
(1995) 03 AHC CK 0084

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8126 of 1995

Mohammad Hasnain

APPELLANT

Vs

Addl. Civil Judge Jaunpur & Anr.

RESPONDENT

Date of Decision : 29-03-1995

Acts Referred:

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

Citation : (1995) 03 AHC CK 0084

Hon'ble Judges : M.Katju, J

Final Decision : Disposed Of

Judgement

M. Katju, J.—This writ petition has been filed against the impugned order dated 931995, a true copy of which is Annexure 4 to the writ petition by which petitioner's application to crossexamine the landlord and other witnesses has been rejected. The petitioner is the tenant of the premises in dispute and the respondent No. 2 is the landlady. The respondent No. 2 filed an application under Section 21(1)(a) of U. P. Act No. 13 of 1972 which is pending. During the course of these proceedings the tenant filed an application dated 1821992 for crossexamining the witnesses of the landlady. A true copy of this application is Annexure1 to the writ petition. The landlady filed an affidavit to this application and by the impugned order dated 931995 the application has been rejected. Hence this petition.

2. I have heard Sri B. K. Srivastava, learned counsel for the petitioner and Sri S.C. Kharbanda, learned counsel for the respondent No. 2. In certain decisions of this Court it was held that ordinarily crossexamination should not be allowed in proceedings under Section 21 but I have differed with this view and referred the matter to a Larger Bench in writ petition No. 4097 of 1995, Khushi Ram Dedwal v. Additional Judge, Small Causes Court, Meerut and others reported in 1995 (1) ARC 308. There are certain conflicting opinions of learned Singles Judge on this point whether ordinarily crossexamination should be permitted in Section 21 proceedings or not. For example in Rano Lal v. Prescribed Authority 1982 (1) ARC

449, the learned Single Judge has held: "In a case wherein affidavit is filed the veracity of the credibility of the witnesses cannot be tested unless he is subjected to crossexamination." In my opinion Section 21 proceedings are not like a writ petition where ordinarily evidence is only on affidavits. Section 21 proceedings are more similar to a civil suit where there is a right to crossexamination. Although Section 21 proceedings are not strictly speaking a suit but yet they have many of the features of a civil suit. In my opinion ordinarily crossexamination should be permitted under Section 21 and it is only rare and exceptional cases where crossexamination should be refused. In my opinion it would be appropriate in Section 21 proceedings if examination in chief is permitted on affidavit but the deponent he should be subjected to crossexamination otherwise the veracity of the statement on affidavit cannot be properly attested. Mere filing of a counter affidavit is no substitute for crossexamination and it does not properly test the veracity of the witnesses. Section 21 proceedings are of a serious nature which can result in the eviction of a person from a house where he may have living for decades. Under Section 34(1)(a) of U.P. Act 13 of 1972 the Prescribed Authority has power to summon and enforce attendance of any person and examine him on oath. In my opinion this power to examine a person on oath, includes the power of permitting crossexamination. Thus, it is in the discretion of the Prescribed Authority to permit crossexamination or not. It is settled law that whenever discretion is conferred on a quasi judicial authority it is a judicial discretion and not arbitrary discretion. Whether the discretion should be exercised in favour of permitting or not permitting cross examination will depend on the nature of proceedings, the result which may ensue thereto from, and other factors.

3. I have already observed above that Section 21 proceedings are of a serious nature which may seriously affect one of the parties to the dispute. Hence they should not be disposed of without permitting crossexamination by both the parties, though the examination in chief may be on affidavit.

4. Sri S.C. Kharbanda has placed reliance on a decision of Division Bench of the Lucknow Bench in Assan Dass v. Prescribed Authority and another, 1981 ALJ NOC (7). The entire judgment has not been placed before me and Sri S.C. Kharbanda has stated that he could not get the copy of the entire judgment as it is of the Lucknow Bench. What has been reported in the journal placed before me is only a paragraph of the said judgment which states as follows:

"A conjoint reading of Rule 1 of Order XIX, C. P. C. and Section 34 makes it quite manifest that if the Prescribed Authority is satisfied that it is necessary for the ends of justice and to elicit truth that the deponent of the affidavit should be called upon to appear before it for the purpose of crossexamination, the Prescribed Authority has jurisdiction and power to ask such person to appear before it for that purpose. 1973 RC 405, distinguished."

5. In my opinion, this paragraph of the said judgment does not seem to be of no help to the respondents because it does not seem to lay down any hard and fast

rule. It does not say whether ordinarily any crossexamination should be permitted, but it only seems to say that if the Prescribed Authority is satisfied that it is necessary in the ends of justice and to elicit the truth then the deponent of the affidavit should be called upon for crossexamination. In my opinion, this does not detract from the observations which I have made above. Whenever an application under Section 21(l)(a) is filed by the landlord in such proceedings the members of the landlords and tenants family, the number of rooms available with the landlord and with the tenant etc. are usually mentioned in the application. The tenant usually denies these facts alleged by the landlord. Hence, when the tenant denies the allegations of the landlord in his application under Section 21(l)(a) it is ordinarily necessary to permit crossexamination to elicit the truth. According to the Division Bench decision, or interpreted by me, crossexamination should be permitted if the tenant denies the factual allegations of the landlord in his application under Section 21(1)(a). In my opinion the Division Bench ruling referred to above supports the view which I have taken. However, I am not expressing any final opinion on this point because the entire judgment of the Division Bench has not been placed before me. Since I have already referred the matter to a larger Bench, in my opinion this case should also refer to a larger Bench. If Hon''ble the Chief Justice so deems fit he may refer the matter to a Full Bench.

6. Connect with Writ Petition No. 4097 of 1995 Khushi Ram Dedwal v. Additional Judge, Small Causes Court, Meerut. Learned counsel for the respondent No. 2 may file counter affidavit within two weeks. Petitioner may file two weeks thereafter for rejoinder affidavit.

7. Until further orders further proceedings in Case No. 2 of 1991, Smt. Urmila v. Mohammad Hasnain pending in the Court of 1st Additional Civil Judge, Jaunpur shall remain stayed.

Referred to larger Bench.