

(2007) 05 AHC CK 0400

In the Allahabad High Court

Case No : C.M.W.P. No's. 68026 of 2006, 1788 and 8129 of 2007

Sita Ram and Others

APPELLANT

Vs

A.D.J. Ist Jaunpur and Another

RESPONDENT

Date of Decision : 22-05-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35(2), 35B

Contempt of Courts Act, 1971 — Section 2

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 23

Citation : (2007) 4 AWC 3706

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : Dhan Prakash Agrawal and Rajiv Sharma, for the Appellant; M. Sarwar Khan, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—This is an unfortunate litigation. The litigation has come to this Court second time. The Petitioners of Writ Petition No. 68026 of 2006 and of Writ Petition No. 8129 of 2007 though lost upto the Apex Court have audacity to say before the trial court that the judgment of the Apex Court which in turn confirmed the judgment of the High Court is liable to be ignored and be treated as null and void as the orders were obtained by fraud without disclosing any particulars as to how the fraud has been committed.

2. All the three writ petitions were heard together on the request made by the learned Counsel namely Shri Dhan Prakash Agrawal and Rajiv Sharma for the Petitioners. The argument was advanced in the leading case being Writ Petition No. 68026 of 2006 which arises out of an ad interim injunction matter. It was agreed upon by the counsel for the parties that the fate of other writ petitions is dependent upon the outcome of the Writ Petition No. 68026 of 2006. The facts of the Writ Petition No. 68026 of 2006 are, therefore, noticed.

3. The property in dispute is a double storeyed accommodation. It consists of four Khani (compartments) shops on the ground floor and four rooms on the first floor. The first floor accommodation is being used for residential purposes by the tenant. It is not in dispute that one Mewa Lal, the predecessor in interest of the present Petitioner was the original tenant against whom an application for release u/s 21(1)(a) of U. P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the U. P. Act No. 13 of 1972) was filed. It was registered as P.A. Case No. 4 of 1978 before the prescribed authority/ Munsif Shahganj, Jaunpur. During the pendency of proceedings Mewa Lal, the original tenant expired leaving behind him three sons namely Radhey Shyam, Uma Shanker and Sita Ram. All the three sons were substituted in place of Mewa Lal and they contested the release application filed by Nasim Ahmed, the Respondent No. 2, herein, tooth and nail. The matter of grant of release, ultimately reached to this Court by way of Writ Petition No. 20382 of 1990. In the writ petition besides the other pleas a plea was also raised that Radhey Shyam and Sita Ram have purchased 1/9th share of the disputed property by means of registered sale-deed dated 5th of January, 1981 executed by one co-sharer and therefore they have become co-sharer. The said plea was put in forefront by the Petitioners herein, who were Respondents in the Writ Petition No. 20382 of 1990, as defence. This Court rejected the said plea by its judgment dated 27th of March, 2006. The validity of the High Court judgment was challenged before the Apex Court by filing SLP (Civil) No. 7624 of 2006. In the SLP the Apex Court passed an order directing the Petitioners therein to pay the rent at the rate of Rs. 1,500 per month if they file undertaking within the time granted by High Court, vide order dated 9th May, 2006. It was provided that in case the Petitioners fail to give undertaking within the time granted, then they shall pay rent at the rate of Rs. 2,500, as has been directed by the High Court in the impugned judgment.

4. In pursuance thereof, undertaking was furnished before the Civil Judge (Senior Division), Jaunpur in Execution Case No. 6 of 2006 by the judgment debtors therein namely Gulab Devi, Siya Ram, Shree Ram, Uma Shanker and Shiv Shanker vide Annexure-7 to the writ petition.

5. The SLP was dismissed subsequently by following order dated 5th of May, 2006 :

Heard.

The SLP is dismissed.

However, counsel prays for some time to vacate the suit premises which is not opposed by the counsel for the Respondent who is present on caveat. Accordingly, the Petitioners, are granted time upto 1st November, 2006 to vacate the suit premises subject to filing of usual undertaking within four weeks from today. They should handover the vacant possession of the suit premises to the Respondent on or before 1st November, 2006, if not already vacated.

6. This was the first round of litigation between the parties which reached upto the Apex Court in respect of the property in question.

