Mohammad Tayyab Vs Addl. District Judge (E.G.Act),Dehradun and Others

Court: Allahabad High Court

Date of Decision: Sept. 23, 1999

Acts Referred: Constitution of India, 1950 â€" Article 226
Provincial Small Cause Courts Act, 1887 â€" Section 25

Hon'ble Judges: A.K.Yog, J

Final Decision: Dismissed

Judgement

A. K. Yog, J.
Mohd. Tayyab/ Petitioner, is the tenant of a shop situate at Chakrata Road, Panditwari, near I.M.A. Dehradun (called

Ã¯Â¿Â½the shopÃ¯Â¿Â½) at the rate of Rs. 900 per month belonging to Siriram Gupta/Respondent No. 2, who happens to be his landlord.

2. Siriram Gupta, landlord, served notice dated 17th August, 1992 (Annexure1 to the Writ Petition) on 2481992 and filed J.S.C. Suit No. 71 of

1992 (Siriram Gupta v. Mohd. Tayyab), claiming eviction as well as for arrears of rent against Defendanttenant/Petitioner on the ground that he did

not pay arrears of rent inspite of notice being served on 24th August 1992. Copy of Plaint of said J.S.C. suit has been filed as Annexure2 to the

writ petition.

3. Suit was contested by Defendanttenant by filing written statement (AnnexureSA1 to the Supplementary Affidavit1).

Both the Plaintiff and Defendant led oral evidence in support of their respective cases.

Perusal of Para 1 of the written statement (Annexure SA1) indicates that Defendant accepted landlord tenant relationship and applicability of the

provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. 1972, U.P. Act No. XIII of 1972 (for short called Ã¯Â¿Â½the

ActÃ¯Â¿Â½) to the instant case.

In Paragraph 9 of the written statement, it is pleaded that suit was barred by Section 20 of the Act. It was also pleaded that Plaintiff has no right to

file suit before the Court of Judge Small Causes and that Plaintiff had not indicated as to when tenancy had commenced. It is also pleaded that

provisions of the Act were applicable to the building in question and the Court of Judge Small Causes had no jurisdiction to entertain the same. In

the written statement Defendanttenant did not specifically plead that there was no valid ground for release and that the agreement, if any, between

Defendant and Plaintiff, being in contravention of provisions of the Act, was void abinitio and inoperative.

4. The Trial Court/Judge Small Causes Court dismissed the aforesaid suit vide judgment an order dated 25th May, 1996. (Annexure6 to the writ

petition). Siriram Gupta, landlord/Respondent No. 2 filed S.C.C. Revision No. 15 of 1996, which has been allowed by Additional District Judge,

Dehradun/Respondent No. 1 vide judgmentand order dated 16th August, 1996 (Annexure7 to the writ petition).

5. Defendant/Petitioner, feeling aggrieved from the judgment of the Revisional Court/Respondent No. 1 has filed this writ petition challenging the

aforesaid judgment and order dated 16th August, 1999 (Annexure7 to the writ petition).

Petitioner has filed Supplementary Affidavit II and stated that petitioner should be allowed to challenge finding of the Trial Court, Judge Small

Causes Court against him on the question of default though he did not challenge the same before the Revisional Court because the judgment of

Trial Court, assuch.wasin his favour.

6. Contention of the petitioner, in short, is that Revisional Court ought to have remanded the case back to the Trial Court for deciding it afresh

since he had no opportunity to assail the finding against him because the suit, in the ultimate result, was dismissed and thus he did not bother himself

as he had no grievance so long decree of the trial Court in his favour existed.

Trial Court had framed three issues, namely:

Ã¯Â¿Â½1. Whether any rent is due towards the Defendant? If so, howmuch?

2. Whether the U.P. Act No. 13 of 1972 is applicable on the premises in dispute? If so, its effect?

3. Relief?Ã¯Â¿Â½

Trial Court, on Issue No. 1, recorded a finding of fact that rent with effect from 1st February, 1992 was due against the Defendant which was not

paid in spite of demand and hence he was guilty of committing Ã¯Â¿Â½defaultÃ¯Â¿Â½ in payment of rent.

