
(2012) 02 AHC CK 0213
In the Allahabad High Court
Case No : Review Petition No. 332 of 2011

Saeed Ahmad and others

APPELLANT

Vs

Inayat Ullah and others

RESPONDENT

Date of Decision : 13-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2012) 02 AHC CK 0213

Hon'ble Judges : Anil Kumar, J

Final Decision : Dismissed

Judgement

Anil Kumar, J.

Heard Mohd. Ali, learned counsel for the review petitioners and perused the record.

Present review petition has been filed against the judgment and order dated 19.10.2010 passed by this Court in Writ Petition No. 121 (R/C) of 1995 (Rahmat Ullah and another Vs. Aziz Ahmad and others).

The facts in brief are that the landlord /Rahmat Ullah and Ummatunnissa filed a release application under Section 21(1) (a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act , 1972 (herein after referred to Act no. 13 of 1972) on 8.5.1986 for release of house no. 211, Phool Bagh, Lucknow under the tenancy of Sri Aziz Ahmad. Accordingly a case was registered before the Prescribed Authority/ Additional Small Cause Court , Lucknow as P.A. Case no. 33 of 1986(Rahmat Ullah and others Vs. Aziz Ahmad), dismissed by order dated 27.3.1990.

Aggrieved by the said order, landlord filed rent appeal(Rent Appeal No. 96 of 1990), dismissed by order dated 10.5.1995. Thereafter, the order dated 10.5.1995 passed by the appellate authority and the order dated 27.3.1990 passed by prescribed authority have been challenged by the petitioners/ landlords before this Court under Article 226 of the Constitution of India.

During the pendency of writ petition, original landlord and original tenant had died as such their legal representatives have been substituted in their place . On 20.8.2010 writ petition was listed in the cause list for hearing , after hearing Sri J.P. Mathur learned counsel for the petitioners and Sri Yogesh Keshewani learned counsel for tenants/ respondents, allowed by judgment and order dated 19.10.2010 and the impugned orders dated 27.3.1990 and 10.5.1995 passed by respondent nos. 2 and 3 respectively were set aside.

Aggrieved by the said order, present review petition has been filed by the tenants/ review petitioners through Sri Mohd. Ali Advocate.

Initially, the question has been put by this Court to Sri Mohd. Ali, learned counsel for the review petitioners that whether he can file the present review petition as Sri Yogesh Keshewani Advocate appeared and argued on behalf of the tenants/ review petitioners in Writ Petition.

Sri Mohd. Ali , learned counsel for the review petitioner in this regard submits that he has taken no objection from Sri Yogesh Keshewani, learned counsel who represented the tenants/ Saeed Ahmad and others in the writ petition to file the present review petition , so keeping in view the said fact , in the interest of justice I permit Sri Mohd. Ali, learned counsel to argue the matter on behalf of review petitioners .

Arguments as advanced by Sri Mohd. Ali , learned counsel for the review petitioner are summarized as follows:

(a) In the present case both the courts below have given findings that the need of landlord is not bona fide one, so this Court has erred under law in interfering and setting aside the said findings while exercising the power of judicial review under Article 226 of the Constitution of India.

(b) The tenants/ review petitioners were not informed in respect of the judgment dated 19.10.2010 which has been passed against them by their erstwhile counsel Sri Yogesh Keshewani and it only came to their knowledge when the application for execution was moved by the landlords so, the present review petition can be entertained on their behalf and decided on merit.

(c) Provisions contained in Section 21(1) of U.P. Urban Buildings (Regulation of Letting , Rent & Eviction) Act 1972 , provides two conditions for eviction of the tenant i.e. (a) bona fide requirement; (b) dilapidated condition of building, which is needed for demolition and new construction and in the present case while passing the judgment , the matter in regard to condition (b) dilapidated condition of the building has not been considered by this Court.

Further, in the present case with the consent of landlord , the tenants/ review petitioners had made certain repairs in the premises in question which is under the tenancy so it is established that the premises in question is dilapidated condition.

Before dealing the above three submission made by Sri Mohd. Ali, learned counsel for tenants/ review petitioners in the matter in question I feel it appropriate to see the ambit scope and parameters in which the court can review its earlier order. In this regard Hon"ble the Apex Court in the case of M/s. Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes, Anantapur, AIR 1964 SC 1372, The Apex Court held that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected. but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

Hon"ble the Apex Court in Subhash Vs. State of Maharashtra & Another, AIR 2002 SC 2537, the Apex Court emphasised that Court should not be misguided and should not lightly entertain the review application unless there are circumstances falling within the prescribed limits for that as the Courts and Tribunal should not proceed to reexamine the matter as if it was an original application before it for the reason that it cannot be a scope of review.

