

(1981) 03 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 5683 of 1979

Subhash Chandra Saxena

APPELLANT

Vs

Prescribed Authority (Rent Control) cnm IInd Addi. Civil
Judge and Others

RESPONDENT

Date of Decision : 05-03-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 3(2), 151, 152
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 22, 25(1)

Citation : (1981) AWC 258

Hon'ble Judges : K.N. Singh, J;A. Banerji, J

Bench : Division Bench

Advocate : V.S. Saxena, for the Appellant; D.P. Bahadur, for the Respondent

Final Decision : Dismissed

Judgement

A. Banerji, J.—This writ petition is directed against an order of the Prescribed Authority, Kanpur under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 who allowed the application of the Respondent No. 2 Smt. Janki Dulari for the impleadment of Sharat Chandra Saxena and Ramesh Chandra Saxena, sons of the original tenant. Ram Chandra Saxena. The Petitioner Shri Subhash Chandra Saxena is one of the sons of the deceased tenant. Mr. Bhalla, learned Counsel for the Petitioner has contended that since the application for impleadment was not moved within the prescribed period of time, the proceedings abated and the application was not maintainable and the Prescribed Authority had no jurisdiction to entertain or allow the same. Mr. D. P. Bahadur, learned Counsel for the Respondent has, however, contended that the proceedings did not abate and the Court had ample jurisdiction to entertain the application for impleadment under the provisions of Rule 22(f) of the Rules made under the Act. We have heard the learned Counsel for the parties and perused

the material on the record.

2. The Respondent No. 2 had filed an application for ejectment of the original tenant Shri Ram Chandra Saxena u/s 21 of the Act. The application was pending when Sri Ram Chandra Saxena died on 29th April, 1976. Respondent No. 2 moved an application for the substitution of the heirs of the deceased tenant that mentioned the names of only two sons-Kailash Chandra Saxena and the Petitioner Subhash Chandra Saxena as heirs and legal representatives of the deceased tenant. This application was allowed on 22nd May, 1976. The Petitioner thereupon filed an objection stating that some of the legal representatives were deliberately avoided to be impleaded as party. The Respondent No. 2 thereupon moved an application under Order I Rule 10 CPC read with Rule 22(f) framed under the Act. She prayed for the impleadment of the two other sons of the deceased Ram Chandra Saxena. This application was ultimately allowed on 4th June, 1979. It is against this order that the present writ petition has been filed.

3. Rule 25 provides a period of one month for making an application for substitution for bringing on the record the legal representatives of a deceased party. This Rule however, does not state anywhere the effect if such an application is not made within time. There is nothing in the above Rules to indicate that the proceedings will abate if no application is made within a month of the date of the death of a party. Since the Rule is silent in this regard the provisions are at best directory and not mandatory. The language of Rule 25(1) may be contested with the provisions of Order 22 Rule 3(2) of the Code of Civil Procedure. Sub-rule (2) of Rule 3 provides:

Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased Plaintiff is concerned, and, on the application of the Defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased Plaintiff.

If the Plaintiff of a suit, dies, and all his legal representatives are not brought on record within the time allowed by law, the suit would abate. There is no such provision under Rule 25 made under the Act. It is clear from the above that where the legislative intent was that such a proceeding must abate it was clearly indicated. It is, therefore, evident that the Legislature never intended that where the substitution application is not made within time in a proceeding under the Act the proceeding will not ipso facto abate. Read with the provision of Rule 22(f) the authority concerned shall have power to entertain an application in interest of justice.

4. It will be relevant to refer here to Rule 22(f) which permits the authorities under the Act to exercise powers as provided in Sections 151 and 152 of the Code of Civil Procedure, 1908 and "to make any orders for the ends of justice or to prevent the abuse of the process of the authority concerned." The above Rule specifically entitles the authorities under the Act to exercise the powers for the

ends of justice or to prevent the abuse of the process, it is, therefore, evident that in a suitable and appropriate case the Court may exercise his powers to entertain an application even made after the expiry of a period of One month to bring on record the heirs and legal representatives of a deceased party.

5. It is also well settled that a proceeding does not abate if an application has been made within time for the impleadment of even one heir of the deceased. It is always permissible for the Court in appropriate cases to order the impleadment of the other heirs. See *Daya Ram and Others Vs. Shyam Sundari*, . It was held in the above case:

Where a Plaintiff or an Appellant after diligent and bonafide enquiry ascertains who the legal representatives of a deceased Defendant or Respondent are, and brings them on record within the time limited by law there is no abatement of the suit or appeal, the impleaded legal representatives sufficiently represent the estate of the deceased and a decision obtained with them on record will bind not merely those impleaded but the entire estate including those not brought on record. In a case where the person brought on record is a legal representative it would be consonant with justice and principle that in the absence of fraud or collusion the bringing on record of such a legal representative is sufficient to prevent the suit or the appeal from abatement.

Similar is the position here. Two of the legal representatives of the deceased tenant were sought to be impleaded within time. The Respondent No. 2 in her application under Order 1 Rule 10 CPC had stated that she was not aware of the other two heirs and consequently could not make an application to bring them on record within time. This has been believed by the Prescribed Authority. The two heirs who had been impleaded earlier sufficiently represent the estate of the deceased tenant and consequently there is no question of the abatement of the proceedings even on principle. The Prescribed Authority, while allowing the application for impleadment of the two remaining heirs of the deceased tenant, had not acted without jurisdiction. We, therefore, do not find any merits in the contention raised by Mr. Bhalla.

6. For the reasons indicated above, this petition fails and is accordingly dismissed with costs. Interim order stands discharged.