On Issue No. 2 Trial Court held that provisions of U.P. Act XIII of 1972 were applicable to the premises in question.

Consequently, on Issue No. 3 Trial Court held that plaintiff was not entitled to the decree claimed as the premises in question was let out without

complying the provisions of U.P. Act XIII of 1972.

7. Before Revisional Court, main thrust on behalf of the plaintifflandlord was that Issue No. 2 was wrongly decided inasmuch as it was not the case

of any of the parties to the suit that the Defendant was not the tenant or he occupied premises in question illegally without complying with

provisions of Act XIII of 1972 and Trial Court had committed illegality in carving out a new case for dismissing the suit.

8. It is further contended that Trial Court was not justified in making observations regarding occupation of the tenant without an allotment order,

particularly when plaintiff had no opportunity to file replication as there was no categorical pleading on the part of the Defendanttenant in the

written statement coupled with the circumstance that the Defendanttenant had accepted existence of Ã¯Â¿Â½landlord tenantÃ¯Â¿Â½ relationship claiming to

be a lawful tenant and claimed that rent was deposited under Section 30 of the Act. It is contended that Paragraphs 9 and 14 of the Written

Statement have been misread by the Trial Court to base his conclusion on surmises and conjectures.

9. Revisional Court found that trial Court had carved out a new case, which was not pleaded by either of the parties, and that no issue (with regard

to unlawful occupation by the tenant without allotment order) was framed by the Trial Court.

10. It is interesting to note (refer to Paragraph 10 of the Revisional Court judgment) (particular page 61 of the Writ Paper Book) that

Defendanttenant/Petitioner conceded on this score. He, however, submitted that case should be remanded to the Trial Court with direction to

frame additional issue and to afford opportunity of hearing to the parties to lead evidence, if any, and to decide it afresh in accordance with law.

11. The aforesaid prayer of the Defendanttenant was opposed by the plaintifflandlord and it was submitted that Revisional Court was competent to

accept additional evidence and also record a finding of fact; and hence, there was no necessity to remand the case to the Trial Court.

12. In Paragraph 12 of Revisional Court judgment (particular page 64 of the Writ paper Book) it is observed that in the facts and circumstances of

the case Trial Court, in fact, has set up a third case (new case), which was not pleaded by either party and in that view of the matter, found that

none of the decisions cited before him were relevant.

13. The Revisional Court referred to several decisions and held that a party cannot be allowed to raise a new plea, if he omitted the same at earlier

stage and held that no party will be allowed to lead evidence on a fact which has not been pleaded and any evidence led without pleading will not

be looked into.

14. Revisional Court found, Ã¯Â¿Â½It was no body"s case that the Defendant/tenant was in unauthorised occupation of the building in question without

allotment letter.Ã¯Â¿Â½

15. The Revisional Court further went on to say on record that in view of the finding on Issue No. 1 recorded by the Trial Court, it had no option

but to set aside the order passed by the Court of Judge Small Causes and that Defendant could not be allowed to lead evidence on a plea, which

did not mention in the written statement and consequently, no purpose was going to be served by remanding the case to the Trial Court.

16. I find no manifest error apparent on the face of record in the said observation.

The revision was allowed with costs, judgment and order dated 25th May 1996 passed by Judge Small Causes Court was set aside, S.C.C. Suit

No. 71 of 1992 was, therefore, decreed with costs and tenant has been directed to vacate premises in question within thirty days and pay arrears

of rent etc. to the landlord.

17. On behalf of the Petitioner it is urged that the Revisional Court has erred in law an committed manifest error apparent on the face of record in

not sending the case back to the Court of Judge Small Causes. According to him, the case should have been remanded back to the Trial Court for

decision afresh. Petitioner submits that he shall amend his pleading and file additional evidence in support of his new case to be pleaded and

thereafter Trial Court may decide the suit.

