
(2009) 04 AHC CK 0038
In the Allahabad High Court

Rajan Bhatia

APPELLANT

Vs

Smt. Zohra Begum and Another

RESPONDENT

Date of Decision : 10-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 47

Citation : (2009) 3 AWC 3086

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ran Vijai Singh, J.—Present second appeal has been filed against the judgment dated 22.8.08, passed by the Additional District Judge/Special Judge, Essential Commodities Act, Meerut in Misc. Appeal No. 137 of 2008, Rajan Bhatia v. Smt. Zohra Begum, by which the learned Judge has confirmed the judgment dated 7.8.08, passed in Misc. Case No. 22 of 2008, Rajan Bhatia v. Zohra Begum and dismissed the appeal as not maintainable.

2. The facts giving rise to this second appeal are that Smt. Zohra Begum W/o Mohd. Hassan plaintiff-respondent No. 1 has filed an application u/s 21 (1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as Act No. 13 of 1972) against the respondent No. 2 (Sri Harish Bhatia) for release of the shop in question. This case was registered as P.A. Case No. 46 of 2002. This application was rejected by the prescribed authority on 12.12.02.

3. Aggrieved from this judgment the respondent No. 1 has filed an appeal u/s 22 of the U.P. Act No. 13 of 1972. This appeal was registered as Misc. Appeal No. 6 of 2003, Smt. Zohra Begum v. Sri Harish Bhatia. During the pendency of appeal Smt. Zohra Begum offered the tenant (Sri Harish Bhatia) to shift his shop on second floor situated in House No. 157, Rang Saaj Mohalla, Sadar Meerut Cantt., but the respondent No. 2 has refused her offer, ultimately the appeal was allowed

by the Additional District Judge, Court No. 3, Meerut on 10.12.07.

4. Against the order dated 10.12.07, passed by the Additional District Judge, Court No. 3, Meerut the respondent No. 2 Sri Harish Bhatia filed a Civil Misc. Writ Petition No. 6491 of 2008, Harish Bhatia v. Smt. Zohra Begum, before this Court. This writ petition was dismissed on 4.2.08 by this Court and a direction was issued to the respondent No. 1 (the landlady) to deposit two years rent with the prescribed authority towards the compensation as required under the second proviso to Section 21 (1) (b) of the Act No. 13 of 1972 within the period of one month.

5. After the dismissal of the writ petition by this Court the respondent No. 1 has filed an application u/s 23 of the U.P. Act No. 13 of 1972 before prescribed authority for the enforcement of the judgment and order dated 10.12.07. This case was registered as P. A. Execution No. 10 of 2008, Smt. Zohra Begum v. Sri Harish Bhatia.

6. It appears that after filing of the said execution case a review application was filed by Sri Harish Bhatia (the respondent No. 2) for reviewing the judgment and order dated 4.2.08 passed by this Court in the Writ Petition No. 6491 of 2008. The said review application was also rejected by this Court on 17.3.08. Thereafter the prescribed authority issued a Parwana DaKhal for enforcement of the judgment passed in favour of the respondent No. 1 landlady.

7. Aggrieved from the judgment of this Court, the respondent No. 2 has filed a SLP No. 1079 of 2008, Sri Harish Bhatia v. Smt. Zohra Begum, before the Apex Court and that too was dismissed on 5.5.08. Thereafter the prescribed authority fixed 24.5.08 for eviction of Sri Harish Bhatia with the police help and directed the respondent No. 1 to pay the amount of Rs. 3,643 as directed by this Court in Writ Petition No. 6491 of 2008.

8. Thereafter Sri Harish Bhatia filed a civil misc. application on 12.5.08 for modifying the judgment and order dated 4.2.08, passed by this Court in Writ Petition No. 6491 of 2008, seeking modification to the extent that he be allowed to occupy a shop situated on the second floor of House No. 157 Rang Saaj Mohalla, Sadar Meerut pursuant to the offer extended by landlady.

