
(2001) 07 AHC CK 0169
In the Allahabad High Court
Case No : C.M.W.P. No. 14334 of 1999

Nasim Ahmad

APPELLANT

Vs

IVth Addl. District Judge, Meerut and others

RESPONDENT

Date of Decision : 10-07-2001

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2, 21(1), 24(2)

Citation : (2001) 3 AWC 2178

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : K.K. Arora, for the Appellant; R.K. Jain and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.K. Rathi, J.—The respondent Nos. 3 and 4 filed S.C.C. Suit No. 21 of 1997 against the petitioner in the court of Judge Small Causes Court. Meerut, for eviction and for recovery of arrears of rent. The eviction was sought alleging that the premises in suit was constructed in the year 1990. The suit having been filed in the year 1997, the provisions of U. P. Act No. XIII of 1972 does not apply to the premises in suit. The suit for eviction as well as for recovery of arrears of rent was decreed by Judge Small Causes Court. Meerut, on 18.7.1998 by Judgment. Annexure-8 to the writ petition. Aggrieved by it the petitioner preferred S.C.C. revision No. 374 of 1998, which has been dismissed by respondent No. 1 on 30.3.1999 by judgment. Annexure-9 to the writ petition. Aggrieved by the orders, the petitioner has preferred this writ petition invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with the request that both the orders. Annexures-8 and 9 to the writ petition be quashed and the suit of the respondents Nos. 3 and 4 be dismissed with costs.

2. I have heard Sri K. K. Arora. learned counsel for the petitioner and Sri R. K. Jain, learned senior advocate for respondent Nos. 3 and 4.

3. The first argument of the learned counsel for the petitioner is that the respondent No. 4 is posted as District Judge and respondent No. 3 is his wife. That taking undue advantage of the position, the decree has been obtained in hot haste. That the adjournment application moved by the petitioner was rejected and the matter was decided by the learned Judge, Small Causes Court without providing opportunity to the petitioner to produce the evidence and hearing. The copy of the order sheet has also been filed in support of the argument, which is Annexure-6 to the writ petition. It is contended that the order sheet shows that on 16.7.1998, the petitioner moved the application for adjournment on the ground of his illness. That the case was adjourned only for one day and 17.7.1998 was fixed though the petitioner was ill. That on 17.7.1998 the petitioner again moved an application for adjournment on the same ground. The application was also supported by medical certificate, even then the application was rejected. That proper opportunity of hearing was not granted and the suit was decided in hot haste under the pressure of the respondents.

4. I have considered the arguments. It is admitted that in this case that fifteen adjournments were granted to the petitioner by the trial court. It is no doubt true that short adjournments were granted. However, it was a small cause matter and should have been decided expeditiously. No prejudice can be presumed for the reason that short adjournments were granted.

5. It is also true that application for adjournment was moved by the petitioner on 16.7.1998 on the ground of illness which was supported by medical certificate. Even then the case was adjourned for day only. However, on 17.7.1998 again the application for adjournment was filed with the medical certificate of the same doctor. The respondents also produced the medical certificate of the same doctor from which it became apparent that the doctor is in the habit of issuing false medical certificates. The medical certificate was, therefore, not relied. It is contended by Sri K. K. Arora, learned counsel for the petitioner that if one wrong medical certificate was given, it does not mean that the other medical certificate was also false. This principle of law is correct and no such presumption can be taken. However, when the evidence was brought that the doctor whose medical certificate has been filed also issued a false medical certificate, the Court is justified in rejecting such medical certificate. In the circumstances, no illegality was committed by refusing to grant adjournment. This matter was considered by the revisional court in great detail and he expressed the opinion that sufficient opportunity of hearing was given.

6. After considering the arguments, I am of the view that the Judgment of the court below cannot be quashed for the reason that proper opportunity of hearing was not given.

7. Now coming to the merits in this case, the facts are almost admitted. There was an old building, in which the petitioner was tenant of one shop of the respondents. That shop was vacated by the petitioner and a new market was

constructed known as "Khan Market". After its construction In the year 1990, the disputed shop was let out to the petitioner. The argument of the learned counsel for the petitioner is that the tenancy was in continuation of the old tenancy and, therefore, U. P. Act No. XIII of 1972 will apply. As against it is pleaded by the respondents that the petitioner was tenant of the building since 1973 which was an old building. That the entire old building was demolished and new market was reconstructed in the year 1990. That the petitioner was tenant of one shop of old building @ Rs. 500 per month. On the request of the respondents, the petitioner vacated the shop and surrendered the tenancy for the reason that the building was to be reconstructed. After his vacation, the entire building was demolished and was reconstructed in the year 1990. That according to the agreement, the old tenancy came to an end. That after reconstruction of the Khan Market on the request of the petitioner, one shop was given to him on rent @ Rs. 800 per month. That it was a fresh tenancy and was not in continuation of the old tenancy.