18. Contention of the petitioner is not as innocuous as it appears to be on the face of it.

It may be appreciated that petitioner took no steps for filing an application for amending written statement before Revisional Court. From the

record of the case it is evident that even prior to that fact was not made before the Revisional Court. Before Revisional Court tenant''s argument

was that case may be remanded to the Trial Court with a direction to frame additional issue in the light of new amended pleadings. Admission of

the Defendanttenant (contained in Paragraph 4 of the written statement Annexure SA1) cannot be allowed to be withdrawn at such a highly

belated stage without furnishing an explanation acceptable under law. There is nothing on record to justify fresh innings to the advantage of the

tenantpetitioner. The Defendant tenant/Petitioner did contest the proceedings knowing fully well the issues arising from the pleadings of the parties

and led evidence in the light of the same. He cannot be permitted now at this belated stage to plead a new case so as to change the nature of the

case completely and leaving his adversary bewilder surprised and at loss.

19. It will, render, entire previous exercise fruitless causing irreparable injury to landlordbesides waste of time of Court. Defendant cannot be

permitted to take turns and somersaults at the fag endat his own convenienceleaving his adversary in bewildermentonly because it suits him.

Permitting such amendments, as claimed in the facts of present case, cannot be said to be conducive, in consonance with the fair play or otherwise

justiciable.

20. Learned counsel for the petitioner argued that provisions of the Act were applicable to the accommodation in question when shop was given to

him on rent but the landlord, ignoring the provisions of the Act, let out the shop to the petitioner. The agreement creating tenancy between him and

landlord is void in view of Full Bench decision of this Court reported in Nutan Kumar v. II Additional District Judge, Banda, 1993 (22) ALR 437

(HC)(FB).

Petitioner submitted that pleadings have to be construed liberally as held in Ram Swarup Gupta v. Vishnu Narain Inter College, 1987 (13) ALR 57

(SC) (Sum.), wherein Supreme Court observed that Court must find out whether in substance I the parties knew the case and issues upon which

they had contested, and if, in spite of sufficiency in the pleadings, parties knew I the case and they proceeded to trial on those issues for producing

evidence, in that event it would not be open to a party to use question of absence of pleadings in appeal.

21. In the present case learned counsel for the petitioner conceded that averments contained in Paragraph 9 of the written statement did not clearly

make out the case so as to bring it within the ambit of the decision in the case of Nutan Kumar, (supra).

22. Now the question arises as to whether the averments contained in the written statement, as they stand, can be construedeven if a liberal

approach is to be adoptedto satisfy factual essential ingredients required for applying the case of Nutan Kumar, (supra).

23.1 am afraid, pleadings in the written statement, as they stand, cannot be stretched by adopting any amount of liberal approach, so as to

constitute them and substitute for pleadings of necessary facts for attracting the ratio in the case of Nutan Kumar, (supra).

Secondly, tenantpetitioner cannot be allowed, at this stage, to stretch his argument on the basis of aforesaid decision Ram Swarup Gupta, (supra)

once he himself conceded and gave walk over before the Revisional Court.

24. Learned counsel for the petitioner then places reliance upon the following decisions:

1. Man Mohan Dixit v. A.D.J. (R.H. Zaidi, J.),1997(29)ALR253.

2. Om Prakash Gupta v. VA.D.J. (B.K. Singh,J.), 1996 (2) ARC 532.

3. Kanahiya Lal v. VA.D.J. (A.K. Yog, J.),1999(36)ALR79.

25. In the case of Man Mohan Dixit, (supra) this Court held that Revisional Court while exercising powers under Section 25, Provincial Small

Causes Court Act has no jurisdiction to rectify legal errors and that it had no jurisdiction to record findings of fact of its own. It was held that in

case a finding of fact is set aside, the Revisional Court should send the case back.

26. It is held that Revisional Court is empowered to point out legal errors and there is nothing illegal if the Revisional Court rectifies the defects in

the conclusions drawn by the Trial Court. This Court, in the facts of a given case, for equitable reasons affirmed the Revisional Court judgment

(which decreed the suit on its own) and did not remand the case to the Trial Court.

27. In the cases of Om Prakash and Kanhaiya Lal, (supra) this Court was not required to consider said question in hand.

The said decisions are distinguishable and does not apply to the facts of the present case.

