

(2017) 12 AHC CK 0001
In the Allahabad High Court
Case No : 47970 of 2017

Radhey Shyam

APPELLANT

Vs

Anil Kumar Bhargawa And 2 Others

RESPONDENT

Date of Decision : 04-12-2017

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, Section 38, Section 21(1), Section 21(1)(a), Section 21(1)(b)

Citation : (2017) 12 AHC CK 0001

Hon'ble Judges : Vivek Kumar Birla

Bench : Single Bench

Advocate : Swapnil Kumar

Judgement

1. Heard Sri Swapnil Kumar, learned counsel for the petitioner.
2. Present petition has been filed with the following prayer:- "A. Issue a writ, order or direction in the nature of certiorari quashing the orders dated 20.8.2016 and 13.9.2017 (Annexures 4 and 7 to this writ petition) passed by the Prescribed Authority / J.S.C.C. Agra.

B. Issue a writ order or direction in the nature of prohibition by allowing the application no. 16-C to Prescribed Authority / J.S.C.C., Agra to proceed and decide P.A. Case No. 70 of 2013 Anil Kumar Bhargawa vs. Radhey Shyam and another.

C. Issue any other suitable writ, order or direction, which this Hon"ble court may deem fit and proper in the circumstances of the case.

D. Award costs of the writ petition to the petitioner."
3. By the impugned order dated 20.8.2016 the application paper no. 16-Ga filed by the petitioner to the effect that one release application filed under Section 21(1)(a) of the Act 13 of 1972 against two tenants, occupying two different

shops at different rate of rent, is not maintainable and therefore, the court cannot proceed to hear the same and the release application is liable to be rejected. Only one tenant has filed this application and he has come forward to challenge the same before this Court. The application was rejected by the trial court holding that the single release application against two different tenants is maintainable. The recall application against the aforesaid order was also rejected vide order dated 13.9.2017. These two orders are under challenge before this Court.

4. Submission of learned counsel for the petitioner is that in view of Section 38 of the Act 13 of 1972 all the provisions of CPC are not applicable. He has also made a reference to Rule 20 (e) of the Rules framed under the Act 13 of 1972, whereby it has been provided that the court has power to consolidate two or more cases for eviction by the same landlord against the tenants and submitted that therefore, it has to be two release applications against two different tenants and that though the power to consolidate two release applications does exist but one single release application against two tenants is not maintainable particularly under Section 21(1)(a) of the Act 13 of 1972.

5. He further submitted that the present petitioner has taken objection at the very outset after putting appearance in the case pending before the trial court and therefore, the same was liable to be entertained and release application was liable to be rejected. He further submitted that the fact that the case was pending since the year 2013 and this application was moved in the year 2017 would have no adverse effect as the plea has been taken after he has put in appearance in the matter. He pointed out that on service of the release application he has put in appearance on 1.2.2016 before the trial court and the application in question was moved on 11.7.2016, therefore, there was no delay in filing the application or taking objection regarding maintainability of the release application.

6. Learned counsel for the petitioner has placed reliance on paragraph 11 of the judgment of this Court in the case of Mohan Lal and another Vs. Additional District Judge, Court No. 4, Gorkahpur and others 2014 (3) ADJ 296 to contend that though the release application against more than one tenant may be maintained if filed under Section 21(1)(b) of the Act 13 of 1972 but the same would not be maintainable if filed under Section 21(1)(a) of the same Act.

7. I have considered the submissions and have perused the record.

8. Before proceeding proceeding further it would be appropriate to take into account paragraph 11 of the judgment of Mohan Lal (supra), which is quoted as under:- "11. Having gone through the aforesaid judgments carefully, I find that a single application under Section 21 (1) of Act, 1972, per se, may not be bad or illegal but depending on the ground on which the application is filed and other relevant reasons. There may be a case of joinder of different cause of action so as to require that separate applications should be filed. No general proposition

either way, can be laid down. The ground on which the application was filed in Jagdish Chandra Yadav (supra) was that entire building, being in dilapidated condition, need be demolished, and, therefore, the tenants should be evicted. The building consisted of two rooms and a veranda. It had two tenants. The entire building was sought to be demolished on the ground that it is in dilapidated condition, so that landlord may build a new building. Therefore, the ground on which building was required to be vacated was common to all the tenants. No different facts were to be pleaded or proved by the parties. But when an application is filed under Section 21 (1) (a) of Act, 1972, on the ground of personal need, the landlord has to show not only bona fide of his personal need, but the question of comparative hardship also. The issue of comparative hardship vis-a-vis different tenants, would envisage different facts, pleadings and other relevant aspects. In this context, two different tenants cannot be treated at par and, therefore, in my view, such an application would not be permissible, otherwise it will create lot of complications in disposal of matter, as would be evident in the case in hand. A handy illustration is evident from appellate judgment. The Appellate Court's judgment in Writ Petition No. 64282 of 2008 shows that here he was dealing with the P.A. Rent Appeal No. 2 of 2007 which was filed on behalf of Zaheer and this fact he has mentioned at page 296 of the paper book that this appeal has been preferred by Opposite party no. 1, Zaheer, but then on page 297, it has said that the present appellant Mohan Lal in his objection has said something, and everywhere he has referred to the appellate Mohan Lal, of whose case, he has discussed in the entire order and there is no discussion about the case set up by Zaheer, who was the actual appellant therein. When pointed out, Sri Navin Sinha, learned Senior Advocate, also could not give any effective reply to this and said that it may be a typing mistake." (emphasis supplied)

