
(2015) 10 AHC CK 0024
In the Allahabad High Court
Case No : Writ-A No. 45664 of 2013

Sapan Das

APPELLANT

Vs

Dist. Judge and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Citation : (2015) 10 AHC CK 0024

Hon'ble Judges : Sunita Agarwal, J.

Bench : Single Bench

Advocate : Abhishek Kumar and K.K. Singh, for the Appellant; Lalit Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Sunita Agarwal, J.—Heard Sri Abhishek Kumar, learned counsel for the petitioner and Sri Lalit Kumar, learned counsel for respondent No. 3.

2. This writ petition is directed against the order of release of two shops in premise No. D-32/1 situated at Mohalla Ayarbartalla Bengali Tola, Varanasi. This premises is a three storied building having four shops and one toilet at the ground floor, first, second and third floors are residential. The petitioner is tenant of two shops @ Rs. 80/- and Rs. 120/- per month.

3. The release application has been filed in the year 2010 on the ground that the landlady needed both the shops to settle her son in the General Merchandise business. It was pleaded by the landlady that both the shops have been kept under lock and key and the petitioner had shifted his business in a premise which is opposite to the house in question. In fact he has started a new business of Cable connection and is not doing the General Merchandise business.

4. By means of the supplementary affidavit filed before this Court, it was brought on record that the electricity bill of the disputed shops have not been paid by the tenant since after 2008. An outstanding amount of Rs. 53,653/- have been shown in the bill dated 26th November, 2013 in the name of Sapan Kumar Das,

the petitioner.

5. In rebuttal, learned counsel for the petitioner challenging the orders of release passed by both the Courts below submits that the courts below have committed grave error of law in not considering the conditions laid down in Rule 16(2)(a) and (d) of the U.P. Act No. 13 of 1972. The petitioner is occupying the shops for a long time. Clause (a) of sub-rule (2) of Rule 16 imposes a duty upon the Court to look into the period of occupation of the disputed premises by the tenant while weighing on the scale of comparative hardship.

6. His further submission is that in view of Clause (d) of sub-rule (2) of Rule 16 only the need of a son who has completed his technical education and is not employed in Government service, can be considered. As the son of the landlady is not having technical education, his need could not be looked into.

7. Submission is that non-consideration of the provisions of Rule 16(2)(a) and (d) goes to the very root of the controversy and therefore, the finding on both the aspects i.e. bonafide need and comparative hardship recorded by the courts below are perverse.

8. While elaborating his submissions on clause (a) of sub-rule (2) of Rule 16, learned counsel submits that the fact of three shops in occupation of the landlady and one shop being run by her in the premises in question have not been considered. The release application has been allowed on the ground that the petitioner tenant had not made any effort to search the alternative accommodation. The goodwill acquired by him in the business was not given due consideration.

9. The judicial pronouncements of this Court and the Apex Court that searching of the alternative accommodation is a relevant factor to be considered while comparing the hardship of the landlord and tenant would not be attracted in the instant case as the Statute requires that the period of occupation should be given due consideration. The statute will prevail over the judicial pronouncements of the High Court and the Supreme Court. This is a fit case for remanding back on the issue of consideration of mandatory requirements of Rule 16(2)(a) and (d).

10. Reliance has been placed upon the judgments of Apex Court in *Bishan Chand Vs. Vth Additional District Judge, Bulandshahr (Uttar Pradesh) and Another, ; State of Haryana and Others Vs. Vijay Singh and Others, ; Lucknow Bench judgment of this Court in Ram Prakash v. Shyam Narain Gupta* reported in 1975 A.L.J. 326.

11. In the rejoinder the landlord reiterates that the tenant is not doing any business in the shops since after 2008 and keeping them locked.

12. On the other hand learned counsel for the respondent submits that in the supplementary affidavit filed on 8.9.2013 on the directions of this Court, the bills, invoice and the documents filed by the petitioner are upto the year 2008. No latest bill or invoice has been produced by the petitioner to controvert the

specific contention of the landlady that he is keeping the shops closed.

13. He has changed his business and the Cable connection business is being done from his residential house, which exist on the other side of the road i.e. the opposite to the building in question. The tenant would not suffer any hardship in the event of eviction from the shops in question.

14. The provisions of Rule 16 are only directory and relevant on the issue of comparative hardship, once the bonafide need of the landlady has been found genuine merely because the tenant had occupied the shop for a considerable long period, would not be relevant to deny the release.

15. Both the Courts below have recorded concurrent findings of fact on the bonafide need and comparative hardship of the tenant. A categorical finding has been recorded that the tenant is not doing any business in the shops in question. These findings are based upon the evidence on record and may not be interfered by this Court.

16. The contention of the petitioner that the landlord is in possession of alternative accommodation or the small shop in occupation of the landlady would be sufficient for the need set up in the release application has been categorically denied. It is stated that the landlady is doing business of "Bhuja" in a small shop measuring "7ft. 6 inch X 4 ft. 5 inch". She wants to settle her son in an independent business. This Court in a number of decisions has held from time and again that if the landlord wants to establish a business separately for his son, his need cannot be refused. The landlord is the best judge to choose as to how and at which place he should run the business in his premises. Every adult member of the family has a right to carry on business of his/her own choice. There is nothing on record that the landlady's son is carrying on any independent business.

17. Reliance is placed upon the judgments of the Apex Court in Rishi Kumar Govil Vs. Maqsoodan and Others, ; Panna Lal Sonkar v. Swami Nath Singh reported in 2012 (2) ARC 351 and Smt. Ram Sumrani and Others Vs. Dr. Subhash Vaishya and Others, .