7. The Respondent No. 2 Naseem Ahmed, the landlord who succeeded upto the stage of the Apex Court was reasonably expecting to get actual vacant possession of the release accommodation but such expectation was belied by the Petitioners as they filed an Original Suit No. 534 of 2006, Sita Ram v. Nasim Ahmed for permanent injunction restraining the decree-holder Respondent to take the possession of the disputed accommodation to the extent of 32 ft. x 12 ft. which they have allegedly purchased by means of a registered sale deed dated 5.1.1981 from Safi Ullah. An application for temporary injunction was filed therein. The said injunction application was dismissed by the Civil Judge (Senior Division), Jaunpur on 19th of February, 2006. The said order rejecting the temporary injunction application has been confirmed in Misc. Appeal No. 117 of 2006. These two orders are under challenge in the Writ Petition No. 68026 of 2006.

8. The only contention raised by the learned Counsel for the Petitioner is that the Petitioners have purchased a part (1/9th share) of the disputed property from Safi Ullah, therefore, the release order cannot be executed in respect of the said portion which has been purchased by them. In other words, the release order passed in the earlier proceeding though confirmed upto the stage of the Apex Court stands modified in the light of the sale deed dated 5.1.1998 and the judgment of this Court as well as of Apex Court have lost their efficacy.

9. I have given careful consideration to the aforesaid submission of the learned Counsel for the Petitioner. The undisputed fact is that the release application was filed against the tenant Mewa Lal in respect of a double storey accommodation containing four Khani shops on the ground floor and four rooms on the first floor. The extent of the said accommodation has been noticed by this Court in its judgment delivered in Writ Petition No. 2038 of 1990. Relevant portion for the sake of convenience is reproduced below : Property in dispute is double storey accommodation containing four Khani shops on the ground floor and four rooms on the first floor, which are being used by the tenant for residence.

10. A plea was raised with regard to the maintainability of release application as Radhey Shyam and Sita Ram has purchased 1/9th share of the disputed property by means of the sale deed dated 5.1.1981. This plea was considered and rejected by this Court in the aforesaid writ petition and it was held that there will be no merger of interest of landlord and tenant. Reliance has been placed on a decision of the Apex Court in the case of Pramod Kumar Jaiswal and Others Vs. Bibi Husn Bano and Others,

11. This Court while dismissing the writ petition referred above had granted six months time subject to the condition of filing of undertaking and depositing Rs. 9,000 and damages at the rate of Rs. 2,500 per month since after 6 months till actual vacation. It is not in dispute that the Petitioners did file an undertaking in

pursuance of the judgment given by this Court as well as in pursuance of the interim order passed by the Apex Court in the SLP referred above. The undertaking filed before the Apex Court has been annexed alongwith the counter-affidavit, the said undertaking is reproduced below :

We, (1) Smt. Gulabi Devi W/o Late Mewa Lal (2) Smt. Manti Devi W/o Late Radhey Shyam (3) Ratan Shanker Agrahari alias Pappu S/o Late Shri Radhey Shyam (4) Ravi Shankar alias Bablu S/o Late Shri Radhey Shyam (5) Surjeet Agrahari alias Bablu S/o Late Shri Radhey Shyam (6) Sita Ram S/o Late Mewa Lal (7) Sri Ram S/o Late Mewa Lal (8) Siya Ram S/o Late Mewa Lal (9) Sheo Shanker S/o Late Mewa Lal (10) Uma Shanker S/o Late Shri Mewa Lal (11) Sitaram son of Late Mewa Lal by faith Hindu, all residents of Mohalla Husainganj P.O. Shahganj, district Jaunpur, U. P. At presently come down to New Delhi do hereby solemnly affirm and state as under :

1. That we are the Petitioners and as such we are fully conversant with the facts and circumstances of the case.

2. That we in terms of the order dated 9.5.2006 passed by this Hon''ble Court undertake to this Hon''ble Court to handover the vacant and peaceful possession of the suit building to the Respondent on 1.11.2006.

3. That we undertake to continuously pay rent @ Rs. 1,500 per month to Respondent till handing over of the vacant and peaceful possession of the suit building to the Respondent and also undertake to pay arrears of rent, if any, to the Respondent before handing over actual and vacant peaceful possession of the suit property.

4. We shall not assign, sub-let or part with the possession of the said suit building to any third party.

5. That we will abide by this undertaking given to this Hon''ble Court pursuant to the order dated 9.5.2006.

6. That the above statements are true to my knowledge and nothing has been concealed. Verified on 16.5.2006 at New Delhi.