9. Even a bare perusal of the aforesaid paragraph clearly indicates that the finding of a single application under Section 21(1) of the Act, 1972, per se, may not be bad or illegal but depending on the ground on which the application is filed and other relevant reasons and it has been further observed that there may be a case of joinder of different cause of action so as to require that separate applications should be filed and that no general proposition either way can be laid down. In the aforesaid judgment the case of Jagdish Chandra Yadav vs. I Additional District Judge and others 1976 AWC 819 was considered in detail and thereafter this finding was recorded. Paragraphs 3 and 4 of Jagdish Chandra Yadav (supra) are quoted as under:- "3 Section 2(1) of the Act stipulates that a landlord has to make an application for seeking eviction of a tenant from a building under tenancy on grounds mentioned in Clauses (a) and (b) of Section 21(1) of the Act. the use of the words "an application" and "a tenant" does not mean that there has to be an application for each tenant to be evicted, What is emphasised is that the order of eviction of a tenant from a building under tenancy can only be passed if the landlord makes an application setting forth one or more than one grounds mentioned in Clauses (a) and (b). It

is well settled that the word used in singular may be read in plural and vice versa. The words "an application" only emphasise that there must be one application at least before an order under Section 21(1) can be passed. Similarly, the words "a tenant" include the particular tenant against whom the eviction was sought. Assuming that a landlord has given on tenancy a building to one or more tenants, the law does not envisage that the eviction can be sought only against one of them. The eviction can be sought against the entire body of tenants who hold that building under tenancy. Thus, the words "a tenant" do not relate to one single tenant but to the particular tenant against whom eviction is sought. There may be one or more tenants in a tenancy. Thus, the words "an application" and "a tenant" do not mean that there has to be a separate application for each tenant.

4. Further, where there are more than one tenant in a building and eviction of each one of them is sought on the same ground or cause of action, one application would be sufficient. There is nothing in Section 21(1) of the Act to show that the law envisages a separate application against each tenant. In the present case, the building comprised of two rooms and a Verandah It has two tenants. The entire building Was sought to be demolished, as it was in a dilapidated condition so that the Petitioner could build a fresh building, The ground for the eviction was the same against both of them. Further, in the present case, the two tenants had filed a common written statement. They had engaged a common lawyer. They had not raised any objection as to the maintainability of the application before the Prescribed Authority. They had jointly led evidence. Thus, their plea at the appellate stage that the application was not maintainable on the ground that there should have been two applications was devoid of merits. An objection as to the maintainability of the application ought to be taken at the very first opportunity. No such objection was taken at the time when the written statement was filed. I, therefore, do not see that the tenants were justified in raising this objection before the appellate court and their objection ought to have been rejected on this ground alone. In my opinion, a common application for the eviction of the two tenants from a building which was sought to be demolished for the purpose of reconstruction was perfectly maintainable and was in accordance with law." (emphasis supplied)

10. A reference may be made to the judgments passed by this Court in the cases of Janki Prasad Vs. VI Additional District Judge 1978 ARC 137, Jyoti Swarup Agarwal vs. Civil Judge and others 1994 (2) AWC 1181 and Harun Ali and another Vs. Navjeewan 2017 (9) ADJ 504.

11. The aforesaid judgments have been passed placing reliance on Jagdish Chandra Yadav (supra). It is, however, pertinent to note that in Jyoti Swarup Agarwal (supra) it was opined that the court below was perfectly justified in rejecting the application of the tenant, which was also to the same effect. It is also important to note that it has further been observed by the Court that infact one application filed under Section 21 of the Act by the landlord against two