18. It is further submitted that the petitioner's contention that the landlady's son is not technically educated and therefore, his need to start a business could not be considered by the court is nothing but misreading of the provisions of Clause (d) of sub-rule (2) of Rule 16.

19. The tenant has failed to bring on record that he has made any genuine effort to search for an alternative accommodation during pendency of the release application. This is one of the relevant factor to be taken into consideration while comparing the hardship of the landlord and tenant. Once the need of the landlord is found bonafide and genuine, the above fact would tilt the hardship in favour of the landlord.

20. Reliance is placed upon the judgments of this Court in Sohan Singh @ Mallu

(since deceased) and others v. Prescribed Authority No. 2/Additional Civil Judge (S.D.) Agra and others , 2012 (1) ARC 688 ; Naseer Ahmad & Others v. Salekh Chandra Agrawal , 2012 (2) ARC 693 and Kishore and Others Vs. Additional District Judge, Court No. 8 and Others, .

21. Lastly, it is submitted that the tenant is carrying on another business from the alternative accommodation and hence he cannot contest the release application.

22. Reliance is placed upon the judgments of this Court in Umesh Chandra Agrawal v. Additional District Judge, Court No. 7, Moradabad and others , 2008 (1) ARC 467 and Ramesh Chandra Vs. Thakur Prasad, .

23. Lastly he submits that there are outstanding electricity bills in the name of the tenant for these two shops and in the event of the release of the shops in question, he may be directed to deposit the entire dues otherwise the landlord would suffer grave hardship as the electricity debt is charge over the property.

24. Disputing this submission, learned counsel for the petitioner referring to the supplementary affidavit filed on 19.4.2015 submits that an amount of Rs. 26,340/- has been paid on 28.2.2015 by the petitioner which was due amount as per the bill dated 27th February, 2015. As on date, there are no dues in the name of the tenant.

25. Having heard learned counsel for the parties and perused the record, this Court finds that the petitioner has not been able to bring on record any material which would show that the landlady's son is doing an independent business. It is well settled that the landlord can get a premises released for the need of any of his/her family member. The landlady's son is B.Com pass and admittedly is not employed in any Government service. It is not on record that he is doing any other job whatsoever. The fact that the landlady's son is helping her in "Bhuja" business cannot be a factor to deny the release or to hold that the need is not bonafide. The landlady's son is an adult member of the family and is under obligation to maintain his family. The finding is that he requires the shops for his General Merchandise business. This finding cannot be upset by this Court on the interpretation given by the learned counsel for the petitioner to Clause (d) of sub-rule (2) of Rule 16.

26. The contention that as per the said clause only the need of a technically educated son could be look into is nothing but misreading and misinterpretation of the said provision. Moreover, Rule 16 is applicable on the point of comparative hardship of the landlord and tenant. This provision cannot be looked into to frustrate the bonafide need of the landlady and moreover, this is directory in nature.

27. However, considering the judgments of both the courts below from the angle of the learned counsel for the respondent i.e. on the comparative hardship also show that the relevant factors which are required to be considered while

weighing the comparative hardship on the balancing scale it tilts in favour of the landlords. There is a categorical finding that the tenant had not made any effort to get an alternative accommodation during the pendency of the release. Further finding is that he had shifted and started another business. The tenant had admitted that he is doing Cable connection business from the premises in which he is residing, but he has not been able to establish or bring any relevant material on record that he is still doing business in the shops in question, despite opportunities given by this Court. The bills, receipts and invoices filed in the year 2013 are admittedly upto the year 2008. No latest bill or invoice or document has been brought on record to establish that the petitioner is doing business currently from the shops in question. This is one of the relevant factor which has rightly been considered by both the courts below while comparing the hardship. The relevant conditions in Rule 16 (2) have been given due consideration and findings of fact have been recorded by the Courts below. Merely because, the tenant is occupying the shops for a considerable long period would not be sufficient to deny the need of the landlord.

28. In the facts and circumstances of the case, on both the counts, the bonafide and comparative hardship, no interference is required.

29. Lastly the submission of learned counsel for the respondent regarding the electricity dues are to given due consideration as admittedly the electricity dues are charge over the property. The tenant is required to hand over vacant possession of the shops in question free from all encumbrances or charge over the property.

30. However, looking to the submission of learned counsel for the petitioner in the supplementary affidavit filed in the year 2014, it is provided that the landlord shall file an application alongwith the certified copy of this order before the Executive Engineer, Purvanchal Vidyut Vitaran Nigam Ltd., Varanasi, who shall provide the information regarding the electricity dues, if any, in the name of Sri Sapan Kumar Das with reference to the disputed shops i.e. premise No. D-32/1 situated at Mohalla Ayarbartalla Bangali Tola, Varanasi, U.P. This information may be brought before the Executing Court, if required.

31. The petitioner shall file an undertaking before the Court below that he would handover the vacant possession on or before 5th April, 2016, free from all encumbrances or charge over the property.

32. In case, the petitioner fails to file the undertaking or vacate the shops in question within the time given above, the proceedings for his eviction may be initiated against the petitioner, in accordance with law.

33. The executing court shall ensure that the petitioner shall make the payment of entire electricity dues of the shops in question, if any, before handing over possession.

34. In the event of failure of deposits of electricity dues, if any, the recovery in

accordance with law may be initiated against the petitioner.

35. With the above observations and directions, the writ petition is dismissed.