(2012) 09 AHC CK 0193

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No''s. 957 and 958 of 2002

Ram Bharosey Lal and Sons — APPELLANT

Vs

Indian City Properties Ltd. and Another — RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23
Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 21(1)(a)

Citation : (2013) 1 ADJ 772

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : P.K. Jain, Komal Mehrotra, Rama Goel, Rajesh Tandon and Shashi Tandon, for the Appellant; Pankaj Srivastava, Vipin Sinha, Ms. Manisha Ambwani, M.B. Lal and S.C., for the Respondent

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Sri P.K. Jain, learned Senior Advocate assisted by Mr. Komal Mehrotra, Advocate for petitioners and Miss Manisha Ambwani, Advocate holding brief on behalf of Sri Vipin Sinha, learned counsel for respondent No. 1. Both these writ petitions involve common questions of law and facts, therefore, as requested and agreed by learned counsel for the parties, the same are being decided by this common judgment under the Rules of the Court.

2. Both these writ petitions have arisen out of the Prescribed Authority''s order dated 29.10.1998 whereby it has allowed release applications of respondent No. 1, namely, M/s. Indian City Properties Limited in Rent Cases No. 50/1987 and 54/1987 filed u/s 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act, 1972") and the appellate judgment dated 3.10.2001 passed by Additional District Judge, Kanpur Nagar dismissing Rent Appeals No. 206 of 1998 and 207 of 1998, preferred by petitioners.

3. The facts, in brief, relevant for adjudication in the case in hand are that respondent No. 1, a Public Limited Company, owned a building, i.e., "Thaper House", Municipal No. 26/41-42-43 situated at Kasturba Gandhi Marg (earlier known as Birhana Road), Kanpur. It is a three story building occupied by different tenants as detailed in para 2 of applications filed by landlord before Prescribed Authority.

4. The Rent Case No. 50 of 1987 relates to part of premises (one flat) occupied by petitioners-tenants situated on the third floor of disputed building. In Rent Case No. 54 of 1987 the landlord sought release of flats No. 1 and 2 (other two flats) of disputed building. The case set up by landlord is that M/s. Karamchand Thapar and Brothers Limited, a parent Company has been promoting and floating various associated companies for the purpose of facilitating, extension and diversification. It promoted a Company known as "Indian City Properties Ltd.", for maintaining and managing the properties for the benefit of associated companies floated under the parent Company, M/s. Karamchand Thapar and Brothers Limited. The parent Company, is actually a managing agent of several leading companies having business of coal, paper, Indian made foreign liquor, sugar, starch, textiles and various other commodities in all major cities of India including Kanpur. It has established its factories in Punjab, Uttar Pradesh and Maharashtra. The Directors and other Principal Officers of Companies looking after the concerns of all the groups of M/s. Karamchand Thapar and Brothers Limited, and its associated companies, have been visiting Kanpur and quite often stay for days and months together. Since a distillery has been established in Unnao and the establishment of Unnao is not congenial, it was decided to have a establishment at Kanpur for sale promotion for which the Company requires an office establishment at Kanpur. It was resolved by Company to shift the office of establishment in the building, i.e., "Thapar House" and in the flats which are in the tenancy of M/s. Singhania and Sons Private Limited, which are very suitable to meet the need of Company. It is also pleaded that landlord-Company is duly incorporated under the Companies Act having its registered office at "Thapar House", 25 Brehourne Road, Calcutta and is an associate Company of parent Company, M/s. Karamchand Thapar and Brothers Limited.

5. The averments made in both the cases were common. The applications were contested by petitioners on various grounds. However, both the applications of landlord have been allowed by Prescribed Authority and judgment has been affirmed in appeals.

6. Sri P.K. Jain, learned Senior Advocate appearing for petitioners contended that accommodation in question was not required by landlord for its own use or for any person for whose benefit it is held by him, hence applications u/s 21(1)(a) were not maintainable at all. He said that the landlord on the one hand pleaded that the building was owned by it and simultaneously at another place it pleaded that the landlord-Company is an associated Company of M/s. Karamchand Thapar and Brothers Limited but no material, no evidence, whatsoever was

placed on record to substantiate this fact that respondent No. 1-Company was a subsidiary company and was holding the building in question for the benefit of its holding Company, namely, M/s. Karamchand Thapar and Brothers Limited. The purpose and the manner for which need pleaded, was not within the scope of Section 21(1)(a) and, therefore, both the Courts below have erred in law and the impugned judgments are wholly without jurisdiction since the applications were not maintainable. He further contended that the accommodation which was being used by petitioner-tenants for residential purposes could not have been allowed to be vacated for commercial purposes, i.e., to be used like a Guesthouse by the officers of various companies visiting Kanpur for commercial purposes. He also contended that enough alternative accommodation was available to the landlord, the respondent No. 1 who could not show its need genuine and bona fide and hardship also he in favour of petitioners-tenants, hence the impugned judgments are wholly illegal. There is a manifest error causing grave injustice to petitioners-tenants justifying setting aside of impugned judgments and orders.