9. It appears that at this stage the present petitioner claiming himself a tenant holding over has filed an application/objection under Order XXI, Rule 99 read with Section 151, C.P.C. on 25.5.08. The application/ objection of the petitioner was registered as Misc. Case No. 22 of 2008. The said application was supported with an affidavit stating therein that joint tenancy was created in his favour as well as Sri Harish Bhatia by the previous landlord by whom Smt. Zohra Begum has purchased the shop in question. On the said application an interim order was passed, by the prescribed authority on 22.5.08 staying the Parwana Dakhal which was to be executed by 24.5.08.

10. Aggrieved from this order Smt. Zohra Begum has filed a Civil Misc. Writ

Petition No. 34760 of 2008 before this Court. This writ petition was disposed of by this Court on 21.7.08 with the following observations:

Writ petition is disposed of with the direction to the prescribed authority to decide Misc. Case No. 22 of 2008 very expeditiously. If it is found that Sri Rajan Bhatia has abused the process of Court, then very heavy cost amounting to Rs. 1 lac shall be imposed upon him. Until decision of Misc. Case No. 22 of 2008, eviction of any person, who is in possession of shop in dispute, shall remain stayed provided that damages for use and occupation @ Rs. 10,000 (ten thousand) per month starting from May, 2008 are deposited before the prescribed authority. Damages at the said rate for the month of May, June and July, 2008 shall be deposited within a week from the date of production of a certified copy of this order before the prescribed authority after serving a copy upon the learned Counsel, who is appearing for the applicant in Misc. Case No. 22 of 2008. Damages at the said rate w.e.f. August, 2008 shall be deposited by 7th of each succeeding month.

In case of single default, possession shall at once be delivered by the prescribed authority to the petitioner. No further latitude or laxity on the part of the prescribed authority will at all be appreciated by this Court.

Absolutely, no unnecessary adjournment shall be granted to any of the parties. If court below is inclined to grant any adjournment on any ground to any of the parties, then it shall be on very heavy cost, which shall not be less than Rs. 1,000 per adjournment.

11. After the above order passed by this Court the petitioner's application filed under Order XXI, Rule 99 was heard and rejected by the prescribed authority on 7.8.08 as not maintainable.

12. Aggrieved from this order the petitioner has filed an appeal before District Judge, Meerut which was numbered as Misc. Appeal No. 137 of 2008, Rajan Bhatia v. Zohra Begum, which too was dismissed on 22.8.08 as not maintainable.

13. Aggrieved by this judgment the present second appeal has been filed by the appellant through Sri K. K. Arora, learned Counsel who submitted that there is no remedy to the petitioner for redressal of his grievance except to invoke the provisions as contained under Order XXI, Rule 99 as the petitioner can neither avail the remedy as provided under Section 47 of the CPC nor u/s 23 of Act No. 13 of 1972.

14. He further submitted that the prescribed authority as well as the appellate court both have erred in law in not deciding the petitioner's objection on merit in view of the judgment of this Court dated 31.7.08 in Writ Petition No. 34760 of 2008. In his submissions in view of the provisions contained under Order XXI, Rule 103 the order passed under Rule 101 of Order XXI, amounts to be a decree and an appeal would lie against such order passed on the application filed under Order XXI, Rule 99.

15. Refuting the submissions of the learned Counsel for the appellant Mohd. Isha Khan learned Counsel for the respondent No. 1 has submitted before the Court that Act No. 13 of 1972 is a special Act and the provisions for evicting a tenant pursuant to an order of the prescribed authority/appellate court allowing the release application there is a procedure prescribed u/s 23 of the Act No. 13 of 1972. In his submissions the provisions of Order XXI, Rule 99 are not attracted in the proceedings of Act No. 13 of 1972. In his submissions if a particular Act provides to do a thing in a particular manner then the aid of other Act or Statute is not permissible to be taken particularly in the circumstances when the procedure has been given the special Act itself. The aid of the other Acts/Rules/ Statute is permissible to be taken only in the circumstances when the special Act is silent on the point or vague. In his submissions the prescribed authority as well as the appellate court has committed no error of law in rejecting the petitioner's application/objection under Order XXI, Rule 99 as not maintainable.

