
(2011) 02 AHC CK 0043
In the Allahabad High Court
Case No : Writ Petition No. 5 (R/C) of 2011

West Watch Company	Vs	APPELLANT
Prescribed Authority/Small Causes Court and Another		RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152, 19
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 22, 34, 34(1), 38
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 22, 229

Citation : (2011) 3 ADJ 361

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri Mohd Arif Khan learned senior Advocate assisted by Mohd. Aslam Khan, learned Counsel for the Petitioner and Sri Kabir Ahmand and Sri Anurag Srivastava, learned Counsel for the opposite parties.

2. By means of the present writ petition, Petitioner has challenged the order dated 13.1.2011 passed by opposite party No. 1, Prescribed Authority/Small Causes Court, Lucknow.

3. Controversy involved in the present case relates to shop No. 64 situated on the ground floor of building No. 31/72, Mahatma Gandhi Marg, Police-station-Hazratganj, Lucknow which is bounded as under:

East: Shop in occupation of N.L. Roay Watch Company

West: Shop in occupation of M/s Mangal Prasad & sons

North: Lane

South: Footpath and thereafter Mahatma Gandhi Marg, Hazratganj, Lucknow

4. On 20.3.2008 Sri Mohammad Asif Naseer/opposite party No. 2 the landlord/owner of shop No, 64 moved an application u/s 21(1)(a) of the U.P. Urban Building Regulations of Letting (Rent and Eviction) Act (hereinafter referred as an "Act") for release in which Petitioner is a tenant at monthly rent of Rs. 15 registered as PA. Case No. 10 of 2008, on 19.7.2010 an objection/written statement filed by Petitioner.

5. On 22.11.2010 the Petitioner/tenant moved an application u/s 34 of U.P. Act No. 13 of 1972 read with Rule 22 (e) of the UP. Urban Buildings (Regulation of Letting Rent & Eviction) Rules, 1972 (hereinafter referred to as a "Rules") that PA. Case No. 10 of 2008 (Mohd. Asif Naseer v. West Watch Company) and PA. Case No. 08 of 2008 (Mohd. Asif Naseer v. Mangal Prasad and Sons) may be consolidated and heard together as both the shops situate at the same building.

6. The Prescribed Authority/Small Causes Court, Lucknow by means of impugned order dated 13.1.2011 (Annexure No. 6 to the writ petition) rejected the said application, hence the present writ petition has been filed.

7. Sri M.A. Khan, learned Senior Advocate for the Petitioner submits that release application moved for release of shop No. 64 situate in same building almost on the same facts and circumstances involved in other release application moved by the same landlord in respect to shop No. 63 situate on the ground floor of the same building under the tenancy of M/s Mangal Das and Sons, except deletion of two paragraphs in the instant release matter. In order to support the said averments he relied on paragraph No. 11 to the release application moved by Respondent/landlord in the instant case quoted herein above:

11. That it will not be out of place to mention here that the Applicant has already moved an application u/s 21(1)(a) of the U.P. Act No. XIII of 1972 dated 10.3.2008 before this Hon'ble Court in respect of shop No. 63 situated on the ground floor of building No. 31/72, Mahatma Gandhi Marg, P.S. Hazratganj, Lucknow which is in the tenancy of M/s Mangal Prasad & Sons. On the said application of the Applicant dated 10.3.2008, a PA. Case No. 8/2008- Mohd. Asif Naseer v. Mangal Prasad & Sons, was registered and the aforesaid P.A. Case No. 8 of 2008 is fixed for 21.4.2008.

8. Sri M.A. Khan learned Counsel for the Petitioner submits that both the cases are at the hearing stage, keeping in view the facts both matters be clubbed together, decided simultaneously as the same will facilitate the opposite party No. 1 to come to just conclusion, also save the precious time of the Court. Both the cases are ripe for hearing. P.A. case No. 10/08 has been fixed for hearing on 21.1.2011 while P.A. Case No. 08/08 has been fixed for 28.1.2011. The opposite party No. 1 even without going through the averments made in both the release applications illegally rejected and application paper No. C-51 for consolidating both the P.A. Cases by incorrectly observing that the grounds of release are different, thereby the order passed is vitiated in law.