7. Per contra, Miss Manisha Ambwani, Advocate contended that respondent No. 1-Company is in fact a Subsidiary Company of M/s. Karamchand Thapar and Brothers Limited and the accommodation was required for the benefit of officers of parent, i.e., Holding Company as well as the respondent No. 1-Subsidiary Company; the property was held by respondent No. 1 for the benefit of its parent Company and, therefore, the applications are well within the purview of Section 21(1)(a). Moreover both the Courts below have recorded concurrent findings of facts regarding bona fide need and comparative hardship, hence no interference is called for in exercise of jurisdiction under Article 226 of Constitution of India.

8. From the pleadings and record available before this Court, following facts emerge, which are undisputed:

(A) The owner of entire building, namely, Thapar House 26/41-42-43 Birhana Road, Kanpur is Indian City Properties Ltd. (This is evident from para 2 of release application of respondent No. 1).

(B) The respondent No. 1 is a Company incorporated under the provisions of Companies Act.

(C) Out of two flats, subject-matter of Rent Case No. 54 of 1987, one was let out, according to the case set up by respondent No. 1, for running office of M/s. Singhania and Sons Private Limited and another for the purpose of residence of Manager/Officers of said Company.

(D) One flat on third floor was admittedly let out by respondent No. 1 to M/s. Ram Bharosey Lal and Sons, Kanpur in 1962 for residential purposes and is being used for residence purpose.

(E) All these three flats were required by respondent No. 1 for stay and lodging purposes of Directors and Officers of M/s. Karamchand Thapar and Brothers Limited and several other companies visiting in connection with business to

Kanpur.

9. In the written statement the petitioners while contesting the release applications on the one hand pleaded that M/s. Karamchand Thapar and Brothers Limited itself is owner of building and occupying certain portion thereof as landlord. They are the sister company of respondent No. 1. In Rent Case No. 50 of 1987 the petitioners-tenants disputed respondent''s No. 1 contention that accommodation is being used for residential purposes and said that in fact it is being used for non-residential purposes, running the office of tenant. It was also pleaded that respondent No. 1 actually did not own the building but is only managing and maintaining the properties by collecting rent etc. and requirement is not for the benefit of respondent No. 1 but for the benefit of officers of other companies which has no concern whatsoever with respondent No. 1.

10. It was specifically pleaded that requirement of stay of Directors and Officers of other companies cannot be said to be the personal need of respondent No. 1. In additional pleas, besides other, petitioners-tenants specifically pleaded that application is not maintainable u/s 21(1)(a) of Act, 1972.

11. During proceedings, it appears, that, petitioners-tenants did not seriously challenge the claim of respondent No. 1 that the building is owned by it. It, however, stressed on the question that once a Company is incorporated and registered, it becomes a separate legal entity and the requirement and need of any other legal person cannot be treated to be a personal need of different company; there is no concept of associated company under the Companies Act; M/s. Karamchand Thapar and Brothers Limited itself has been shown to be a tenant of certain portion of building in dispute and, therefore, for the benefit of Officers and Directors of such tenant an application u/s 21(1)(a) would not lie.

12. The Prescribed Authority formulated five issues. It held that there are three flats on the third floor, two were let out to M/s. Singhania and Sons and one to M/s. Ram Bharosey Lal and sons. All the three flats have three rooms each, besides, separate wash rooms etc. It also held that petitioners were let out the flats for residential purposes and not for commercial purposes and the family members of petitioners-tenants were actually residing thereat. It also held that out of the two flats in the tenancy of M/s. Singhania and Sons, one got occupied subsequently by petitioner-Ram Bharosey Lal and Sons unauthorizedly. It then proceeded to consider the issue No. 4 holding that petitioners having constructed its own residential house, has no right to contest the application u/s 21(1)(a) in view of Explanation (i) of Section 21(1)(a).

