
(2007) 09 AHC CK 0093
In the Allahabad High Court
Case No : Writ Petition No. 134 of 2007 (R/C)

Raeesan and others

APPELLANT

Vs

Prescribed Authority/Civil Judge, Mohan Lal Ganj, Lucknow
and others

RESPONDENT

Date of Decision : 19-09-2007

Acts Referred:

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

Citation : (2007) 09 AHC CK 0093

Hon'ble Judges : A.N.Varma, J

Final Decision : Allowed

Judgement

A.N. Varma, J.—The opposite parties Nos. 2 and 3 who are the landlords of the premises in question and the petitioners its tenants, initiated proceedings for eviction by making an applicant under section 21 (1) (a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, U.P. Act 13 of 1972 (hereinafter to be referred as "Act"). The notices/summons were issued to the petitioner and 27.1.2006 was the date fixed on which date they put in appearance by filing a vakalatnama. Next date fixed was 27.3.2006 on which the petitioners did not appear, therefore, the application for release was directed to proceed exparte against them. Finally on 8.11.2006 an exparte order was passed allowing the application of the landlord for release of the building in question. The petitioner preferred an application for recall of the order dated 8.11.2006. The opposite party No. 1 vide its judgment and order dated 6.8.2007 rejected the said application and maintained the exparte order for release. It is the said order, i.e. 6.8.2007 which is under challenge in the instant petition.

2. I have heard Sri T.C. Gupta, learned Counsel for the petitioners as well as Sri Ravi Nath Tilhari, Caveator for opposite party No. 3.

3. Sri Gupta vehemently argued that on 27.1.2006 the Counsel for the petitioners noted down in his list 29.3.2006 as the next date fixed instead of

27.3.2006. He further submitted that it was only when execution proceeded against the petitioners that they learnt about the exparte decree dated 8.11.2006 and immediately thereafter on 21.2.2007 they preferred an application for recall of the exparte order. As per his submission since the application for release has been allowed without giving an opportunity of hearing to the petitioners, therefore, the said order is unsustainable in law and the petitioners cannot be evicted on the basis of exparte order. He further argued that after 27.3.2006 the case was transferred by the District Judge to various Court, therefore, too it could not be ascertained as to where would the case be taken up.

4. Sri Tilhari in opposition submitted that even if the Counsel for the petitioners noted 29.3.2006 as the next date fixed, still on efforts were made to get the order dated 27.3.2006 as well dated 8.11.2006 set aside. He further submitted that sufficient cause having not been explained and no material having been placed on record before the Court below for nonappearance on the date fixed, therefore, the Court below was perfectly justified in rejecting the petitioners' application for recall of the exparte order dated 8.11.2006. Sri Tilhari further submitted that Counsel for the petitioners was well aware of the fact that as to which Court the case had been transferred, as would appear from perusal of the averments made in para 7 of the writ petition, as such it does not lie in the mouth of the petitioner now to say with regard to ignorance of the case being taken up in a particular Court. He further submitted that the application was directed to be proceeded exparte, therefore, further notice was not required to be given. In support of his argument he relied upon:

"1. Babu v. L. Dewan Singh and others. AIR 1952 All. 749.

2. Nawal Kishore Lal v. D.D.C., Varanasi. 1986 RD 279.

3. Vijay Kumar Durga Prasad Gajbi and others v. Kamlabai and others. (1995) 6 SCC 148.

5. Annexure 5 is the copy of the application preferred by the petitioners for recall for the order dated 8.11.2006, perusal of which reveals that on 27.3.2006 an order was passed to proceed exparte against the petitioner fixing 29.5.2006 for filing exparte evidence. It has also been averred that due to mistake of previous Counsel the date noted was 29.3.2006 instead of 27.3.2006. Perusal of the application further reveals that the petitioners were not aware of the case having been transferred as they did not have any notice with regard to the same. Accordingly, there was sufficient ground for the petitioner for nonappearing on the date fixed.

6. The perusal of the impugned order reveals that the cause explained by the petitioners have not been taken in right prospective. The Court below appears to have been completely oblivious of the fact that every cause which prevents a person from coming to Court in time amounts to a sufficient cause. Even otherwise Courts should exercise its discretion in favour of hearing and not to

shut out hearing. By rejecting the petitioners application for setting aside exparte order dated 8.11.2006, the Court below has virtually shut out an opportunity of hearing to the petitioners. Rights of the parties cannot be adjudicated upon without giving an opportunity to a party to set up his case before a Court of law.

7. The application under section 21 (1) (a) of the Act was preferred in October, 2005 and the first date fixed was 27.1.2006. It was only on the next date, i.e. 27.3.2006 that the petitioners absented. There is nothing material on record to indicate that there was a deliberate attempt on the part of the petitioners not to appear on the date fixed. Sufficient cause having been explained by the petitioners for nonappearance on the date fixed, the Court below was not justified in rejecting the petitioners, application for setting aside the exparte order dated 8.11.2006.

8. I have gone through the decision relied upon by the learned Counsel for the petitioners. The same do not have any application in so far as the facts and circumstances of the case at hand are concerned.

9. In view of the aforesaid the judgment and order dated 6.8.2007 cannot be allowed to be sustained. In the circumstances the petition succeeds and is allowed. The judgment and order dated 6.8.2007 is hereby quashed. The opposite party No. 1 is directed to consider the application preferred by the petitioners for recall of the order dated 8.11.2006 afresh in accordance with the observations made hereinabove and after the said application is allowed, shall proceed to decide the application under section 21 (1) (a) of the Act. The opposite party No. 1 shall decide the application for release within a period of four months.