12. Petitioner''s counsel was confronted with the undertaking reproduced above as filed by the Petitioners before the Apex Court as well as before the executing court. The only reply which he could give was that the Petitioners were misled in filing the undertakings and the release order has been obtained by fraud. The particulars of fraud, if any, could not be spelled out by the counsel for the Petitioners. It was not denied by the counsel for the Petitioners either by Shri Dhan Prakash or by Shri Rajeev Sharma, advocates that as a matter of fact, the Petitioners did file the aforesaid undertakings. In view of the undertakings furnished by the Petitioners, it is not open to the Petitioners to wriggle out from the said undertakings on any ground. The Petitioners are bound by their undertakings and as a matter of fact, the Petitioners are guilty of committing breach of faith reposed by the Court in them. Each Petitioner is guilty of

contempt of court as they have failed to honour the undertakings given by them. The Petitioners have deliberately violated the orders of this Court as well as of Apex Court. It has been held time and again that a deliberate breach of undertaking can attract Section 2(b) of the Contempt of Courts Act.

13. Recently, the Apex Court summarised the entire law on the subject in Rama Narang Vs. Ramesh Narang and Another, which are reproduced below :

35. Black's Law Dictionary, 5th Edition defines "undertaking" in the following words :

A promise, engagement, or stipulation. An engagement by one of the parties to a contract to the other, as distinguished from the mutual engagement of the parties to each other. It does not necessarily imply a consideration. In a somewhat special sense, a promise given in the course of legal proceedings by a party or his counsel, generally as a condition to obtaining some concession from the court or the opposite party. A promise or security in any form.

36. Osborn's Concise Law Dictionary, 10th Edition defines "undertaking" in the following words :

A promise, especially a promise in the course of legal proceedings by a party or his counsel which may be enforced by attachment or otherwise in the same manner as an injunction.

37. In M. v. Home Office the expression "undertaking" has been dealt with in the following manner :

If a party, or solicitors or counsel on his behalf, so act as to convey to the court the firm conviction that an undertaking is being given, that party will be bound and it will be no answer that he did not think that he was giving it or that he was misunderstood.

38. In re Hudson the English Court observed as under :

An undertaking to the court confers no personal right or remedy on any other party. The only sanctions for breach are imprisonment for contempt, sequestration or a fine.

41. In Noorali Babul Thanewala v. K. M. M. Shelly and Ors., JT 1990 (4) SC 573, a tenant committed breach of undertaking given by him to the Supreme Court to deliver vacant possession of certain premises. The Supreme Court held the tenant guilty of contempt. Hon'ble V. Ramaswami, J., delivering the judgment observed :

When a court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in substance to an injunction restraining that party from acting in breach thereof. The breach of an undertaking given to the Court by or on behalf of a party to a civil proceedings is, therefore, regarded as tantamount to a breach of injunction although the

remedies were not always identical. For the purpose of enforcing an undertaking that undertaking is treated as an order so that an undertaking, if broken, would involve the same consequences on the persons breaking that undertaking as would their disobedience to an order for an injunction. It is settled law that breach of an injunction or breach of an undertaking given to a court by a person in a civil proceeding on the faith of which the court sanctions a particular course of action is misconduct amounting to contempt.

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44. In K.C.G. Verghese Vs. K.T. Rajendran and Another, this Court dealt with the "undertaking" in contempt proceedings arising out of eviction proceedings. This Court held that when at the time of giving the undertaking, the tenant did not indicate that he was in possession of a part of the premises and not the other portion nor was such a stand taken in any of the pleadings before the High Court or rent controller, the order of eviction passed against the tenant is equally binding upon the occupant of the other portion.

14. Even otherwise, the Petitioners have got no case on merits. The effect of the sale-deed in their favour with respect to a part of property was subject-matter of consideration of this Court in the aforesaid writ petition. This Court on the basis of the judgment of Apex Court has held that there will be no merger of the interest and the release application will be maintainable even if the tenant has purchased a part of the tenanted property. The said plea is now no longer open to be taken up by the Petitioners in the suit filed by them for permanent injunction before the executing court. The plea is barred by res judicata. The Petitioners having been unsuccessful even before Apex Court, the plea cannot be examined de novo by the courts below in view of express adjudication made by the High Court in the same litigation between the same parties. The plea raised by the Petitioners is vexatious and frivolous one. If such a plea is permitted to be raised by the Petitioners before the executing court or in a suit for injunction filed by them subsequently, it would be travesty of justice and if such a course is allowed, there would be no finality of litigation and consequently, it will be impossible to administer the justice. The plea, therefore, fails and the view taken by the courts below cannot faulted.