9. He further submits that by virtue of Section 34 of the Act read with Rule 22 (e)

of the Rules, the prescribed authority for the purpose of holding any inquiry or hearing any appeal or revision under the Act, shall have the same powers as are vested in Civil Court under the Code of Civil Procedure, 1908 when trying the suit. Under Order IV-A of CPC contemplates consolidation of suits and proceedings and the opposite has erred in law in rejecting the application.

10. It is also argued that in any case by applying the principles of provisions of Order IV-A CPC both the cases can be consolidated as in the event the application filed by the opposite party No. 2 against M/s Mangal Das & sons (PA. Case No. 08/08) is allowed the need as set up by the opposite party No. 2 would be satisfied and the opposite party No. 1 would be able to appreciate the so called need as set up by the landlord/opposite party No. 2 in respect to the accommodation in possession of the Petitioner, he could be saved from being evicted from a very small petty shop having an area of 25 sq. feet so order passed by opposite party No. 1 is arbitrary cannot sustain liable to be set aside. In order to press the above said pleas, learned Counsel for the Petitioner relied the following judgments:

- (1) Mohd Yusuf. Ahmad Miya and Ors. AIR 1987 AH 335
- (2) Anandan Gupta v. Navin Agarwal and Ors. AIR 1984 All 387
- (3) Singhasini Chemical Process, Plant and Equipment, Vishnupuri, Kanpur v. XI Vth Additional District & Sessions Judge, Kanpur and Anr. 1990 (1) ARC 218
- (4) Kalluv IXth Addl. District Judge, Kanpur and Ors. 1982 ARC 61.
- (5) Abdul Rahman v. 1st Additional Civil Judge (Senior Division) Moradabad 1999 (1) ARC 557,
- (6) Indian Bank Vs. Maharashtra State Co-operative Marketing Federation Ltd.,
- (7) Attorney General v. H.R.H. Prince Ernest Augustus of Hanover (1957) 1 All E.R. 49.

On the basis of above said submission, Sri M.A. Khan, learned Senior Advocate appearing on behalf of the Petitioner submits that order under challenged is contrary to law, illegal and liable to be set-aside.

11. Sri Kabir Ahmad and Sri Anurag Srivastava, learned Counsels for the Respondents/landlord submits that it is totally incorrect on the part of the Petitioner to say that the fact in P.A. Case No. 10 of 2008 and P.A. No. 8 of 2010 pending before opposite party No. 1, Prescribed Authority/Small Causes Court, Lucknow are identical and similar in nature.

12. Learned Counsel for the Respondents also submits that in P.A. case No. 10 of 2008 only hearing is to be done further as per order dated 6.4.2010 passed in Writ Petition No. 50 (R/C) of 2009 West Watch Company v. Judge Small Causes/ Prescribed Authority, Lucknow and Anr. has to be decided expeditiously. P.A. No. 08 of 2008 although fixed for hearing on 28.1.2011 but as per earlier order

passed on 8.12.2010 applications moved by the tenant are to be disposed of at the time final hearing, so stage in both case are different.

13. Sri Kabir Ahmad, learned Counsel for the Respondent further on the strength of the judgment Abdul Rahman v. 1st Additional Civil Judge (Senior Division) Moradabad 1999 1 ARC 557, submits that it is the discretion of the prescribed authority to consider whether it is in the interest of justice to consolidate the two cases or not under inherent power as provided under Rule 22 (e) of the Rules. In the present case, on the basis of material on record and pleading by order dated 13.1.2011 (Annexure No. 6) opposite party No. 1 rejected Petitioner's application for consolidation of P.A. Case No. 10 of 2008 and P.A. Case No. 8 of 2008, perfectly valid, needs no interference and writ petition filed, liable to be dismissed.

14.1 have heard the learned Counsel for the parties and perused the record.