16. I have heard learned Counsel for the parties.

17. For deciding the present second appeal to my mind one preliminary point has to be decided first, in case, it is answered affirmative then question would arise whether any substantial question of law is involved in the present second appeal. In case it is answered negative then there is no need to enter in the other zone of consideration.

Preliminary Point

Whether under the facts and circumstances of this case present second appeal is maintainable ?

18. As I have noticed earlier learned Counsel for the appellant has urged that the appellant has no other remedy for redressal of his grievance except to file an application under Rule 99 of Order XXI, as neither he can avail the remedy provided u/s 47 of the CPC nor u/s 23 of the Act No. 13 of 1972, whereas the learned Counsel for the contesting respondent (the landlady) has submitted that the Act No. 13 of 1972 is a Special Act and a remedy for enforcement of judgment and order passed by prescribed authority as well as of appellate court has been given in Section 23 of the aforesaid Act. Therefore, the objection under Order XXI, Rule 99 is not maintainable.

19. For appreciation of the point involved in this case the language used in Section 23 of the Act No. 13 of 1972, as well as Order XXI, Rules 97 and 99 to Rule 103 are required to be looked into which are quoted hereinbelow:

Section 23. (1) "The prescribed authority may use or cause to used such force as may be necessary for evicting any tenant against whom an order is made u/s 21 or on appeal u/s 22, as the case may be, or against any other person found in actual occupation, and for putting the landlord into possession.

(2) Every order of the prescribed authority in proceedings under this section shall be final.

Rules 97, 99, 100, 101, 102 and 103 of Order XXI of the Code of Civil Procedure.

97. Resistance or obstruction to possession of immovable property.-(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

[(2) Where any application is made under Sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with provisions herein contained].

99. Dispossession by decree-holder or purchaser.-(1) Where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

100. Order to be passed upon application complaining of dispossession. - Upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

101. Question to be determined. - All questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application, and not by a separate suit and for this Court purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

102. Rules not application to transferee pendente lite.-Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

103. Orders to be treated as decree.-Where any application has been adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.

20. From the perusal of the above provisions contained u/s 23 of the Act No. 13 of 1972 and provisions contained under Rule 99 to Rule 103 of Order XXI. Prima facie it appears that u/s 23 the prescribed authority is under statutory duty to evict the tenant or any other person found in actual possession for the purpose of putting landlord into possession, pursuant to the judgments passed u/s 21 or in an appeal u/s 22. Whereas the Rule 99 of Order XXI, provides a remedy to any other person other than judgment debtor to file an objection after his dispossession and Rule 97 is meant for raising resistance by a person who is in possession. Order 100 cast upon a duty on the prescribed authority to hear the objection and if the objection is valid may direct the applicant to be put into possession. Rule 101 talks about determination of the questions with regard to the right, title or interest in property of third party other than judgment debtor. Rule 103 speaks that any order passed under Rules 98 or Rule 100 will amount a decree.

21. In short if both the provisions are looked together it will transpire that the scope of Rules 97 and 99 are wider than the scope of Section 23 of the Act No. 13 of 1972. To my mind this should be as the former one deals with the execution of a decree passed in regular suit and latter deals with the enforcement of judgment passed u/s 21 or 22 of the Act No. 13 of 1972 which proceedings are not like a regular suit.

22. The point involved in view of the submissions of the learned Counsel for the appellant with regard to non-availability of any other remedy to a person who is not a party in the proceedings initiated u/s 21 (1) (a) of the Act No. 13 of 1972 is to be looked into, in context of the language used in Section 23 itself. From the bare reading of the said section although it appears that there is no scope for a third party in the proceedings to raise any objection under this section during the enforcement of the eviction order but I am afraid as if the language used in Section 23 is interpreted plainly then it may lead to miscarriage of justice therefore, language used in the section has to be interpreted in a manner to make it workable so that meaningful object of the Act be achieved and in convenience to other side be avoided.

