
(2001) 05 AHC CK 0142
In the Allahabad High Court
Case No : C.M.W.P. No. 44916 of 1998

Shahbuddin and others

APPELLANT

Vs

IVth Addl. District Judge, Bulandshahr and others

RESPONDENT

Date of Decision : 22-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(2)

Citation : (2001) 3 AWC 1798

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : S.U. Khan, for the Appellant; V.K. Birla and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.K. Rathi, J.—The petitioners and respondent No. 4 are tenants of a shop situated in Jogipara town Debai, district Bulandshahr. The respondent No. 3 is the landlord of the same. He filed S.C.C. Suit No. 23 of 1984 against the petitioners and respondent No. 4 for eviction and for recovery of arrears of rent. The eviction was sought on two grounds ; firstly, that the petitioners have defaulted in payment of rent and secondly, that the petitioners have made material alterations in the shop in dispute.

2. The petitioners contested the suit and denied both the allegations. Their case is that the alterations made are not material alterations ; that they are temporary constructions ; that they were raised with the permission of the landlord and that there is also no default in payment of rent.

3. The J.S.C.C.. Bulandshahr has held that there is no default in payment of rent. However, it is held that the material alteration has been made in the shop in suit without the permission of the landlord and, therefore, decreed the suit for eviction and also for recovery of arrears of rent by judgment dated 19.5.1994. Annexure-1 to the petition. Against that order, the petitioners preferred S.C.C.

Revision No. 54 of 1994 which has also been dismissed by respondent No. 1 by judgment, Annexure-2 to the petition on 19.12.1998. Aggrieved by that judgment, the petitioners have invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

4. I have heard Sri S. U. Khan, learned counsel for the petitioners and Sri V. K. Birla, learned counsel for respondent No. 3.

5. There is concurrent findings of both the Courts below that there is no default in payment of rent ; that there was no permission of the landlord for making the alterations : that the petitioners have put a tin shed on the front of the shop and also raised a wall and fixed angle irons for fixing the tin shed and placed door in the front portion. These are all findings of fact which cannot be disturbed in this petition and, therefore, the learned counsel for the petitioners very fairly has not challenged these findings. It has been argued by Sri S. U. Khan, learned counsel for the petitioners that presuming that these constructions have been raised in the premises, the constructions are of temporary nature and they do not amount to structural alteration nor such construction is likely to diminish its value, utility of the shop and disfigured it nor they amount to substantial damage to the building ; that, therefore, the petitioners are not liable for eviction under clauses (b) and (c) of sub-section (2) of Section 20 of the U. P. Act No. XIII of 1972.

6. In this case, it is admitted that on the outer-side of the shop, the petitioners have raised one wall on the southern side and have also fixed angle irons and put tin shed and also put a wooden door in the front side. Therefore, the only question for decision is whether the constructions are covered by the above clauses and the petitioners are liable to eviction.

7. The learned courts below have, referred to the decision of Hon"ble Sudhir Narain, J. in Smt. Swaran Devi v. Smt. Meenakshi Gautam alias Chandrawati Devi, 1993 AWC 860. In this case, the petitioners were tenants of one room and there was a chabutra in front of the room. The petitioners constructed a room by raising walls over the chabutra in front of the room and also placed a tin shed on the newly constructed walls thereby added one room to the tenanted accommodation. After considering several decisions of this Court and Supreme Court on the point, it was held that the permanent construction by converting chabutra in a room by raising pucca walls and putting tin shed on it amounts to disfigurement of the building and, therefore, the order of eviction was maintained. The other authority referred to is the decision of the Apex Court in Sohan Lal v. Ram Prakash 1988 (2) ARC 243 (SC). In this case, it was found that tenant putting tin shed with pucca pillars and raised a platform of permanent nature. It was held that it amounts to material alteration.

8. In view of these authorities, I find that the courts below have rightly held that the material alterations have been made in the shop in dispute. The courts below rightly decreed the suit.

9. The petition is without merit and is hereby dismissed.