This Court in the case of Bhagwant Singh Vs. Deputy Director of Consolidation & Another, AIR 1977 All. 163, rejected the review application filed on a ground which had not been argued earlier because the counsel, at initial stage, had committed mistake in not relying on and arguing those points, held as under:

"It is not possible to review a judgment only to give the petitioner a fresh inning. It is not for the litigant to judge of counsel's wisdom after the case has been decided. It is for the counsel to argue the case in the manner he thinks it should be argued. Once the case has been finally argued on merit and decided on merit, no application for review lies on the ground that the case should have been differently argued."

In Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909, in a review petition filed under Order 47 Rule 1 CPC the Supreme Court held that the power of review under Article 226 of the Constitution of India, in reviewing its own orders, every Court including High Court inheres plenary jurisdiction, to prevent miscarriage of justice or to correct grave and palpable errors committed by it.

Further, the review lies only on the grounds mentioned in Order 47, Rule 1 read with Section 141 CPC. The party must satisfy the Court that the matter or evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. A party filing a review application on the ground of any other " sufficient reason" must satisfy that the said reason is analogous to the conditions mentioned in the said provision of C.P.C.

Thus, in view of the abovesaid facts, review can be allowed only on (1) discovery of new and important matter of evidence which, after exercise of due diligence, was not within the knowledge of the person seeking review, or could not be produced by him at the time when the order was made, or (2) when some mistake or error on the face of record is found, or (3) on any analogous ground. But review is not permissible on the ground that the decision was erroneous on merits as the same would be the province of an Appellate Court.

In View of the above discussion , the law of review can be summarized that it lies only on the grounds mentioned in Order 47, Rule 1 CPC . The party must satisfy the Court that the matter or evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. A party filing a review application on the ground of any other "sufficient reason" must satisfy that the said reason is analogous to the conditions mentioned in Order 47, Rule 1 CPC. Under the garb of review, a party cannot be permitted to reopen the case and to gain a fullfledged inning for possible for the Court to take a view contrary to what had been taken earlier. Review lies only when there is error apparent on the fact of the record and that fallibility is by the oversight of the Court.

Hon"ble Supreme Court in the case of Zahira Habibullah Sheikh Vs. State of Gujarat, (2004) 5 SCC 353, after placing reliance on its earlier judgments i.e. P.N. Eswara Iyer etc. Vs. Registrar Supreme Court of India, (1980) 4 SCC 680; Sutherdraraja Vs. State, (1999) 9 SCC 323; Ramdeo Chauhan Vs. State of Assam, AIR 2001 SC 2231; and Devender Pal Singh Vs. State of NCT of Delhi, AIR 2003 SC 3365; observed that review applications "are not to be filed for the pleasure of the parties or even as a device for ventilating remorselessness, but ought to be resorted to with a great sense of responsibility as well."

So far as the first submission made by learned counsel for review petitioner is concerned, both the courts below have given concurrent findings of fact that the need of the landlord is not bona fide, so this Court under Article 226 of the Constitution of India cannot interfere in setting aside the findings .

Needless to mention herein that the prescribed authority in its judgment and order dated 27.3.1990 passed in P.A. Case no. 33 of 1990 has categorically stated that the matter in question is under consideration before it since 1986 and since the date of institution of case, the opposite parties / tenants have not made any efforts to search for alternate accommodation and in spite of the said findings the court below/ prescribed authority, has summarily held that the need of landlord is not bona fide and the said finding was confirmed by the appellate authority in appeal. The said point has been dealt with by me in the judgment and order dated 19.10.2010 after hearing the learned counsel for the parties who appeared at the relevant time in the following manners:

"Further, in the instant case, court below had given categorical finding of fact that the tenant did not make any effort to search an alternative accommodation

immediately after filing of the release application and even during the pendency of appeal, so the said facts were sufficient to tilt the balance of the comparative hardship against the tenant in the present case in view of the law as laid down by Hon''ble Supreme Court in the case of B.C. Bhutada V. G.R. Mundada, A.I.R. 2003 SC 2713 wherein it was held that bona fide requirement implies an element of necessity. The necessity is a necessity without regard to the degree to which it may be. For the purpose of comparing the hardship the degree of urgency or intensity of felt need assumed significance. "

