

(2014) 01 AHC CK 0291
In the Allahabad High Court
Case No : C.M.W.P. No. 9235 of 1988

Smt. Suman Bai Nirmala

APPELLANT

Vs

Ist Addl. District Judge, Varanasi and Another

RESPONDENT

Date of Decision : 23-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Transfer of Property Act, 1882 — Section 106
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2, 20(4), 25, 3(p), 3(q)

Citation : (2014) 3 ADJ 440 : (2014) 4 ALJ 73 : (2014) 103 ALR 655 : (2014) 4 AWC 3779

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : S.N. Singh, R.N. Singh, A.K. Rai, G.K. Singh and V.K. Singh,
Advocate for the Appellant; Arun Singhal, D. Kakkar, Hem P. Singh and U.K.
Pandey, Advocate for the Respondent

Judgement

Sudhir Agarwal, J.—This matter has come up before this Court pursuant to judgment dated 11.12.2007 passed by Apex Court whereby it has required this Court to consider an additional point with respect to effect of insertion of amending Act No. 17 of 1985 on the pending suits. The brief facts are that Banaras Hindu University (hereinafter referred to as the "BHU") is the owner of suit premises bearing No. K-43/3, Baroda House, Gai Ghat, Varanasi. Suman Bai Nirmale occupy certain accommodations on the second floor of aforesaid house on a monthly rent of Rs. 19/-. BHU sent a notice u/s 106 of Transfer of Property Act, 1882 (hereinafter referred to as the "Act, 1882") by registered post terminating tenancy of Suman Bai Nirmale and call upon to vacate the tenanted premises. She was also required to pay arrears of rent. However, the tenant neither vacated premises nor pay arrears of rent. Consequently, BHU filed Original Suit No. 728 of 1978 in the Court of Small Causes, Varanasi for eviction of tenant from suit premises and also for recovery of a sum of Rs. 453.56.

2. The tenant contested the matter and claimed that she is in possession since 1942 and paying rent regularly. She also claimed to have deposited rent u/s 20(4) of U.P. Urban Buildings (Regulation of letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act, 1972") and, therefore, pleaded that a decree for eviction cannot be passed.

3. The Trial Court vide judgment dated 19.7.1983 held that University has not served a valid notice u/s 106 of Act, 1882, hence suit for ejectment of tenant cannot be decreed but decreed it for arrears of rent. However, the Trial Court also held that since BHU is an educational institution established by Government of India, and it is owned and controlled by Government, it is a Public Sector Corporation within the definition of section 3(p) of Act, 1972.

4. BHU carried the matter in revision u/s 25, i.e., Civil Revision No. 211 of 1983, which was allowed by Additional District Judge, Varanasi vide judgment dated 17.2.1988. The Revisional Court held that a valid notice was served upon tenant on 26.7.1977 and, therefore, the decree of ejectment ought to have been passed.

5. The tenant preferred this writ petition which was allowed vide judgment dated 9.3.2003 holding that the Trial Court has recorded erroneous finding about non-applicability of Act, 1972 since BHU was not a "recognised educational institution" at the relevant time when suit was instituted and, therefore, it was not exempted from Act, 1972. This Court held that Act, 1972 was applicable to building in dispute and since the tenant has deposited entire rent on the first date of hearing consequently decree of ejectment could not have been passed against him. The judgment of Revisional Court was set aside.

6. The matter was taken to the Apex Court, which confirmed judgment of this Court and declined to interfere therewith in respect to proposition of law as it was with respect to Act, 1972 before its amendment vide Act No. 17 of 1985. However, one of the question raised before Court was "whether the suit which was already pending, would stand affected by a subsequent amendment made in section 2 so as to take away certain buildings from the purview of Act, 1972 which were otherwise within the purview of Act, 1972 before such amendment". Only on this question the Court has required this Court to decide it treating as an additional point. The operative part of the order reads as under:

