
(2008) 10 AHC CK 0054
In the Allahabad High Court

The Oriental Fire Insurance Co. Ltd.

APPELLANT

Vs

B.D. Banerjee

RESPONDENT

Date of Decision : 17-10-2008

Acts Referred:

Citation : (2008) 10 AHC CK 0054

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Judgement

V.K. Shukla, J.—The Oriental Fire Insurance Co. Ltd. has approached this Court for quashing of order dated 28.07.1997 passed by Rent Control and Eviction Officer-I, Allahabad in case No. 111 of 1993 in exercise of its authority u/s 21 (8) of U.P. Act No. XIII of 1972, and the order of its affirmance dated 10.02.2004 passed by Additional District Judge, Court No. VI, Allahabad, in Rent Control Appeal No. 1993 of 1997.

2. Brief background of the case, as disclosed in the writ petition, is that the petitioners are tenant of premises No. 16-A, Mahatma Gandhi Marg, Civil Lines, Allahabad. As petitioners are statutory corporation, in terms of Section 21 (8) of U.P. Act No. XIII of 1972, application was moved for enhancement of rent. On 09.12.1987 rent was enhanced from Rs. 800/- to Rs. 1312/- per month. On 07.09.1992, landlord again moved application u/s 21 (8) of the Act. Said application was allowed and rent was enhanced from Rs. 1312/- to Rs. 12,622/- per month on 21.07.1997. Against the said order appeal had been preferred u/s 22 of the Act. Said appeal has been rejected. At this juncture, present writ petition has been filed.

3. Pleadings inter se parties have been exchanged, and thereafter, present writ petition has been taken up for final hearing and disposal.

4. Sri A.N. Sinha, learned Counsel for the petitioner, contended with vehemence that in the present case application moved u/s 21 (8) of the Act for enhancement of rent was not at all competent and maintainable, as same could not have been

moved before expiry of the period of five years from the last order of enhancement passed and admittedly, in the present case, last order for enhancement of rent had been passed on 09.12.1987, and the application in question was moved on 07.12.1992 i.e. much before expiry of the period of five years and wrong date 25.07.1993 had been mentioned in the order to bring the said application within the ambit and scope of Section 21 (8), as such said order deserves to be quashed.

5. Countering the said submission, Sri Vikas Srivastava, Advocate appearing for the landlord, contended that in the present case application has been rightly moved and the same has been rightly allowed and relief may be accordingly moulded and made effective from the date when statutory period was over, in case if any shortcoming is there.

6. In order to appreciate the respective arguments, the provisions of Section 21 (8) of U.P. Act No. XIII of 1972 is being quoted below:

21(8) Nothing in Clause (a) of Sub-section (1) shall apply to a building let out to the State Government or to a local authority or to a public sector corporation or to a recognized educational institution unless the Prescribed Authority is satisfied that the landlord is a person to whom Clause (ii) or Clause (iv) of the Explanation to Sub-section (1) is applicable:

Provided that in the case of such a building the District Magistrate may, on the application of the landlord, enhance the monthly rent payable therefore to a sum equivalent to one-twelfth of ten per cent of the market value of the building under tenancy, and the rent so enhanced shall be payable from the commencement of the month of tenancy following the date of the application.

Provided further that a similar application for further enhancement may be made after the expiration of a period of five years from the date of the last order of enhancement.

7. A bare perusal of the provisions quoted above, would go to show that in respect of certain specified class of tenants, the landlord has been given authority to approach the District Magistrate concerned for enhancement of rent and formula has also been prescribed, as per which rent has to be determined. It has also been provided that once application has been moved and orders have been passed, then next application may be moved after expiry of the period of five years.

8. In the present case undisputed position is that the order u/s 21 (8) of U.P. Act No. XIII of 1972 was passed on 09.12.1987 and as per the said provisions, in case enhancement was intended, then application could have been moved only after expiry of the period of five years from the last order. This fact has not been disputed even by tenant that the application which was moved for enhancement of rent, was filed on 07.09.1992 i.e. before expiry of the period of five years from the last order of enhancement of rent. The larger question is as to when

application was moved before expiry of the period of five years, can relief of enhancement of rent be refused to the petitioner. Moving application for enhancement of rent is a right conferred on the landlord, and such right can be exercised at the interval of five years. Thus, once order of enhancement had been passed, then only after expiry of the period of five years next application for enhancement of rent could be entertained. It has been clearly mentioned that from the date application for enhancement of rent being allowed, the rent so enhanced would be payable from the following month when application had been moved. This is, thus, clear and categorical that during intervening period of five years enhanced rent cannot be paid. In the present case application for enhancement of rent moved on 07.09.1992 was premature, but on the date on which order had been passed 28.07.1997, intervening period of five years was already over. Hon''ble Apex Court in the case of Vithalbhai Pvt. Ltd. Vs. Union Bank of India, , has taken the view that premature cause can either be dismissed with liberty to file fresh cause after maturity or it may be decided if during its pendency it has become mature. The question is one of discretion and not jurisdiction. Consequently, in the present case merits of the adjudication has not been questioned. Relief is accordingly moulded by mentioning that enhanced rent would be payable to the landlord in question with effect from 09.01.1993, which is date after expiry of period of five years in following month. Accordingly, orders passed by Rent Control and Eviction Officer and the court below are modified and it is made clear that the enhanced rent would be made payable with effect from 09.01.1993.

9. In terms of the above direction and observation, writ petition is allowed in part.