So far as the factual matrix involved in the present case, it is not disputed between the parties that opposite party No. 2 Sri Mohammad Asif Naseer landlord/owner of the building having municipal No. 31/72, Mahatma Gandhi Marg, Police-station-Hazratganj, Lucknow in which shop No. 63 is under the tenancy of M/s Mangal Das & Sons and shop No. 64 is the tenancy of M/s West Watch Company(Petitioner), release applications have been moved on 10.3.2008 and 21.7.2008 respectively pending for adjudication before opposite party No. 1 Prescribed authority/Small Causes Court, Lucknow.

Thereafter an application u/s 34 and Rule 22 (e) of U.P. Act No. 13 of 1972 read with Section 151 CPC moved on behalf of the Petitioner/tenant for consolidation of P.A. Case No. 10 of 2008 and P.A. Case No. 8 of 2010, rejected by order dated 13.1.2011 (Annexure No. 6 to writ petition), hence the present writ petition.

15. In order to decide the controversy involved in the present case, it is necessary to look into the relevant provisions which governs the field, quoted herein under:

21: Proceedings for release of building under occupation of tenant.--(1) The Prescribed Authority may on an application of the landlord in that behalf order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely-

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade, or calling or where the landlord is the trustee of a public charitable trust, for the objects of the trust:

Section 34(1)(g) of the Act provides as under:

Powers of various authorities and procedure to be followed by them.--(1) The District Magistrate, the prescribed authority or any [appellate or revising

authority] shall for the purpose of holding any inquiry or hearing [any appeal or revision] under this Act have the same powers as are vested in the Civil Court under the code of Civil Procedure, 1908 (Act No. v. of 1908), when trying a suit, in respect of the following matters, namely--

(g) any other matter which may prescribed.

Rule 22(e) of UP. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules 1972 (hereinafter referred as an "Rules"), the relevant portion quoted herein under:

22. Power under the Code of Civil Procedure, 1908 [Section 34(1)(g).--The District Magistrate, the Prescribed Authority or the Appellate Authority shall, for the purposes of holding any inquiry or hearing any appeal or revision under the Act, shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the following matters, namely-

(e) the power of consolidate two or more case of eviction by the same landlord against different tenants;

Section 38 of the Act provides as under:

38. Act to override T.P Act and Code of Civil Procedure.--The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Transfer of Property Act, 1882 (Act No. IV of 1882) or in the CPC 1908.

In view of the above said provisions Order IVA of the Code of Civil Procedure, 1908 (inserted by U.P. Act No. 57 of 1976 with effect from 1.1.1977) is also to be taken into considered while deciding the present case quoted as under:

Order IVA- Consolidation of suits and proceedings- When two or more suits or proceedings are pending in the same Court, and the Court is of opinion that if it expedient in the interest of justice, it may be order direct their joint trial, where upon all such suits and proceedings may be decided upon the evidence in all or any of such suits or proceedings.

Thus by combined reading of provisions of Rule 22 (e) of the Rules, Order IVA of the Code of Civil Procedure, 1908, position in respect to consolidation of two suits pending before the same Court emerges out that it is the discretion of the Court concerned where the two suits are pending to consolidate the same in the interest of justice for a common trial.

16. Word " trial" has been define by Hon"ble the Apex Court in the case of Indian Bank (Supra) as under:

The word "Trial" is no doubt of a very wide import as pointed out by the High Court. In legal parlance it means a judicial examination and determination of the issue in Civil or Criminal Court by a competent Tribunal. Accordingly to Webster"s Comprehensive Dictionary, international Edition, it means the examination,

before the tribunal having assigned jurisdiction, of the facts or law involved in an issue in order to determine that issue. According to Shroff's Judicial Dictionary (5th Edn.) a "trial" is the conclusion by a competent tribunal, of questions in issue in legal proceedings, whether Civil or Criminal. Thus, in its widest sense it would include all the proceedings right from the stage of institution of a plaint in a Civil Case to the stage of final determination by a judgment and decree of the Court. Whether the widest meaning should be given to the word " Trial" or that it should be construed narrowly must necessarily depend upon the nature and object of the provision and the contest in which it is used.

