
(2006) 10 AHC CK 0170
In the Allahabad High Court
Case No : Civil M.W.P. No. 1818 of 1984

S.K. Solan

APPELLANT

Vs

Prescribed Authority/Munsif Havali and Another

RESPONDENT

Date of Decision : 10-10-2006

Acts Referred:

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

Citation : (2007) 5 AWC 5384

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : P.K. Jain, for the Appellant; V.P. Varshney and S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.U. Khan, J.—At the time of arguments no one appeared for the Respondents hence only arguments of learned Counsel for the Petitioner were heard.

2. This is tenant's writ petition arising out of eviction/release proceedings u/s 21 of U. P. Act No. 13 of 1972 initiated by landlady Respondent No. 2 Smt. Ram Kali Devi against him in the form of P.A. Case No. 84 of 1983. Prescribed Authority/Munsif Hawaii, Meerut through ex parte judgment and order dated 3.11.1983, allowed the release application. Application to recall the said order was filed by the Petitioner on 28.11.1983. The said application was registered as Misc. Case No. 102 of 1983. Prescribed Authority through judgment and order dated 13.1.1984, rejected the said application which order has been challenged through this writ petition.

3. The property in dispute is a room, which is part of accommodation number 166J, Circular Road, Meerut Cantt. Petitioner is an advocate and has got his chamber in the accommodation in dispute. Rent is Rs. 26 per month.

4. In the restoration application and the affidavit filed in support thereof,

Petitioner admitted service of notice. The release application was filed on 20.9.1983. Notices were issued to the Petitioner for filing written statement on 18.10.1983. It appears that due to visibility of moon, Moharram holiday, which was initially scheduled on 19.10.1983, was shifted and 18.10.1983 was declared as holiday on account of Moharram instead of 19.10.1983. The case was taken up on 19.10.1983 and it was directed that as Defendant had not appeared inspite of sufficient service hence case should proceed ex parte and evidence must be filed within 10 days. The case was again taken up on 28.10.1983 on which date affidavits were filed by the landlady. Thereafter on 1.11.1983, arguments were heard and release application was allowed on 3.11.1983.

5. Petitioner in the restoration application and affidavit filed in support thereof took the case that he was an advocate practising on the sales tax side and it was a practice in the Sales Tax Court that and if on a fixed date holiday was declared then notice of the fresh date was sent to the parties hence he was under the impression that 18.10.1983, the date fixed in the case having been declared holiday, fresh notice would come to him hence he could not appear on 19.10.1983.

6. Holidays of Eid and Moharram are subject to the local visibility of the moon and in case any of these holidays is preponed by a day then the cases fixed on the working day which is subsequently declared as holiday are taken up on the next day which was initially shown to be the holiday. After personal service, which was admitted it was not at all necessary to issue fresh notice to the Petitioner. Within few days of passing ex parte decree Petitioner appeared and filed restoration application hence his version that he was waiting for fresh notice was rightly disbelieved by the prescribed authority.

7. Moreover, in paragraphs 2 and 3 of the writ petition, it has been stated that the property in dispute is situate in a prime location of City which is very much suitable for advocate's chamber and Petitioner is running his chamber since 1956. Eviction of the Petitioner is stayed in this writ petition since 6.2.1984 (for more than 22 years). Rent of Rs. 26 per month for such an accommodation is virtually as well as actually no rent. It is rather ridiculous. Hence interest of justice which is often relevant in restoration matters stands nullified.

8. The finding of fact recorded by the court below that the Petitioner was negligent does not require any interference. Trial court further held that Petitioner only stated that through some advocate colleague, he came to know about the ex parte decree however even the name of that advocate was not mentioned. It clearly demonstrates that Petitioner was all along aware of the proceeding but in order to delay the proceeding, he allowed the case to be decided ex parte knowingly and thereafter filed restoration application.

9. Accordingly I do not feel inclined to interfere in the impugned order. Writ petition is therefore dismissed.

10. Tenant Petitioner is granted six months time to vacate provided that:

(i) Within one month from today he files an undertaking before the prescribed authority to the effect that on or before the expiry of period of six months he will willingly vacate and handover possession of the accommodation in dispute to the landlord-Respondent.

(ii) For this period of six months which has been granted to the tenant to vacate he is required to pay Rs. 6,000 (at the rate of Rs. 1,000 per month) as damages for use and occupation. This amount shall also be deposited within one month before the prescribed authority and shall immediately be paid to the landlord-Respondent.

11. It is further directed that in case undertaking is not filed or amount of Rs. 6,000 is not deposited within one month then tenant-Petitioner shall be liable to pay damages at the rate of Rs. 2,000 per month since after one month till the date of actual vacation.

12. Similarly, if after filing the aforesaid undertaking and depositing the amount of Rs. 6,000 within one month the accommodation in dispute is not vacated on the expiry of six months then damages for use and occupation shall be payable at the rate of Rs. 2,000 per month since after six months till actual vacation.