15. In the result, there is no merit in the Writ Petition No. 68026 of 2006.

Civil Misc. W. P. No. 8129 of 2007:

16. Present writ petition is directed against the order dated 13th of December, 2006 passed by Civil Judge (Senior Division), Jaunpur in Execution Case No. 6 of 2006 : Nasim Ahmed v. Gulaba Devi and Ors., rejecting objections filed by the Petitioners with respect to accommodation 32" North-south and 12" East-west which contains four shops on the ground floor and two rooms on the first floor, as allegedly purchased by the Petitioners by means of registered sale deed dated 15.1.1981.

17. This writ petition arises out of Execution Case No. 6 of 2006 wherein an objection filed by them u/s 23 of U. P. Act No. 13 of 1972 is in respect of release order passed u/s 21(1)(a) of the Act in P. A. Case No. 4 of 1978 has been rejected. The facts in detail have been noticed while considering the Writ Petition No. 68026 of 2006. At the cost of repetition it may be stated that after dismissal of the SLP filed by the tenants by the Apex Court, the landlord (decree holder) applied for delivery of possession before the prescribed authority. An objection on the basis of the sale deed dated 5.1.1981 was filed. The said objection has been rejected by the impugned order dated 13.12.2006. The prescribed authority has rightly, after noticing the history of the litigation between the parties upto the Apex Court rejected the objection filed by the Petitioners. No separate argument was advanced in the present petition and all the arguments which were raised in the connected writ petition have been dealt with in the earlier part of this judgment and the writ petition is, therefore, given the same treatment and is dismissed. It is held that the objections were rightly rejected by the executing court.

Civil Misc. W. P. No. 1788 of 2007:

18. This writ petition is on behalf of Poonam Devi wife of Shri Ratan Shanker for the relief of a writ, order or direction in the nature of certiorari for quashing the impugned order dated 13.12.2006 passed in Execution Case No. 6 of 2006 and the order dated 15.12.2006. The validity of the order dated 13.12.2006 has been upheld by me in the connected Writ Petition No. 8129 of 2007. An application was filed before the prescribed authority by the present Petitioner to recall the order dated 13.12.2006. The said application has been rejected by the prescribed authority by the order dated 15.12.2006 on the ground that the objector is a third party and the order dated 13.12.2006 was passed after taking into consideration the entire facts and circumstances of the case. No separate argument was advanced by the learned Counsel for the Petitioner in this case. In this view of the matter, there is no merit in the writ petition and the writ petition is dismissed.

19. Before saying omega to these cases, it is useful to take into consideration the observation made by the Apex Court in the Gayatri Devi v. Shashi Pal Singh, AIR 2005 SCW 2070: 2005 (2) AWC 1072 (SC), wherein its earlier observation in Ravindra Kaur v. Ashok Kumar and Ors., AIR 2004 SC 904: 2004 (1) AWC 750 (SC) was reproduced :

Courts of law should be careful enough to see through such diabolical plans of the judgment-debtors to deny the decree holders the fruits of the decree obtained by them. These type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing laws" delay and bringing bad name to the judicial system.

20. In Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), the Apex Court has observed that u/s 35B of Code of CPC an order may be made

requiring the defaulting party to pay to other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of the suit or the defence. It is observed that judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded on the unsuccessful party. Unfortunately, it has become a practice to direct parties to bear their own costs. It has been further held that when Section 35(2) provides for cost to follow the event, it is implicit that the costs have to be those which are reasonably incurred by a successful party except in those cases where the Court in its discretion may direct otherwise by recording reasons thereof. The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost besides the payment of the Court fee, typing, etc.

21. In view of the above discussion, all the three writ petitions fail and are dismissed with costs of Rs. 30,000 to be paid by the Petitioners collectively as well as individually to the contesting Respondent No. 2 (Nasim Ahmed) within a period of 15 days failing which the said cost shall be recoverable as arrears of land revenue by the District Magistrate, Jaunpur. The Prescribed Authority/Civil Judge (Senior Division), Jaunpur is directed alongwith the District Magistrate, Jaunpur to get deliver the actual and physical vacant possession of the disputed accommodation by evicting the Petitioners or any other persons whosoever may be found in the occupation of the disputed premises forthwith but not in any case more than a week from the date of production of certified copy of this order.