In this regard reliance has been placed by learned counsel for review petitioners on the case of Salim Khan V. IVth Additional District Judge, Jhansi and others , 2006(1) ARC 588 has held as under:

"In respect of comparative hardship, tenant did not show what efforts they made to search alternative accommodation after filing of release application. This case sufficient to tilt the balance of hardship against them Vide Bhutada V. G.R. Mundada 2003 Supreme Court 2713; 2005(2) ARC 899. Moreover, rent of Rs. 6/ per month which the tenants are paying is virtually as well as actually no rent. By paying such insignificant rent they must have saved a lot of money. Money saved is money earned. They must, therefore, be in a position to take another house on good rent. Further, they did not file any allotment application for allotment of another house. Under Rule 10(3) of the Rules framed under the Act, a tenant, against whom release application has been filed, is entitled to apply for allotment of another house immediately. Naturally such person is to be given preference in the matter of allotment. Respondents did not file any such allotment application.

(1) Jai Raj Agarwal Vs. Bhola Nath kapoor and others , 2005(3) ARC 417.

(2) Rulemuddin and others Vs. Abdul Nadeem ,2007(2) ARC 62.

(3) Mohabbey Ali Vs Taj Bahadur and other, 2009 (2) ARC 715.

(4) Raj Kumar Vs. Lal Khan, 2009 (2) ARC 740

(5)Ashis Sonar and other Vs. Prescribed Authority and others 2009 (3) ARC 269.

In the case of Jagdish Chandra Vs. District Judge, Kanpur Nagar and others 2008 2 ARC 756 this Court after relying on the judgment given by the Apex Court in the case of Bega Begam and others Vs. Abdul Ahad Khan 1979 AIR SC 272 :1986 SCFBRC 346 held as under :

"In every case where an order of eviction is passed the tenant will come on the street. The fact that all tenants will come on street if eviction is ordered, is not at all relevant for consideration of a comparative hardship of the respective parties. It is for the tenant to find out alternative accommodation. In absence of any material to show that any attempt was made by the such tenant to find out alternative accommodation release application cannot be rejected on ground that such tenant would suffer greater hardship if the release application is allowed."

Under Rule 16 of the Rules framed under the Act No. 13 of 1972 various parameters have been provided while considering the comparative hardship of the landlord qua the tenant. The Apex Court in the case of Ganga Devi Vs. District Judge, Nainital and others, 2008(2) ARC 584 while considering the said scheme provided in Rule 16 has held that :

"The Court would not determine a question only on the basis of sympathy or sentiment. *Stricto sensu* equity as such may not have any role to play."

In the instant case as stated above, the appellate court has held that the tenant has not made any effort in surcharging for the alternative accommodation, but he is a poor man so his need is bonafide in comparison to the landlordpetitioner and the tenant will be in greater hardship if he is evicted from the premises in question, accordingly the appeal of the landlord was dismissed.

It is settled proposition of law that the equity follows law and so does sympathy. If the factors mentioned in Rule 16 are considered alongwith the facts of this case, no doubt it is an old tenancy but there is nothing to show any real efforts were made by the tenant to find another accommodation in spite of the fact that the application for release has been moved in the year 1986.

In view of the law as stated above, the judgment passed by the court below is contrary to law and perverse in nature and cannot be sustained.

Needless to mention that in the case of Avinash Chandra and others Vs. 6th Additional District Judge, Ghaziabad and others [2008 (1) ARC 812] it has been held as under :

"Normally,when both the Courts below have rejected the release application of the landlord and the writ court finds the judgments erroneous, the matter is either remanded to the prescribed authority or permission to file fresh release application is granted to the landlord. However, in certain circumstances, particularly when no new enquiry into facts is to be made ultimate final relief may be granted to the landlord in writ petition itself, even though both the Courts below may have rejected the release application. I have discussed this aspect in detail in the authority reported in 2005(2) Mohd. Arif Vs. A.D.J. For the said proposition, I placed reliance upon AIR 2002 SC 200 :2001 (2) ARC 603 : 2001 SCFBRC 541 "G.C. Kapoor Vs. Nand Kumar Bhasin" wherein the Supreme Court out rightly allowed the release application of the landlord, which had been rejected by the Prescribed Authority and the order of the Prescribed Authority had been affirmed by A.D.J. In appeal and High Court in writ petition.

