
(2010) 11 AHC CK 0199
In the Allahabad High Court
Case No : Writ - A No. 64137 of 2010

Radhey Shyamm Rastogi

APPELLANT

Vs

Arvind Kishor and Others

RESPONDENT

Date of Decision : 08-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 151
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 10

Citation : (2011) 6 RCR(Civil) 2519

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Disposed Of

Judgement

Rakesh Tiwari, J.—Order on Civil Misc. Correction Application 321164 of 2010

2. Heard learned counsel for the applicantpetitioner and perused the record.

3. This application has been filed by the applicantpetitioner for correction of the order dated 26.10.2010 by mentioning P.A. Case No. 27 of 1988 in place of P.A. Case No. 27 of 1998.

The order dated 26.10.2010 is as under:

"Heard learned counsel for the parties and perused the record.

This matter has come earlier also in Civil Misc. Writ Petition No. 19029 of 2008: Rajendra Kishore & others vs. Additional District Judge, Court No. 2 & others in which the Court after considering the controversy in detail has passed the following order:

"After considering the submissions made on behalf of parties, I am of view that admittedly Suit No.319 of 1982 is still pending for consideration between the parties whether the petitioners are the owners or respondent and the person who is holding a better title. Unless and until that is decided, releasing a shop or declaring a vacancy, in my opinion, will not be appropriate in the interest of

justice to give possession to one of the parties, which still has not yet been decided that who is the owner and landlord of the property in question. In suit No.800 of 2003, similar application filed by petitioners under Section 10 of the Act, the proceeding was stayed. But in this case on a an objection made by respondents, it was held that it is not necessary to stay the proceedings in spite of the fact that all the courts including this Court has given an opinion that the matter be decided after the decision of Suit No.319 of 1982.

In such situation, I am of the opinion that revisional court was not justified in rejecting the application. The writ petition is allowed. The order passed by revisional court dated 5.3.2009 (Annexure 15 to writ petition) is hereby quashed. It is made clear that now the proceeding will be initiated or decided after the decision of Suit No.319 of 1982.

As this has been informed that this Court has already directed the court below to decide the Civil Misc. Writ Petition No. 5 of 2006 within a period of six months, therefore, there is no necessity to pass any affirmative order in this writ petition to this extent.

No order as to costs."

It appears from the record that Suit No. 319 of 1982 regarding title is still pending, therefore, petitioner may not be directly affected by the impugned order dated 17.9.2010, appended as Annexure13 to the writ petition as the Court has only directed for hearing of the case. However, the order passed above, may affect the right of the petitioner on final hearing of the release application which is pending before this Court. If the matter is released a fluid situation will arise as to who is the landlord. Suit of title is still pending. There have been many litigations with regard to matter of title.

It is noted that in writ petition no. 5 of 2006: Shri Ravindra Kishore & others vs. Shri Manoj Bahal & others, this Court by order dated 12.8.2008 had directed for expeditious disposal of suit no. 319 of 1982. The order is as under:

"Shri Kshitij Shailendra appearing for the petitioner has filed an application on 8.8.2008 which was come up today, to withdraw the writ petition. Shri Navin Sinha assisted by Shri Arun Kumar Singh appears for the respondents. He has no objection to the prayer.

The application is supported by affidavit of Dr. Mukul Kishore. The application is allowed. The writ petition shall stand dismissed as withdrawn.

Sri Navin Sinha has pointed out that prayers made in the writ petition were only to the effect that the Addl. District Judge, Court No. 10, Moradabad may first decide the petitioner's application dated 8.9.2005 under Order VII Rule 11 CPC and then if necessary decide the respondent's application dated 14.9.2005. Now since the writ petition has been withdrawn, no orders may be passed in the writ petition. The Court may, however, observe that since efforts were made for mediation reconciliation and that on the last occasion the Court had given an

option to the parties to submit offers for consideration, the 2nd Addl. District Judge (before whom the case is pending) in O.S. No. 319 of 1982 will do well, to decide the matter very expeditiously and if possible within six months. The parties will appear along with certified copy of this order before the 2nd Additional District Judge, Moradabad on 1st September, 2008."

Hence in view of the facts and circumstances and also considering the history of earlier litigation between the parties, it would be appropriate to direct the court below to decide Suit No. 319 of 1982 within a period of two months. If the court is vacant, the District Judge shall pass appropriate order for the suit to be transferred and heard by the competent court for deciding the same on day today basis.

Counsel for the respondents submits that petitioner has not complied with order of the court dated 3.9.2007 passed in writ petition no. 4032 of 1984 and 4034 of 1984 passed on 18.5.2007, appended as Annexures 4 & 3 respectively to the writ petition.

It is further observed that as far as nonpayment of rent @ Rs.750/ per month is concerned, Sri Navin Sinha, learned Senior Counsel, has submitted that the petitioner will deposit the amount in court within a period of one month from today. In case of default, in depositing the aforesaid amount, the interim order granted today shall automatically stand vacated.

The short counter affidavit filed today by Sri Kshitij Shailendra, appearing for the respondent, is taken on record. He may file detailed counter affidavit within ten days. Sri Navin Sinha, Senior Counsel, appearing for the petitioner may file supplementary rejoinder affidavit within two weeks. In case, detailed counter affidavit is filed, Sri Navin Sinha may file detailed rejoinder affidavit within ten days.

Till the next date of listing, hearing of P.A. Case No. 27 of 1998 pursuant to order dated 17.9.2010 shall remain stayed.

List after two months."

4. The order has been corrected accordingly and after correction it shall now be read thus:

Heard learned counsel for the parties and perused the record.

This matter has come earlier also in Civil Misc. Writ Petition No. 19029 of 2008: Rajendra Kishore & others vs. Additional District Judge, Court No. 2 & others in which the Court after considering the controversy in detail has passed the following order:

"After considering the submissions made on behalf of parties, I am of view that admittedly Suit No.319 of 1982 is still pending for consideration between the parties whether the petitioners are the owners or respondent and the person who is holding a better title. Unless and until that is decided, releasing a shop or

declaring a vacancy, in my opinion, will not be appropriate in the interest of justice to give possession to one of the parties, which still has not yet been decided that who is the owner and landlord of the property in question. In suit No.800 of 2003, similar application filed by petitioners under Section 10 of the Act, the proceeding was stayed. But in this case on a an objection made by respondents, it was held that it is not necessary to stay the proceedings in spite of the fact that all the courts including this Court has given an opinion that the matter be decided after the decision of Suit No.319 of 1982.

In such situation, I am of the opinion that revisional court was not justified in rejecting the application. The writ petition is allowed. The order passed by revisional court dated 5.3.2009 (Annexure 15 to writ petition) is hereby quashed. It is made clear that now the proceeding will be initiated or decided after the decision of Suit No.319 of 1982.

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mediation reconciliation and that on the last occasion the Court had given an option to the parties to submit offers for consideration, the 2nd Addl. District Judge (before whom the case is pending) in O.S. No. 319 of 1982 will do well, to decide the matter very expeditiously and if possible within six months. The parties will appear along with certified copy of this order before the 2nd Additional District Judge, Moradabad on 1st September, 2008."

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Till the next date of listing, hearing of P.A. Case No. 27 of 1988 pursuant to order dated 17.9.2010 shall remain stayed.

List after two months."

5. The application is disposed of accordingly.