
(2006) 09 AHC CK 0212
In the Allahabad High Court

Rajendra Prasad Gupta

APPELLANT

Vs

Ravi Prakash and Others

RESPONDENT

Date of Decision : 22-09-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34, 35A, 35B
Constitution of India, 1950 — Article 226

Citation : (2007) 2 AWC 1547

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

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

2. This is tenant's petition. The petitioner is tenant of a shop situated at Miyanpur, Pargana Hawaii Shahar, Jaunpur on a monthly rent of Rs. 150. He is running a shoe-shop from the disputed shop.

3. Respondent-landlord filed Civil Suit No. 558 of 1998 for rent and eviction of the petitioner from the disputed shop. The petitioner-tenant also filed Case No. 45 of 1982 for deposit of rent in Court.

4. It is alleged that during the pendency of the aforesaid cases, a settlement took place under the agreement appended as Annexure-3 to the writ petition and the petitioner-tenant was to vacate half portion of the shop as the disputed shop which had two separate shutters for ingress and egress. The shop was so divided that each one of them could separately and independently use one shutter to run their business. The rent of the shop was reduced to Rs. 100 per month under the aforesaid agreement.

5. In the aforesaid shop so vacated by the petitioner, Sri Suresh Kumar one of the four sons of the landlord is doing business of Asian Paints.

6. After retirement from service in 1991, the respondent-landlord started

business with his sons but then he filed an application u/s 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act") for release of the disputed shop. The application was registered as Case No. 17 of 1991. In the release application, the landlord pleaded that he has retired from service and Sri Santosh, one of his son is unemployed; that the petitioner-tenant is not doing any business in his shop which remains closed as he is in employment of M/s. Subhash and Sons Cloth Merchant and is now working in the Badhwa Shoe Store, Holanganj, Jaunpur, as such the shop is not required by him and the same be vacated for bonafide need of the landlord.

7. The petitioner contested the release application by filing his written statement denying the allegations contained in the release application inter alia that the landlord's four sons are doing their business in the name and style of M/s. Gomti Paints under which Sri Suresh Kumar, son of the landlord is doing the business of Asian Paints which joins the petitioner's shop and just thereafter in one shop having two shutters, Mr. Santosh Kumar and Mr. Pradeep Kumar, sons of the landlord are doing the business of electrical goods in the name and style of M/s. Gomti Electricals and that in another shop which is in possession of Sri Prakash Chand, another son of the landlord, who is carrying on the business of furniture. It was also alleged that one of the sons of landlord was running a flour mill in the form of atta chakki at their residence.

8. A commission was appointed by the prescribed authority. A report dated 1.9.1995 was submitted by the commission in favour of the landlord to which the petitioner filed objections.

9. After considering the pleadings, evidence and record, the prescribed authority allowed the release application of the landlord vide order dated 5.10.2001 directing the tenant to handover peaceful possession of the disputed shop to the landlord within 30 days.

10. Aggrieved by the aforesaid order of eviction passed by the prescribed authority, the petitioner filed Rent Control Appeal No. 7 of 2001 inter alia that in its order the prescribed authority did not compare the hardship of the petitioner u/s 21 of the Act; that the prescribed authority had only considered the contentions of the landlord but reply of the tenant to the effect that he has no place for shifting the business nor has any vacant shop for the same was not considered; that the grounds taken by the prescribed authority that as per Commissioner's report the tenant is in possession of two shops in his house which is situated at the commercial place, is non existent as no such report is contained in the Commissioner's report and the report simply says that two shops are situated in the house of the tenant and both of them are occupied by tenants; that the prescribed authority rejected the evidence of the tenant without recording any finding; that a wrong finding has been recorded by the prescribed authority that shop situated in the house of the tenant, Smt. Shyam Mohini is doing business of Kirana on behalf of the tenant without considering the

evidence of Smt. Shyam Mohini as no person rebutted her evidence and that the order passed by the prescribed authority is illegal, arbitrary and liable to be quashed. During the pendency of the appeal, the landlord Sri Uma Shankar died and his sons were arrayed as his heirs and legal representatives.

11. Appeal of the petitioner was dismissed vide judgment and order dated 20.1.2006 by the appellate court confirming the order of the prescribed authority dated 5.1.2001. Aggrieved by the judgment and decree of the prescribed authority and judgment and order of the appellate court, the petitioner has filed the instant writ petition.

12. Counsel for the petitioner contended that Sri Santosh Kumar for whom the disputed shop is sought to be vacated, is already doing business with Sri Pradeep Kumar in the name and style of Gomti Electricals as partner. He submitted that Commissioner's report indicates that the shop of M/s. Gomti Electricals has two shutters and if Sri Santosh Kumar wants to run separate business, he may take one shutter shop of Gomti Electricals but the appellate court miserably failed to take into consideration this aspect of the case.

13. He also urged that it is clear from the evidence led by the petitioner before the courts below that no shop was vacant in the building of the petitioner but the courts below illegally have wrongly disbelieved and discarded his evidence on irrelevant considerations. He vehemently urged that both the courts below have not considered that he was doing business in the disputed shop and to prove this fact the petitioner had filed various bills to show that goods from his shop have been purchased. According to the petitioner neither these evidences nor the question of comparative hardship of the parties has been evaluated by the Court, as such, the orders impugned are illegal and perverse.

14. Counsel for the respondents rebutted the submissions advanced by counsel for the petitioner and submitted that it is absolutely false that Sri Santosh Kumar is engaged in any business. He urged that a concurrent finding of fact has been recorded by the courts below that the tenant is in possession of a vacant shop and that two other shops in the building of the petitioner are in his possession in the house owned by him which is situated in the commercial area.