8. The argument of the learned counsel for the petitioner is that the allegation of the respondent is against the policy of law and the transaction was unfair and unreasonable. That, therefore, the fresh tenancy should be ignored and it was in continuation of old tenancy. Learned counsel in support of the arguments has referred to the decision in Central Inland Water Transport Corporation Limited and another v. Brojo Nath Ganguly and another. 1986 13) SCC 156. In this case, the dispute was regarding the termination of the service. It was observed that the test of reasonableness or fairness of a clause in a contract where there is Inequality of bargaining power is another theory recognised in the sphere of law of contracts. The Court will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or a clause in a contract, entered into between parties who are not equal in bargaining power. Observation of Lord Diplock was also quoted to in this connection. However, the principle of law laid down in the cited case has no application in the present case. In this case, there was not only equal but more bargaining power of the petitioner as compared to the respondents. The petitioner was tenant of old building and according to law, he could not have been evicted. He was, therefore, at commanding end. Therefore, he had powers to bargain and not to vacate the shop, but once he agreed to vacate the shop, it cannot be accepted that the transaction is unfair or unreasonable. The petitioner with his own free will surrendered the tenancy.

9. Both the courts below had scrutinized the evidence in detail and held that the petitioner surrendered the old tenancy and new tenancy was created after reconstruction of the disputed shop in the year 1990. This concurrent findings of fact appear to be correct from the material on the record and can also not be disturbed in this writ petition. The petitioner wrote a letter (Ex-40 of the trial court) on 1.9.1990 according to which he was tenant of the old shop @ Rs. 500 per month and that shop was vacated by him in June, 1990 to facilitate the construction of the new market. He requested in the letter that one new shop be

given to him on rent. He did not write in the letter that his tenancy is continuing and he is entitled to a shop on rent to new building according to agreement or as of right. In another letter. Ex-17, the petitioner again admitted that the old shop was vacated by him. Therefore, it appears that the petitioner voluntarily vacated the shop which was in his tenancy and, therefore, the tenancy stood terminated. If new shop was given to the petitioner again, it cannot be held to be in continuation with the old tenancy.

10. Learned counsel for the petitioner has also referred to provision of Section 21 (1) (b) of the Act and contended that had the shop been got vacated under the said provision, the petitioner would have been entitled to have one shop in the newly constructed building under the provisions of Section 24 (2) of the Act. That therefore, according to the said provision, the tenancy should be considered in continuation with the old tenancy.

11. I have considered the arguments. In my opinion, reference to these provisions is irrelevant in this case because no release order in the present case was passed u/s 21 (1) (b) of the Act. On the other hand, the petitioner himself surrendered the tenancy and vacated the shop. He is not entitled to benefit of Section 24 (2) of the Act.

12. After considering the arguments of the learned counsel for the parties, I am, therefore, of the opinion that there was a new tenancy regarding the shop which was constructed in the year 1990. Therefore, the courts below have rightly held that the U. P. Act No. XIII of 1972 does not apply to the premises in dispute and decreed the suit for eviction. The petition is without merit and is hereby dismissed.

13. Learned counsel for the petitioner also made request for time to vacate the shop. It is contended that the petitioner is to be dislodged from the commercial premises and will require sometime to vacate the shop.

14. With a view to balance the rights of the parties and to mitigate the hardship which occasions due to shifting of business by an order of eviction, I feel that it would be just, proper and reasonable to allow six months time to the petitioner to vacate the shop provided the petitioner fulfils the following two conditions :

(i) he deposits the entire rent due and also damages in advance for next six months calculated at the rate of rent within one month, and ;

(ii) he files an undertaking on affidavit in the trial court that he shall hand over vacant possession in a peaceful manner to the landlords-respondents within six months.

In case of the failure of the petitioner to abide by any one of the conditions within the time specified, the order of release shall become executable at once.