
(2011) 03 AHC CK 0224

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12372 of 2011

Prakash Kaur

APPELLANT

Vs

Prescribed Authority/Addl.Civil Judge (S.D.), Rampur and
others

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Citation : (2011) 03 AHC CK 0224

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the petitioner and perused the record.

2. This petition has been filed challenging the validity and correctness of the order dated 15.2.2011 passed by the Prescribed Authority/Additional Civil Judge(SD), Rampur in P.A. case no. 6 of 2007, by which application moved by the tenant petitioner for amending her written statement, has been rejected. The petitioner has prayed for quashing of the aforesaid order and further a direction in the nature of mandamus commanding the court below to allow her amendment application.

3. By the amendment application, the petitioner desires to incorporate following paragraphs in her written statement :

"19A. That after the death of Sri Chandrakan Khandelwal the original application no. 1, the partnership firm M/s Khandelwal brothers" has been dissolved.

19B. That late Sri Chandrakan Bhandelwal, the original applicant no. 1 on his death has left his widow Smt. Luxmi Khandelwal, applicant no. 1/1, Arjun Khandelwal.

19C. That the applicant no. 1/1 Smt. Luxmi Khandelwal is aging about 65 years, having chronic heart ailment and thus is invalid in participating in any alleged business in the required premises. Smt. Luxmi Khandelwal is a traditional house

hold lady and is not doing or participating in any alleged business. Thus, she does not require any additional accommodation as alleged in the application for release.

19D. That applicant no. ? Sri Arjun Khandelwal is doing lucrative job in United States of America and he does not require any additional accommodation as mentioned in the application.

19E. That the applicant no. 1/3 and ? are married daughters of late Sri Chandrakant Khandelwal and are admittedly residing with their husbands at Mumbai and do not require any alleged accommodation.

19F. That the applicant no. 1/5 is aging about 90 years and the release is not being sought for him.

19G. That the applicant no. 1/1 and ? being house hold lady and working man overseas, never had any cause of action to continue with the present application. They never have any requirement of release of the disputed premises and they have never become partners in M/s Khandelwal brothers, which has been dissolved on the death of late Sri Chandrakant Khandelwal, the original applicant no. 1.

19H. That it is also relevant to mention here that during the life time of Sri Chandrakant Khandelwal he and the applicant no. 2 had entered into some family settlement regarding their properties and had filed O.S. no. 247/2008, for declaration which was decreed by the court of civil Judge(SD), Rampur. Thus, the alleged need shown by applicant no. 1/1 and ? is totally false and flimsy. They in fact do not require any alleged additional premises.

19I. That Smt. Luxmi Khandelwal, applicant no. 1/1 as said above, is aging 65 years, having heart ailment and is a homely lady, she was never before indulged in any business throughout her life till date and has no attitude to indulge in any business. Smt. Luxmi Khandelwal do not permanently reside at Rampur and often resides at United States of America with her son and at Mumbai with her daughters.

19J. That late Sri Chandrakant Khandelwal has left abandoned immovable properties and millions in movable properties by which she can maintain herself properly.

19K. That recently the applicant no. 2 has obtained prejudice and lucrative distributorship of Pepsi in the name and style "Khandelwal Beverages" and has opened the controlling office in the premises which is just adjacent to the property in dispute. It is noteworthy that the existing premises, which is adjacent to the property in dispute is very wide enough to accommodate further business of the applicants and thus too they do not require the disputed property for their release. The alleged need shown of the applicants is neither genuine nor bonafide and is mere flimsy, eye wash and is manufactured one."

4. It may be pointed out here that the petitioner had also filed her additional written statement in reply to substitution application filed by the respondent landlord. In her additional written statement, she has taken almost same grounds which she has taken in the amendment application.

5. The court below by the impugned order dated 15.2.2011 has rejected petitioner's amendment application on the ground that evidence of the landlord is already closed and the case was being listed for evidence of the petitioner tenant but instead of giving evidence, she is delaying the matter by moving applications which is not justified as in the amendment application now filed by the petitioner, almost same facts as in the additional written statement/written statement, have been stated with only change of words here and there. The trial has already begun and the court below has found that amendment prayed for by the petitioner is not justified. The prescribed authority noting the fact that application was filed on the ground of personal need as well as on the ground of sub letting, has rejected amendment application, thus :

6. Contention of the counsel for petitioner is that personal need of the landlord does not exist any more, appears to be against his own averments made in the additional written statement wherein she has stated that brother of the deceased who was doing partnership business in one of the shops and had set up the ground for personal need, has got agency of Pepsi Cola, for which he requires space.

7. Thus, in my considered opinion, the ground of personal need still exists and merely because of death of one of the partners, the firm of real brothers would not do away with the personal need of other even in his own personal capacity.

8. For all the reasons stated above, I do not find any illegality or infirmity in the impugned order. The writ petition is accordingly dismissed. No order as to costs.