paper No. 77-Ga dated 3.7.2001).

16. Learned Counsel for the Petitioner submitted that this petition is confined to the application 77-Ga, copy of which has been filed as Annexure-IV to the petition (Particular Page 42 of the writ paper book) for deleting the name of Sri Nath Dixit and incorporating the name of Anand Prakash Dixit. The application 77-Ga has been allowed by the Court vide judgment and order dated 3.9.2001 (Annexure-1 to the petition) ; relevant impugned part is on PP 33 of the writ paper book.

17. The learned Counsel for the Petitioner submitted that the application was moved belatedly without an application for condonation of delay. It is argued that under Rule 25 of the Rules framed under the Act, heirs/legal representatives have to be substituted within one month from the date of death of such person and the pendency of the writ petition and interim order in the said writ petition has no effect inasmuch as the Appellant could have filed requisite application within the time contemplated under the law.

18. On the other hand, learned Counsel appearing on behalf of contesting landlord/Respondent No. 2, contends that the proceedings in Rent Appeal No. 166 of 1990 were stayed by this Court vide interim order dated 21.3.1995, in Writ Petition No. 6868 of 1995 and it remained stayed till the dismissal of this petition on 12.12.2000. He submits that in the instant case there was no need of "substitution" but only incorporation of the name of a person who had succeeded to the office of Secretary-cum-Manager so as to continue the proceedings on behalf of the registered Society which is a juristic entity but not a natural person or entity.

19. Learned Counsel for the landlord-Respondent No. 2 refers to Sections 6 and 7 of the Societies Registration Act, 1860, which are quoted:

6. Suits by and against Societies. -- Every society registered under this Act may

sue or be sued in the name of the President, Chairman, or Principal Secretary, or Trustees, as shall be determined by the Rules and Regulations of the society and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion:

Provided that it shall be competent for any person having a claim or demand against the society, to sue the President or Chairman, or Principal Secretary, or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the Defendant.

7. Suits not to abate.--No suit or proceeding in any Civil Court shall abate or discontinue by reason of the person, by or against whom such suit or proceedings shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or proceeding shall be continued in the name of or against the successor of such person.

20. Reliance is placed on the decision of this Court in the case of Ram Chandra and Ors. v. Ist Additional District Judge, Nainital and Anr. 1982 ARC 518, Paras 3 and 4, (Hon''ble N.D. Ojha, J., as he then was) wherein the learned single Judge held that Sub-section (4) of Section 34 of the Act and Rule 25 (1) of the Rules framed under the Act were not attracted in the case where appeal was not pending and the party had died during the pendency of the writ petition wherein heirs/legal representative has already been brought on record.

21. The said decision is distinguishable and not applicable to the facts of the present case. Here "appeal" was pending before the court below. In the case of Ram Chandra (supra) question of substitution of Registered Society/ recognised institution was not under consideration.

22. In the instant case, I find that the party in question is a registered Society and a recognised institution, which never ceased or died and hence there is no occasion to substitute the legal representative/heirs. Landlord Appellant is required only to make requisite correction to set the record straight to facilitate representation of the society and the Institution which continue to be party throughout on the record. Further, the incorporation/ substitution having taken place in Writ Petition No. 6868 of 1995 as stated earlier and proceedings in appeal having been stayed, there was useful purpose if any application was filed for correction of array of parties in the appeal.

23. The only circumstance against the landlord is that he took steps after about 7 months after dismissal of the petition. Learned Counsel for the Petitioner failed to show any limitation period for correcting description in the array of the parties.

24. In view of the above, I find no manifest error apparent on the face of record in the impugned order. Apart from this, it is not a fit case for interference by this Court by invoking extraordinary and discretionary jurisdiction under Article 226, Constitution of India inasmuch as the impugned order does not decide or

adjudicate any right of the party to the proceedings and rather helps in rendering substantial justice.

25. No other point has been raised.

26. The writ petition is dismissed in limine with the direction that the court below shall endeavour to decide the rent appeal expeditiously, preferably within a period of six months from the date of production of a certified copy of this order before it.

No order as to costs.