23. For example a tenancy has been created by "A" in favour of "B" with respect to a house and knowing it will that "C" is not tenant, an application is filed by "A" for release of the accommodation u/s 21 (1) (a) against "C" and the application is allowed without knowledge of "B" and thereafter application of "B" u/s 23 of the Act No. 13 of 1972 is rejected on the ground that he was not party in the proceeding of release of accommodation then it will lead serious injustice to "B" who happens to be the main tenant. In view of that I am of the view that if any party other than the judgment debtor files an objection u/s 23 claiming his independent right to the premises then the nature of his possession has to be ascertained by the prescribed authority before evicting him by force.

24. Language used in this section has been interpreted by this Court in numerous judgments and this Court has held that in case any person who is not

a party to the proceeding claiming himself to be a independent tenant files an objection before the prescribed authority during the enforcement of earlier order then the prescribed authority before enforcement of the eviction order is obliged to enquire into the objection and then proceed with the enforcement of the order. It has also been held that the order passed for eviction cannot be enforced against the third party, who claims his independent right, if he has not been impleaded or heard.

25. This Court in the case of Chhakki Lal Vs. IIIrd Additional District Judge, Mainpuri and Others, has observed as under:

In my opinion, in proceedings u/s 23 for enforcement of an eviction order if any person other than the person against whom an order of eviction has been passed, claims to be in possession, the nature of his possession would have to be inquired into. -If it is shown by such person that he is occupying the accommodation in his own right for instance as a tenant. He cannot be evicted by enforcing an order to which he was not a party. On the other hand, if his possession is only on behalf of the tenant against whom the order for eviction has been passed for instance as a sub-tenant within the meaning of Section 25 (1) of the Act or as a licensee, such person can be evicted u/s 23 while enforcing the eviction order passed against the tenant. I wish to make it clear that I am not expressing any opinion in regard to a sub-tenant whom Sub-section (2) of Section 25 of the Act is applicable because in the instant case that question does not arise.

The next point which falls for consideration is as to whether the position in law would be in any manner different if the proceedings are not at the stage of Section 23 but are at the stage of Section 21. In my opinion, there seems to be no rational ground to take the view that it would be so. If the nature of possession for purposes of enforcing the eviction order can be investigated u/s 23, it can certainly be done u/s 21 also. Under both the sections the fact as to whether the person sought to be evicted is the tenant, which term in the context would include a person in occupation on behalf of the tenant, would be the jurisdictional fact. The finding on this fact one way or the other would either confer jurisdiction on the prescribed authority or deprive him of jurisdiction to take action under these sections. A finding on this jurisdictional fact will have to be recorded by the prescribed authority and the jurisdiction to record such a finding would, in the circumstances, in here in the said authority.

26. This case has again been followed in Dharam Chand v. Additional District Judge, Agra and Ors. 1980 ARC 34, where following observations has been made by this Court:

There is an attempt to determine the obvious questions pertaining to such an objection, namely, (1) whether the premises are the same with regard to which the permission u/s 3 had been accorded, and (2) what is the status of the objectors and should they be evicted in these proceedings. In Chhakki Lal v. IIIrd