13. Coming to the last issue No. 5, whether the need of landlord-applicant is genuine, bona fide and who would suffer more hardship, it decided the issue in favour of landlord.

14. This Court finds that petitioners'' objection about maintainability of applications u/s 21(1)(a), as set up and drafted by respondent No. 1, virtually has not been discussed at all. On the contrary, the Prescribed Authority has

proceeded on sheer conjectures and surmises. Whether the need is genuine, bona fide or comparative hardship, are the questions which would be open to consideration only when an application u/s 21(1)(a) would lie. Where the landlord has not been able to show that he is seeking release of building for his personal benefit or for a member of family or the property is actually owned by somebody else and he is holding for his benefit and it required for such purpose, no release application u/s 21(1)(a) is admissible. It is a jurisdictional issue. It was incumbent upon the Prescribed Authority to consider this question appropriately and that too foremost. It has noticed the contention of respondents that there Is no concept of associated company or parent company but then has proceeded to reiterate what was stated in the applications of respondent No. 1 that he is managing the properties of M/s. Karamchand Thapar and Brothers Limited and proposed to establish a guesthouse in the disputed accommodation without going into the question, whether all these pleadings would come within the ambit of Section 21(1)(a) or not.

15. Unfortunately, even the Appellate Court has committed the same jurisdictional error by not looking into this aspect of the matter at all.

16. Miss Manisha Ambwani, learned counsel appearing for respondent No. 1 fairly admitted that besides the pleadings and oral statement of one of the official of respondent No. 1, there is no material on record and no material was adduced to show that respondent No. 1 was a subsidiary company of M/s. Karamchand Thapar and Brothers Limited or that the said company was a holding company of respondent No. 1 or that the property was actually owned by M/s. Karamchand Thapar and Brothers Limited and maintained by respondent No. 1. She also could not explain as to how in the release application itself M/s. Karamchand Thapar and Brothers Limited was shown as tenant of certain portion of building in dispute. The concept of holding and subsidiary company, she endeavored to argue before this Court, but, when asked, on what basis the aforesaid argument should be entertained, she could not dispute that there is no material to support the arguments inasmuch as respondent No. 1, it appears, has not at all adverted to at any stage to place on record showing the nature of its own company and that of M/s. Karamchand Thapar and Brothers Limited.

17. In the impugned judgments, despite specific objection taken in written statement, and also in written arguments have not adverted by both the Courts below to show any attempt on their part to deal with real issue raised by petitioners. It is not only surprising but astonishing also. This Court fails to understand how an application u/s 21(1)(a) can be deemed to be maintainable without looking into and adjudicating on that issue when specifically raised by other side. This Court has no hesitation in holding that both the Courts below in this case have miserably failed to consider one of the most important question in this matter, i.e., jurisdictional issue which goes to root of the matter and without deciding the same, in favour of respondent No. 1, there could not have been any occasion to proceed further. This long drawn litigation could have been avoided if

the issue about maintainability of applications as drafted u/s 21(1)(a) of Act, 1972 would have been discussed and considered in an appropriate manner. Unfortunately, that has not happened so.

18. In normal course when something has been left from consideration, though pleadings and evidence is available on record, this Court would have remanded the matter to Courts below to consider on the aspect which has been omitted by Courts below but in the present case, since, admittedly on the relevant jurisdictional issue, as discussed above (it is admitted by landlord-respondent No. 1), no evidence at all have been adduced before Courts below, the power of remand ought not be availed so as to allow either of the party to fill in the lacuna and cause serious damage to other side. The circumstance which would justify a remand was considered by this Court in S.P. Builders and Others Vs. Chairperson, Debts Recovery Appellate Tribunal and Presiding Officer, Debts Recovery Tribunal, and this Court has referred to Apex Court''s decision in Ashwinkumar K. Patel Vs. Upendra J. Patel and Others, and said:

even the High Court should not remand a case under Order 41, Rule 23, CPC to a lower Court merely if some reasoning of the lower Court is wrong, since it leads to unnecessary delay and cause prejudice to the parties. If the material is available, the High Court should decide the matter itself since it can consider all the aspects.

In the result, both the writ petitions are allowed. The impugned orders dated 29.10.1998 and 3.10.2001 are hereby set aside. The petitioners shall also be entitled to costs which I quantify to Rs. 1,00,000/- (one lakh) for each set of writ petition against respondent No. 1.