occupants of the same building can easily proceed, it rather more convenient and for the interest of justice, the court shall have the entire picture of the case about the need of the landlord. Relevant paragraph 3 of the aforesaid judgment is quoted as under:- "3. In the application of the Petitioner, it was stated that the house in question belongs to Mool Chand. His sons and daughter are also co-owners. They are necessary parties in the case. Since they have not been impleaded, the case cannot be proceeded on the ground of non-joinder of necessary parties, secondly one release application against the two tenants of the same house is said to be illegal for mis-joinder of necessary parties . The learned Counsel for the opposite party No. 1 rejected this application of the Petitioner-tenant on the ground that this application was misconceived moved after about 9 years of the filing of the application itself, apparently for delaying the proceedings for release. The learned Civil Judge/Presetibed Authority in my opinion was perfectly justified in rejecting the application of the tenant-Petitioner. The application filed by the tenant was highly belated which shows that it was simply to delay the proceedings further It is astonishing that nine years have passed and the release application could not be decided even after nine years. The provisions of Code of Civil Procedure do not apply as it is in proceedings under U.P. Act 13 of 1972. Section 34 of the Act incorporates the provisions of Code of Civil Procedure in principle for proceeding and deciding the cases under the Act The Petitioner is wrong in assuming the proceedings under Section 21 of the Act as a suit to attract the provision of non-joinder. The proceedings under Section 21 has been initiated by the landlord. The landlord under the Act is defined i.e. the person who is receiving the rent from the tenant is landlord within the meaning of the Act. The Petitioner has not shown by any cogent evidence that besides the contesting opposite party, there are other persons, who were also receiving rent from the Petitioner. Thus, there may be co-owners or cosharers of the property but for the basis of proceedings under this Act, the landlord as defined in the Act is fully competent to initiate and proceed with the case under the Act. The learned Counsel for the Petitioner submitted that joint petition against the two tenants of the same premises is illegal. The submission is wholly misconceived. The cause of action for the release of both the portions of the same house arose at one and the same time. Thus, one application under Section 21 of the Act by the landlord against the two occupants of the same building can easily proceed, it rather is more convenient and for the interest of justice, the Court shall have the entire picture of the case about the need of the landlord. It would be convenient for the Court to apply Rule 16 of the Act while finally appreciating the evidence of the case deciding the matter. The submission raised by the Petitioner at a highly belated stage and on two technical ground is misconceived, liable to be repelled. The learned Counsel for the Petitioner has not been able to show that there was any prejudice caused to the Petitioner in the proceedings in which two tenants, in the same accommodation are parties and common landlord's need for release was being considered. The decision in Kallu v. IX Addl, District Judge, Kanpur 1982 ARC 61, is helpful in appreciating the facts of the present case. In the said reported case two cases for release by

landlord against the two tenants one on the ground floor and the other on the first floor was consolidated. The learned Single Judge held that no prejudice was caused in the said case, hence interference was declined." (emphasis supplied)

12. Now coming to the facts of the present case it would be relevant to refer paragraph nos. 2 and 3 of the release application, which are quoted as under:-
"2. That the applicants are in bonafide need of both the shops i.e. Shop No. 16/29/1 & Shop No. 16/29/2 for establishing Akash Bhargava son of Ajai Kumar Bhargava who is now aged about 23 years and completed his studies about two years ago. He has passed B.Com. and after completing his studies he tried his best to get a suitable job but was unsuccessful and now wants to start his own business by establishing a restaurant in both the shops i.e. the shops in dispute. Both the shops; if joined, will be suitable for restaurant business. Both the shops are at the crossing of Rawatpara and are most suitable for this business.

3. That the size of the shops are 10 x 10 & 7 x 16 respectively and one shop will not suit the requirement and the need can only be fulfilled after joining the shops and in this way the front will be of 14" wide and will be most suitable for restaurant business. The applicants are themselves doing Hotel business since the lifetime of their father and Akash after completing his studies has been sitting with his father in Hotel business. The name of the Hotel is Ajai International and is situated at Daresi No. 1 Road, Agra and is just behind these shops." (emphasis supplied)

13. From perusal of the above two paragraphs of the release application it is clear that both the shops are required as the shops are required for establishing Akash Bhargava s/o Ajai Kumar Bhargava, who wants his own business by establishing the restaurant in both the shops i.e. the shops in dispute and both the shops, if joined, will be suitable for restaurant purposes. The size of the shops are 10x10 and 7x16 respectively and one shop will not suit for restaurant and need can only be fulfilled by joining the shops. In this way the landlord has expressed his bonafide in categorical terms that both the shops are required, whereas the application filed for rejecting the present petition was simply for the reason that the same is being occupied by different opposite parties and they are paying rent under different contractual tenancy.

14. In such view of the matter and also in view of the law as referred I do not find any legal infirmity in the order impugned herein and no jurisdictional error has been committed by the court below in the present case.

15. It may also be noticed that one of the tenant has put in appearance much earlier and the present tenant-petitioner put in appearance in the year 2013 and the present application has been filed only for the purpose of causing the delay.

16. In view of the totality of circumstances and in view of the law laid down as considered I do not find any legal infirmity in the order impugned herein. Present petition is devoid of merits and is accordingly dismissed.

17. Office is directed to forward a copy of this order to the court concerned within three weeks by FAX.