17. Hon'ble Apex Court in the case of *Kailash v. Nankhu and Ors.* 2005 (23) LCD 1110, has held that the trial begins when issues are framed and the case is set down for recording of evidence. All the proceedings before that stage are treated as proceedings preliminary to trial or for make the case ready for trial.

18. The legislature while enacting the provisions as provided under Order 4(A) of the Code of Civil Procedure, Rule 22 (e) of the Rules has given a sole discretion to the Court before whom two trials are pending to consolidate the same. However, in the interest of justice. However, it is settled position of law that if a discretion is vested in a Court/authority could not be exercised in an arbitrary manner but should be exercised judicially after proper application of mind, taking into consideration the fact and circumstances of the case so that no parties can suffer from the discretion so exercised by the Court

19. Keeping in view the aims and object of the legislature in framing the said provisions in the case *Attorney General v. H.R.H. Prince Ernest Augustus of Hanover* (1957) 1 All ER 49, it is held that:

The key to the opening of every law is the reason and spirit of the law- it is the *animus imponentis*, the intention of the law maker, expressed in the law itself, taken as a whole. Hence, to arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed detached from its context ...meaning by this as well the title and preamble as the purview or enacting part of the statute-

Provisions as provided under Order IVA of CPC for judicial scrutiny in the case of *Anandan Gupta v. Navin Agarwal and Ors.* 1998 (1) All R 387, in para -10 has held as under:

It appears that in that case Second Appeal No. 1545 of 1951 which was an offshoot of a small cause Court suit brought by the landlord for recovery of house rent from the Petitioner was pending when the subsequent suit was filed on small Cause Court side being suit stay of this suit u/s 19 CPC Till the disposal of the second Appeal aforesaid. That prayer is allowed.

In the case of *M/s Singhasini Chemical Process, Plant and Equipment,, Vishnupuri, Kanpur* (Supra) after considering the provisions of Order IVAC.RC. has held that considering the fact and circumstances of the case that both the

suits are consolidated together, the possibility of coming into existence of two conflicting decisions will be eliminated.

20. Further the provisions as provided u/s 22(e) of the rules has been considered in the case of *Kallu v. IX Addl. District Judge, Kanpur and Ors.* (supra) where the landlord has moved applications for release against two tenants for consolidating not been opposed by the tenants, so this Court has held as under:

Whenever cases are consolidated, the evidence on record is to be read in all the cases which are consolidated. The provisions of Rule 22(e) have been made in order to avoid duplication of evidence and multiplicity of the proceeding. These provisions specifically permit the consolidation of the case as it has been done in the Court below, consolidating the two cases into one. It may be mentioned that the Petitioner did not even the objections the application for consolidation of the cases. In the circumstances, the second objection of the learned Counsel is also over-ruled.

In the case of *Mohd. Yusuf (Supra)* Hon"ble the Apex Court has held as under

The question not consolidation of two suits would largely depend upon the identity or the subject-matter, the parties and convenience in proceeding with the trial having regard to the nature of the evidence which is to be led in the suits and the precise controversy which arises for trial in the two suits. For such determination as well it is necessary that the parties to the two suits should disclose their cases in each of them to enable the trial Judge to come to a conclusion whether it would be expedient to try the two suits together.

21. In the case of *Abdul Rahman v. Ist Addi tonal Civil Judge (Senior Division) Moradabad and Anr.* 1999 (1) All RC 557 in para -3 it is held as under:

It is true that under Rule 229e) 22:

22. Power under the Code of Civil Procedure, 1908, Section 34(1)(g).--The District Magistrate, the Prescribed Authority or the Appellate or Revising Authority shall, for the purpose of holding any inquiry or hearing any appeal or revision under the Act, shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely-

(e) the power of consolidate two or more cases of eviction by the same landlord against different tenants.