15. He vehemently contended that both the courts below have recorded concurrent findings of fact after dealing with the comparative hardships of both the parties which is not liable to be interfered with in the writ under Article 226 as no illegality or perversity in the impugned judgments could be shown/established by him.

16. No other point has been argued by the parties.

17. After giving my anxious thoughts to the respective submissions advanced by counsels for the parties and on perusal of record, I find that the prescribed authority has considered the evidence led by both the parties has recorded the following findings of fact regarding having his own vacant shops and doing his

business in those shops:

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18. As regards the appellate court, it has affirmed the order passed by the prescribed authority above and held that the petitioner is the owner of a house and himself does business in the shops situated in that house. He has also considered the fact that the petitioner alleges that his two sons are handicapped yet he has not settled them in any business in his two vacant shops which are available to him in his other properties. He has also made no efforts to search for any alternate accommodation hence in the aforesaid circumstances, it cannot be said that he has any bonafide need of the shop, in dispute. The findings by the appellate court are as under:

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19. Thus, a bare perusal of the orders passed by the two courts below makes it clear that they have considered the question of bona fide need and comparative hardships of the parties and after discussing the evidence led by both the parties, have recorded concurrent finding of fact that the need of the landlord is genuine and bona fide and that the landlord will suffer greater hardship than that of the tenant in case the disputed shop is not vacated.

20. As regards the question that the courts below have not considered various bills produced by the petitioner in evidence that he is doing business from the shop in dispute and is making sale to establish that the shop was not closed, suffice it to stay that from the report of the Commissioner it is evident that on spot inspection it was found that the petitioner was only keeping empty boxes of shoes only to mislead the Commissioner. The petitioner had not produced any bill etc., to the Commissioner and in absence of any positive evidence such as sales tax returns, documents showing purchase of shoes from the manufacturers for sale, electricity bills, wage register of its employees to establish that he was in fact running the business, it cannot be said that his business was running. It has rightly been discarded by the courts below as the petitioner could have issued the bills himself and unless and until they were proved by positive and supportive evidence, it cannot be inferred from the bills that the petitioner was running business.

21. Admittedly, the courts below have come to the conclusion that the petitioner is having his own shop in his own house which is available to him in vacant condition and that he can conveniently shift his business there, hence the petitioner cannot raise the question of bona fide need and comparative hardship on the analogy of Explanation (i) to Section 21(1)(a) of the Act which is as under:

Explanation. - In the case of a residential building-

(i) Where the tenant or any member of his family who has been normally residing with him or is wholly dependent on him has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this sub-section shall be entertained.

22. Even if it is assumed that Sri Santosh Kumar was doing business with his

brother, every adult member of the landlord's family has independent right to do his independent business and in the circumstances, need of the landlord as well as his sons can be looked into by the courts below on the release application filed by the landlord.

23. For the reasons stated above, this Court is not inclined to interfere with the concurrent findings of facts recorded by the courts below. No illegality or perversity in the orders Impugned could be made out.

24. In the result, the writ petition is dismissed. The petitioner-tenant will handover peaceful possession of the disputed shop to the landlord within a month from today and will also pay the arrears of rent, if any. In case of default of any of the aforesaid conditions, the landlord will be at liberty to take recourse, in accordance with law for dispossession of the tenant by coercive process and recover arrears of rent, as arrears of land revenue.

Cost:

25. As regards cost, Hon''ble the Apex Court in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), has held that:

So far as awarding of costs at the time of judgment is concerned, awarding of cost must be treated generally as mandatory inasmuch as the liberal attitude of the Courts in directing the parties to bear their own costs had led the parties to file a number of frivolous cases in the Courts or to raise frivolous and unnecessary issues. Cost should invariably follow the event. Where a party succeeds ultimately on one issue or point but loses on number of other issues or points, which were unnecessarily raised. Costs must be appropriately apportioned. Special reasons must be assigned if costs are not being awarded. Cost should be assessed according to rule in force. If any of the parties has unreasonably protracted the proceedings, the Judge should consider exercising discretion to impose exemplary costs after taking into account the expense incurred for the purpose of attendance on the adjourned dates.

26. Thus from the law laid down by the Hon''ble Apex Court in the aforesaid case of Salem Advocate Bar Association (supra), it is apparent that non-payment of cost is an exception for which special reasons have to be given by the Court and that in normal circumstances cost has to be awarded on the party according to the issue decided in favour of the party which were unnecessarily raised. The cost so imposed should be in accordance with rules and if the proceedings are unnecessarily protracted or adjournments have been sought it is upon the discretion of the Judge to impose exemplary cost taking also into account the circumstances etc. for the purpose of adjournment.

27. Following the ratio laid down in Salem Advocate Bar Association (supra), this Court in Civil Misc. Writ Petition No. 48752 of 2006 Nizamuddin v. Shakoar Ahmad after considering provisions of Rule 9 of Chapter XXII and Rule 11 of Chapter XXI of the High Court Rules, 1951 and provisions of Sections 34, 35A

and 35B of the CPC has held that while awarding interest on a party by non-payment of principal amount or any dues should also be considered by the Court and not only interest but penal interest may also be awarded.

28. Since it is a frivolous petition, the cost is to be deterrent and exemplary. In the facts and circumstances of the case, it is directed that apart from payment arrears of rent, the petitioner will also pay cost of Rs. 10,000 which shall be deposited by him before the District Judge, Jaunpur within two months from today. The arrears of rent as well as the cost so deposited can be withdrawn by the respondent-landlord without furnishing any security within two months from the date of deposit. In case the petitioner fails to make payment of the aforesaid amount, the same shall be recoverable as arrears of land revenue.