Additional District Judge N. D. Ojha J. M., held that in proceedings u/s 23 a person occupying the premises in his own right (for instance as a tenant) cannot be evicted by enforcing an order to which he was not a party. But one whose occupation is only on behalf of the tenant against whom the order of eviction has been passed can be evicted. The learned Judge also held the section envisages an enquiry by the prescribed authority to determine whether the person claiming to be in occupation is liable to be evicted as tenant or a person on his behalf. While there can be no question that a person in occupation on behalf of the evicted tenant would be liable to be evicted on cannot fail to notice that Section 23 refers to eviction of "any other person found in actual possession" which words are considerable wider than the words in Order XXI, Rule 98 (2) of C.P.C. under which the resister is to be removed if the Court is satisfied that the resistance was occasioned by the "judgment-debtor or by some other person at his instigation or on his behalf..." Undoubtedly where the person in independent possession can show his own right to possession he cannot be evicted as, observed in Chhakki Lal's case (supra). But apparently persons in, occupation whose case of independent right is not so clear that the eviction order can be virtually considered a fraud on them will not be able to thwart the eviction order merely by showing that they are not in occupation on behalf of the tenants ordered to be evicted. Only a consideration of all the facts about the right they claim, the duration and nature of their occupation, the manner in which they came into occupation the duration and nature of the occupation of those order to be united and the other circumstances will determine whether they should be evicted or not. Moreover, the burden will be on them to show that they are not liable to eviction in these proceedings.

27. From the law laid down by this Court in the case of Chhaki Lal and Dharam Chand it is clear that the objection of third party who is not a party to the proceeding for release is maintainable u/s 23 of the Act No. 13 of 1972 and the prescribed authority is under an obligation first to inquire about the nature of a tenancy of the objector before enforcing the order of eviction. Nothing has been brought to my notice by the counsel of either side contrary to the law laid down in above two cases.

28. The next point which has been urged by the learned Counsel for the appellant is that, that pursuant to the judgment of the Court dated 21.7.08 in Writ Petition No. 34760 of 2008, the prescribed authority was under an obligation to decide petitioner's objection filed under Order XXI, Rule 99 as this Court has directed the prescribed authority to decide the Misc. Case No. 22 of 2008 with the observation that if it is found that Rajan Bhatia has misused the process of the Court then very heavy cost amount in Rs. 1 lacks shall be imposed upon him. The eviction was also stayed subject to deposit of Rs. 10,000 damages per month. In the submission of the learned Counsel for the appellant in view of the direction issued by this Court there was no occasion for the prescribed authority to reject the appellant's application moved under Order XXI, Rule 99 as not maintainable.

29. So far as the judgment of this Court dated 21.7.08 is concerned in the aforesaid judgment the availability of the forum to the petitioner for redressal of his grievance either under Act No. 13 of 1972 or under the CPC was not considered at all otherwise also that judgment do not prohibit the courts below to decide the application in accordance with law and court of competent jurisdiction is not precluded to decide the question of maintainability of the application first and then to proceed on merit.

30. It is very interesting to note that neither appellant nor the respondent have challenged the order passed by this Court in the Writ Petition No. 34760 of 2008. During the argument a specific query was made by the Court from the learned Counsel for the appellant, whether he has been depositing the damages as directed by this Court while retaining the possession during the disposal of the application ? The answer was in negative. Likewise the counsel for the respondent has also not challenged the direction of this Court with regard to the disposal of application filed under Order XXI, Rule 99 of the CPC but that has become irrelevant in view of the fact that the application of a third party seeking independent right is maintainable u/s 23 of the Act No. 13 and if the special Act provides the manner of eviction then the provisions contained under Rule 99 of Order XXI are not attracted.

31. The matter can be examined from another angle also as the object of the Act No. 13 of 1972 is different than the regular suit filed under Code of Civil Procedure. The nature of enquiry of right under Act No. 13 of 1972 is altogether different than the Code of Civil Procedure. Under the Code of Civil Procedure, there is a complete procedure prescribed for filing suit, written statement framing of issues and leading of evidence etc. Whereas under Act No. 13 of 1972 only few provisions of CPC have been adopted and the provisions contained under Order XXI, Rules 97 and 99 are not amongst those provisions therefore, also the application under Order XXI, Rule 99 was not maintainable. To my mind if these provisions are made applicable under the proceedings of Act 13 of 1972 it may enlarge the scope of objection than the original proceedings initiated u/s 21. In view of that I do not find any illegality in the impugned orders passed by the courts below, therefore, the preliminary question No. 1 is answered in negative. In view of that the consideration of second question does not arise.

32. The second appeal is dismissed as not maintainable.