At the outset it may be stated that the Suit was instituted prior to the amending Act No. 17/1985. One of the questions which arises for determination in this case is whether a subsequent event of change in law by amending Act No. 17/1985 could be taken into account by the Court. This question arises in the present case because on the date when the Suit was filed in the Trial Court and on the date when it came to be decreed, the said amending Act No. 17/1985 was not on the statute book. However, we need not labour on this point any further in view of the judgment of this Court in the case of Om Prakash Gupta Vs. Ranbir B. Goyal, quoted herein-below:

12. Such subsequent event may be one purely of law or founded on facts. In the

former case, the Court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order VI, Rule 17 of the CPC. Such subsequent event the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties. In *Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar*, this Court has held that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found; without the amendment of the pleadings the Court would not be entitled to modify or alter the relief. In 2 CWN 681 (Privy Council), their Lordships observed that, as a rule, relief not founded on the pleadings should not be granted.

In our view, question of applicability of 1972 Act and, particularly, applicability of amending Act No. 17/1985 in the Civil suit filed by the University is a pure question of law. Therefore, following the above judgment this Court, it is open to the University to raise necessary contention with regard to exemption of the said 1972 Act to the suit building.

Be that as it may, the important question of law which still remains to be answered is whether the amending Act No. 17/1985 by which the words University established by law in India have been inserted in the definition of "recognised educational institution" u/s 3(q), as quoted herein-above, is applicable to the present case or not. Unfortunately, the question as to whether this amending Act is declaratory in nature, the question as to whether it operates retrospectively or prospectively was never raised by the University before the High Court. The fate of this litigation hangs on the interpretation of section 3(q) which states as of today that "recognized educational institution" means any university established by law in India. Prior to the date of this amendment, Banaras University was not recognised by the State Government as educational institution but the complexion of the matter changes with the insertion of Act No. 17/1985. Therefore, in our view, this question needs to be answered.

Accordingly, we remit the matter to the High Court for deciding the afore-stated question in accordance with law. At this stage, we make it clear that on the status of the law as it stood prior to 1985, there is no infirmity in the impugned judgment. The only question which the High Court is required to decide is as regards to the applicability of the 1972 Act after the insertion of the amending Act No. 17/1985. We also grant liberty to the University to file additional affidavit and rejoinder by the respondent herein, if so advised.

Subject to the above clarification, we are not setting aside the impugned judgment. We are only directing the High Court to consider an additional point.

The Appeal is disposed of accordingly. No order as to costs.

7. This Court finds that this issue stands answered in M/s. Ambalal Sarabhai Enterprises Ltd. Vs. M/s. Amrit Lal and Co. and Another, , wherein it has been held that insertion of certain provision in the principal Act, taking away application of the Act, would not affect pending proceedings, if on the date when proceedings were initiated, the same were well within its jurisdiction.

8. The said principle has been followed by Full Bench in Smt. Champa Devi and Another Vs. Rent Control and Eviction Officer (1st), Allahabad and Another, , and in para. 4 of the judgment, the reference made to the larger Bench was answered as under:

Accordingly, the answer to the question referred would be that Clause (g) to section 2 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, inserted in the Act by section 2 of U.P. Act No. 5 of 1995, will not affect the proceedings pending on the date of enforcement of U.P. Act No. 5 of 1995.

9. The same view has also been taken by this Court in Writ Petition No. 53119 of 2002 (Thakur Rang Ji Maharaj and another v. Om Prakash Agarwal and another) decided on 14.8.2012.

10. Sri A.K. Rai, Advocate appearing for petitioner and Sri V.K. Singh, learned Senior Advocate appearing for BHU, could not dispute the exposition of law as laid down above by Apex Court as well as this Court and it could not be disputed that on this question now the legal position is well settled that subsequent change by Act No. 17 of 1985 shall not affect pending proceedings or pending suits which were already filed validly before amendment in respect of buildings which were within the purview of Act, 1972. The pending cases thus will not be affected adversely in any manner.

11. In that view of the matter, the question is answered against BHU. Since in respect to law as it stood prior to Act No. 17 of 1985 the Apex Court has already said that there is no infirmity in the judgment of this Court dated 9.3.2006, therefore, nothing further is required. The matter is decided accordingly.