(f) The power referred to in Sections 151 and 152 of the Code of Civil Procedure, 1908 to made any order for the ends of justice or to prevent the abuse of process of the authority concerned, gives power to consolidate cases filed by one landlord against different tenants. This may held in assessing the bona fide need and comparative hardship. The actual accommodation with the landlord" may be known. The Rules 22(e) does not empower the Prescribed Authority to consolidate the cases filed by different landlords against the same tenant. But

this does not mean that Prescribed Authority in no other case can consolidate the case. All Courts and Tribunals have inherent power to prevent the abuse of process of law [Busching Schmitz Private Limited Vs. P.T. Menghani and Another, devise its own procedure subject to statutory prohibition [B. Prabhakara Rao Vs. Desari Panakala Rao and Others, (para 13)] So has the authorities and the Courts under the Act. The Authorities and the Court have inherent power not because of any legislature but because of their nature and constitution [Indian Bank v. Stayam Finre (P) Ltd. 1996 (5) SCC 5 (22)]. They have power to pass order in the interest of justice [Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, or follow procedure unless prohibited [Devendra Nath v. A.D.J. Agra 1977 ARC 475] by law. Rule 22(f) [Kindly see foot No. 2] specifically confers inherent power to make any order for ends of justice or to prevent the abuse of the authority concern. The Act does not prohibit consolidation of two cases against same tenant in respect of same premises by different landlords. The only limitation is it should be in interest of justice or to prevent the abuse of the process of law.

Further in para-4 in the case of Abdul Rahman (Supra) it is also held as under:

It is for Prescribed Authority to consider whether it is in interest of justice to consolidate the case or not under inherent powers.

In the light of the fact, the position which emerges out, in nut shell, that if two cases are pending before the same Court for trial then the Court concerned in the interest of justice have a discretion to consolidate the same, the said discretion is to be exercised judicially after proper application of mind not in a mechanical manner and no party can claim order thereof as matter of right to get botti the case consolidated on his request.

22. Now reverting the said fact in the present case, it is not disputed that two shops, namely, shop No. 64 and shop No. 63 are situated in the same building, the landlord moved two P.A. Case Nos. 10 of 2008 and 08 of 2008 before the prescribed authority/Small Causes Court, Lucknow. In P.A. Case No. 10 of 2008 only hearing is to be done and the same is expedited as per order dated 6.4.2010 passed in Writ Petition No. 50 (R/C) of 2009 West Watch Company v. Judge Small Causes/Prescribed Authority, Lucknow and Anr. the relevant portion quoted as under:

In view of the above, the writ petition is allowed with cost of Rs. 5000/-. The order dated 9.4.2009 as contained in Annexure 1 to the writ petition is hereby quashed. The application u/s 34(1)(g) read with Rule 22(b) as contained in Annexure No. 3 is allowed. The ex parte order dated 11.9.2008 is set aside. The Court below is directed to decide the application preferred by the opposite party No. 2 u/s 21(1)(a) of the U.P. Act XIII of 1972, expeditiously, say, by 31.12.2010. It is clarified that the parties will not seek any adjournment before the Court below.

23. Whereas in P.A. Case No. 08 of 2008 as per material on record, not disputed

between the parties that as per order dated 6.1.2011, although fixed for hearing but before adjudicating and deciding on merit, misc. applications moved by the parties are to be decided prior to hearing as per order dated 20.10.2010 passed earlier. Accordingly in view of the said facts, I am of the considered opinion that the position in both the P.A. case are at different stage and footing. Further, the prescribed authority while passing the impugned order on the basis of material on record came to conclusion that in both the cases stages are different, cannot be decided by one evidence, and P.A. Case No. 10 of 2008 is to be decided expeditiously as per order passed on 6.4.2010 by this Court, rejected the Petitioner's application for consolidation of both the P.A. vide order dated 13.1.2011, has not committed any illegality or infirmity rather the said action is in accordance to the provisions of Rule 22(e) of the Rules read with Order IVA Code of Civil Procedure.

For the foregoing reasons, the writ petition lacks merits and is dismissed as such.

No order as to costs.