Prior to the said authority, I was either remanding or granting liberty to file fresh application to the landlords in the writ petitions filed by them against rejection of their release applications by both the Courts below. One of such judgments delivered by me was reversed by the Supreme Court which is reported in Ram Kumar Barnwal Vs. Ram Lakhan, 2007 AIR SCW 3250 :2007 SCFBRC 346 : 2007 (2) ARC 577."

The said view was further reiterated by this Court in the case of Govind Narain Vs. 7th Additional District Judge, Allahabad and others [2008(1) ARC 526] and Rani Devi Jain Vs. Badloo and another[2008 (3) ARC 351].

After taking into consideration the Rule 16 of the Rules framed under the Act , the findings of fact recorded by the Court against the bona fide need, is perverse and contrary to law as laid down by the Apex Court"

In view of the said fact the first arguments which advanced by learned counsel for the tenants/ review petitioners has got no force , liable to be rejected because it is settled proposition of law that if the finding recorded by the courts below are perverse in nature and contrary to the fact of the case , this Court while exercising the power of judicial review under Article 226 of the Constitution of India can set aside the same.

The next argument advanced by learned counsel for tenants/ review petitioners is that Sri Yogesh Kesharwani who has appeared and argued before the writ court on behalf of the opposite parties/ tenant has not informed in respect to the fact that the matter was heard on 20.8.2010, thereafter decided on 19.10.2010 and it came to their knowledge only when the execution proceedings have been filed by the landlord. The said argument has also got no force because once a party is represented by an Advocate before High Court and after hearing the counsel on their behalf judgment has been passed, the same is binding on them irrespective of the fact that whether they are present on the said date or not.

So far as the matter in respect to the fact that the erstwhile counsel (Yogesh Kesharwani) has not informed to the tenant has got no relevancy in the present case because Sri Mohd. Ali , learned counsel for tenants/ review petitioners has been given opportunity of hearing and after considering the case on merit present review petition is being decided , so from the said submission in question made on their behalf by Mohd Ali , they cannot derive any benefit as no prejudiced is caused to the review petitioners in the matter in question.

In view of the said facts, the submission made by learned counsel for review petitioners has no force and is rejected.

So far as the last submission is concerned , it has also got no force because in the present case admittedly the release application under Section 21(1) (a) has been moved by the landlord on the basis of which a P.A. case was instituted before the prescribed authority/ Additional Small Causes Court, Lucknow which was dismissed, thereafter an appeal was filed which was also dismissed, subsequently the writ petition filed by the petitioner has been allowed.

Needless to mention herein that for release of building the bona fide need between the landlord and tenants as per law is to be considered and decided when the application under Section 21(1) (a) of the Act No. 13 of 1972 has been moved and the court is not bound to see the dilapidated condition of building.

So far as the matter for release of building on the basis of dilapidated condition

of building is concerned , a separate procedure is provided under the Act No. 13 of 1972 as per provisions as provided under Section 21(1) (b) of U.P. Act 13 of 1972 and admittedly in the present case the said procedure has not been followed by the landlord . In view of the said fact the argument advanced by learned counsel for the review petitioners that the dilapidated condition of building has not been taken into consideration while deciding the matter by writ court is contrary to law, is wholly misconceived , liable to be rejected.

Further, there is no legal impediment or embargo before the landlord not to move release application if tenant has made certain repairs in the premises in question which is under the tenancy with or without the consent of landlord, so the said ground/ point taken by Sri Mohd Ali , learned counsel for the review petitioners has got no force and is accordingly rejected.

Needless to mention herein that in the present case release application has been moved in the year 1986 thereafter judgment in Writ Petition No. 121(R/C) of 1995 has been passed after hearing the learned counsel for the parties on 19.10.2010 and till date no effort has been made by the tenants to search for alternative accommodation which is admitted by Sri Mohd. Ali appearing on behalf of the tenants/ review petitioners and only in this regard he submits that the tenants are poor persons and doing the business of tailoring, have no other premises to live, cannot said to be a ground to grant some time to the tenant/ review petitioners to vacate the premises in question as requested on their behalf by Sri Mohd. Ali.

For the foregoing reasons, the review petition is dismissed with cost of Rs. 2000/ which shall payable by the tenants/ review petitioners to the landlords.