28. Learned counsel for the contesting respondent disputed the above proposition and submitted that there was in the facts of the present case, no

need to remand the same to the Trial Court. He places reliance on the following decisions:

1. Ram Milan Singh v. D.J. Basli and others, 1988 (2) ARC 45 (Para 9) (S.D. Agarwal, J.): 1988 (14) ALR 86 (HC) (Sum.).

2. Smt. Protima Chatierjee v. Special Judge, Kanpur, 1993 (22) ALR 199.

3. B.N.S. Hajela v. IIIrd Additional District Judge and others, 1996 ALJ 1221 (Para 8) (Para 7 to 11) (Sudhir Narain, J.).

29. In the aforesaid decision, it has been held that once landlordtenant relationship is admitted to the parties then tenant cannot plead contrary and

claim to be unauthorised occupant. Reference may be made to Paragraph 5 of the judgment in the case of Protima Chatterji, (supra) and then

followed in the case of B.N.S. Hajela, (supra).

30. The underlying idea and the logic of the Courts appears to be of consensus tollit errorema, which means a man who does not speak where he

ought to, shall not be heard later when he desires to speak.

Hon"ble J.C. Gupta, J. in Paragraph 12 of his judgment in the case of Manager, Lease and Rent, (supra) Court, has held that where an

accommodation is let out without an allotment order, still occupant cannot take advantage of the decision in the case of Nutan Kumar (supra), if

Ã¯Â¿Â½landlord and tenantÃ¯Â¿Â½ relationship is admitted.

31. Learned counsel for the petitioner fairly conceded to the above preposition/ratio as settled law as on date and referred to following decisions

to the same effect:

1. Laxmi Kishore and another v. Har Prasad Shukla, 1981ARC545.

2. Jaidev Misra v. District Judge, Faizabad and others, 1998 (1) ARC354.

32. True, there cannot be an absolute proposition of law on the subject laying down that under Section 25, Provincial Small Causes Court Act

Revisional Court should always as of matter remand the case.

Learned counsel for the contesting respondent has placed reliance on the decision reported in:

1.1998(2)ARC451.

33. In the decision reported in 1988 (1) ARC 525 (Paragraph 9) it is held that when a party makes a categorical pleading, which is being

understood in that sense by the other side, then in that case there is no scope for falling back upon the principle of liberal interpretation of or liberal

approach to the pleadings.

As already noted, in the instant case, the tenant had conceded that Trial Court was not justified in dismissing the suit while recording finding on

Issue No. 2 and Revisional Court proceeded on that basis. It is also admitted to the petitionertenant that he did not challenge the finding regarding

default (See his Supplementary Affidavit). Revisional Court also found that the suit could be decided finally nothing more was required to be done

in the matter. In such a situation, it cannot be said that Revisional Court committed illegality in exercising jurisdiction by not remanding the case.

34. Learned counsel for the petitioner submitted that being an unauthorized occupant having been inducted in breach of the provisions of Act XIII

of 1972 the suit could not be entertained at all without adjudicating on merit, even if the argument is to be accepted for the sake of argument, I find

that in that case petitioner loses the battle inasmuch as if he himself admits to be an unauthorized occupant and having acquired possession in

breach of statutory provision, he cannot ask for protection from this Court in exercise of its powers under Article 226, Constitution of India, which

are discretionary as well as dependent on equitable consideration. O a this score also I am not satisfied that petitions deserves relief. One who

commits breach of law or is guilty of acquiring some rights or status in violation of law cannot seek protection of law or take shelter of process of

law and Court.

35. Having failed on the above score petitioner attempted to challenge the impugned order on merit by assailing finding on the pointÃ¯Â¿Â½whether

building in question is dilapidated?Ã¯Â¿Â½ but failed to assail on permissible grounds.

No other point pressed for consideration. "

In view of the discussion made above, I find no manifest error apparent on the face of record, no permissible ground for exercise of jurisdiction

under Article 226, Constitution of India made out.

Writ petition is devoid of merit. It is, accordingly, dismissed.

In the facts of the instant case, there will be no order as to costs.