

(2013) 09 AHC CK 0157

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 51553 of 2013

Omkar Nath

APPELLANT

Vs

District Judge, Kanpur Nagar and
Others

RESPONDENT

Date of Decision: Sept. 24, 2013

Citation: (2014) 1 ADJ 419 : (2014) 102 ALR 554

Hon'ble Judges: Ran Vijai Singh, J

Bench: Single Bench

Advocate: N.L. Agarwal, for the Appellant; J.P. Singh, for the Respondent

Final Decision: Dismissed

Judgement

Ran Vijai Singh, J.

Heard Sri N.L. Agarwal, learned counsel for the petitioner and Sri J.P. Singh learned counsel appearing for respondent No. 3. Through this writ petition, the petitioner has prayed for issuing a writ of certiorari quashing the order dated 26.7.2013 passed by the learned District Judge, Kanpur Nagar in Civil Revision No. 182/07/2013 (Omkar Nath Agnihotri v. Rakesh Kumar Gupta) and order dated 9.7.2013 passed by the 1st Upper Civil Judge (Senior Division), Court No. 4, Kanpur Nagar in Rent Suit No. 1 of 2011 (Rakesh Kumar Gupta v. Omkar Nath Agnihotri). Vide order dated 9.7.2013, the petitioner's application under Order XI, Rule 12 and 14 of the Civil Procedure Code, 1908 (in short, "CPC") read with Rule 23 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (in short, "the Rules") has been rejected, whereas by the subsequent order dated 26.7.2013, the revision challenging the order dated 9.7.2013 has been dismissed as not maintainable.

2. It appears, the respondent-landlord filed an application u/s 21(1)(a) of the Act before the Prescribed Authority for releasing the house No. 49/56 and 1st and 2nd floors of house No. 149/50-C situated at General Gunj, Nayagarh, Kanpur Nagar under the tenancy of the petitioner (the tenant). The respondent-landlord also filed his written statement. After closure of the evidence of the landlord, the petitioner

(tenant) filed the aforesaid application stating therein that apart from the house in dispute, the respondent has eight other houses in the city, i.e., house No. 2/169 Nawabganj, Kanpur Nagar; house No. 1/34 Nawabganj, Kanpur Nagar; house No. 2/99 Nawabganj, Kanpur Nagar; house Nos. 1/273 Nawabganj, Kanpur Nagar; house No. 67/5 Harvansh Mohal, Kanpur Nagar; house No. 13/280 Parmit, Kanpur Nagar, house No. 13/280-A Parmit, Kanpur Nagar and house No. 61/213, Canal Road, Kanpur Nagar, therefore, the landlord be directed to file the papers showing ownership and possession over the above houses before the Court.

3. Learned Prescribed Authority rejected the petitioner's application by the impugned order dated 9.7.2013 on the ground that this application was filed at the belated stage when the date was fixed for evidence of the petitioner (tenant). Further, the petitioner (tenant) could state the details of these houses by way of filing an affidavit before the Court. Aggrieved by this order, the petitioner filed revision, which had been dismissed as not maintainable as the same was filed against an interlocutory order.

4. While assailing this order, Sri Agarwal contends that the Courts below have erred in rejecting the petitioner's application. In his submissions, it was incumbent upon the prescribed authority to direct the landlord to file the papers relating to the ownership and possession over the houses mentioned in application No. 47/1. In support of his submissions, learned counsel for the petitioner has placed reliance upon the judgment of this Court in [President Shri Chaturbhuj Sharma Sikshan Sansthan Mahavidyalaya Samiti and Others Vs. Awadh Bihari Tiwari alias Ram Babu and Others](#), .

5. I have heard learned counsel for the petitioner and perused the record of the writ petition.

6. For appreciating the controversy, it would be useful to go through the provisions contained in Order XI, Rule 12 of the CPC as well as Rule 23 of the Rules, which are reproduced herein under:

Order XI, Rule 12 of the CPC.

12. Application for discovery of documents: Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion be thought fit:

Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving

costs.

Rule 23 of the Rules.

23. Power to call for particulars (Section 34(1)(g)). The District Magistrate, the Prescribed Authority or the Appellate or Revising Authority may call for any particulars in respect of any building from the landlord, tenant or occupant, or any previous landlord, tenant or occupant thereof, who shall thereupon furnish such particulars.

7. From the bare reading of Rule 12 of the Rules, it would transpire that any party may, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. After hearing such an application, the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary. The proviso to the Rule provides that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs, meaning thereby, the order for discovery and production of a document cannot be claimed in a routine manner and it may be claimed only in a circumstance when the particular document of which production sought is in possession of the other side and in spite of the best effort, the party praying production of the document has not been able to get the same. There is a rider for the Court also that this kind of application can only be allowed when production of such document is necessary for proper adjudication of the matter in order to pronounce the judgment.

8. Rule 23 of the Rules read with Section 34(1)(g) of the Act talks about the power of the Court that it can suo moto seek any particulars in respect of any building from the landlord, tenant or occupant, or any previous landlord, tenant or occupant thereof, who shall thereupon furnish such particulars.

9. I am of the view that, this power too cannot be utilized sparingly without applying its mind that the said particular is necessary for pronouncing the judgment.

10. Learned counsel for the petitioner has placed reliance upon the judgment of this Court in Chaturbhuj Sarma Sikshan Sansthan Mahavidyalaya Samit (supra). In that case, earlier an application was filed under Order XI Rule 12 of the CPC for discovery of certain documents. The said application was rejected. Thereafter, second application was filed u/s 151 of the CPC. The objection was taken by the other side that the second application has not been filed under the relevant provision of law and further, it is barred by principle of res judicata as on the same set of facts, application has already been rejected. The Court concerned has allowed the second application. The matter was challenged before this Court. This Court dismissed the writ petition by observing that the document in question which was required to be discovered was in possession of the society alone and it could not be discovered anywhere else. Therefore, direction was given to them to produce those documents.

11. Here the facts are entirely different. Here the petitioner has come up with the case that the landlord has got eight more houses and he be directed to file the documents relating to the title and possession over the said houses. There is nothing on record to suggest that the petitioner has ever tried to find out the details of the title as well as the possession of the houses which are detailed in the application and the petitioner wants to shift the burden of producing the papers on the landlord. I am of the view that the provisions contained, either under Order XI, Rule 12 of the CPC or Rule 23 of the Rules, speaks about the power of Court directing the particular party to produce the particular document, While exercising this power, either under Order XI, Rule 12 of the CPC or Rule 23 read with Rule 34 of the Rules, the Court must keep in mind that the party praying for discovery/production of a particular document has made its best effort to find out the same and in spite of the best effort, ultimately, failed or the said document is in possession of the other party, which can only be produced by that party. The Court should also have in mind, while allowing such type of application, that production of such document is essential for pronouncing the judgment.

12. This provision cannot be utilized by a party directing a party to adduce the evidence against him. The party seeking relief is duty-bound to collect the evidence in its favour and it cannot compel the other side to produce the evidence against the aforesaid party. I do not find any illegality in the impugned orders. The writ petition is dismissed.