

(1996) 05 AHC CK 0155

Allahabad High Court

Case No: C.M.W.P. No. 17053 of 1996

Mohd. Aslam

APPELLANT

Vs

Special Judge (E.C. Act)/Addl.
District Judge and Another

RESPONDENT

Date of Decision: May 15, 1996

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 10
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21, 21(1), 22

Hon'ble Judges: R.K. Gulati, J

Bench: Single Bench

Advocate: Anil Kumar Singh, for the Appellant;

Final Decision: Dismissed

Judgement

R.K. Gulati, J.

The Petitioner is a tenant of the premises No. 52/36A, Nai Dal Mandi. Kanpur Nagar on a monthly rent of Rs. 200. The second Respondent is one of the co-owner and landlady of the aforesaid house.

2. In the writ petition, it is asserted that the landlady with an evil design was adamant to demolish the construction in the occupation of the Petitioner and the accommodation on the first and second floors of that building. The Petitioner filed a suit before the competent Civil Court seeking the relief for permanent injunction restraining the landlady, the second Respondent, from demolishing the accommodation under the tenancy of the Petitioner, and further not to evict the Petitioner forcibly from the said accommodation. It is said that the trial-court granted an interim injunction on 9th October, 1990. However, the accommodation on the first and second floor which existed in the said house, it is said, was demolished by the landlady and the malwa of about 5 to 6 trucks was left on the

roof of the accommodation under the tenancy of the Petitioner. The Petitioner moved the concerned court for a direction to the landlady to remove the malwa, and an order to that effect was passed. Against that order, the landlady preferred an appeal which was also dismissed, and thereafter a writ petition was filed before this Court, which is still pending decision before this Court.

3. During the pendency of the suit, the landlady moved the prescribed authority/Additional Chief Metropolitan Magistrate, 4th, Kanpur Nagar u/s 21(1)(a)(b) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 for release of the accommodation under the tenancy of the Petitioner and for permission to demolish the said accommodation. The application filed by the Petitioner was dismissed by the prescribed authority, against which the landlady (second Respondent) preferred an appeal as provided u/s 22 of the Act. In appeal proceedings, the Petitioner filed an application u/s 10 of the CPC to the effect that the hearing of the appeal be stayed until the suit filed by the Petitioner and the writ petition filed by the landlady is decided. The appellate authority, however, dismissed that application by its order dated 8th March, 1996 on the view that the provisions of Section 10 were not attracted to the facts of the case. Feeling still aggrieved, the Petitioner has preferred this writ petition challenging the correctness of the said order passed by the appellate court.

4. It was contended on behalf of the Petitioner that the need of the landlady, Respondent No. 2 was not bona fide as was held by the prescribed authority, and further the accommodation in dispute was not in dilapidated condition, and, therefore, the application u/s 21(1)(a) (b) was not maintainable and had rightly been rejected by the prescribed authority. The learned Counsel went on to argue that the provisions of Section 10 of the CPC were applicable to the facts of the case, and, therefore, the appellate authority, namely, the Special Judge (E. C. Act)/Additional District Judge, Kanpur Nagar, the first Respondent erred in rejecting the application taking a contrary view of the matter.

5. I have considered these submissions carefully. Whether the application u/s 21 of the Act was made with ulterior purpose and was thus not maintainable, is a question which is the subject-matter of appeal in which the impugned order was passed. It would not be proper for this Court to express any opinion on that matter lest it prejudices the cause of either party. Now coming to the question whether Section 10 of the CPC was available to the Petitioner, it may be observed that the provisions of that Section come into play when the conditions envisaged under those provisions are made out. Section 10 of the Code of Civil Procedure, inter alia, provides that no court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially an issue in a previously instituted suit between the same parties, or between the parties they or any of them claim litigating under the same title and such previously instituted suit is pending either in the same court or in any other court in India competent to grant the same relief. In

other words, the Court in earlier suit should be competent to grant relief in the subsequent suit. The purport and the scope of Section 10 is to avoid conflict by judicial decisions in respect of the same subject-matter involved in different suits filed by and between the same parties. The expression "matter in issue" employed in Section 10 refers to the subject-matter in dispute and it has reference to the entire subject-matter of controversy between the parties. To put it differently, the substratum of controversy, namely, the substance of the matter in controversy should be identical. One of the test for the application of Section 10 of CPC is whether the decision in previously instituted suit will operate as *res judicata* in the subsequent proceedings. Section 10 would not come into play where there is material difference in the two suits about the subject-matter on which the contesting parties are at issue.

6. It may be recalled that the Petitioner had instituted a suit in the Civil Court of competent jurisdiction for a permanent injunction against the Respondent-landlady for prohibiting her to demolish the accommodation under the tenancy of the Petitioner, and not to evict the Petitioner therefrom. The learned Counsel for the Petitioner could not dispute that so far as the relief with regard to the eviction of the Petitioner from the accommodation in question was concerned, the civil court was not competent to grant that relief and to that extent the suit was barred under the provisions of the Act.

7. Sub-section (1) of Section 21, *inter alia*, empowers the prescribed authority to order the eviction of a tenant from a building under his tenancy or any specified portion thereof, when it is approached by the landlord in that behalf, on its being satisfied 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 for any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling. Clause (b) of Sub-section (1) of Section 21 empowers the prescribed authority to order the eviction of the tenant from a building which is in dilapidated condition and is required for the purposes of demolition and new construction.

8. It would thus be seen that the ambit and purport of Section 21 is to enable the landlord to seek eviction of a sitting tenant where in a given case, the conditions specified in that provision are made out and to release the disputed accommodation in favour of the landlord. The relief sought in the Civil Suit which is pending at the instance of the Petitioner and the relief which the Respondent-landlady has prayed in the proceedings u/s 21 of the Act, are distinct and different from each other and there is no similarity between two. Further, the relief which can be granted under the provisions of Section 21 of the Act, cannot under law be allowed by the civil court and the vice versa. By instituting a suit for permanent injunction, the Petitioner has prayed that the landlady be restrained from demolishing the disputed accommodation whereas in the proceedings u/s 21 of the Act, the landlady has

sought permission from the prescribed authority for demolition of the tenanted accommodation apart from the release of the premises in her favour. I am of the clear view that the provisions of Section 10 of CPC were not at all attracted in the instant case. In rejecting the application of the Petitioner by the impugned order, the Civil Court has expressed a somewhat similar view. The Special Judge (E. C. Act)/Additional District Judge, Kanpur Nagar, the first Respondent, therefore, did not commit any error of law when he rejected the application of the Petitioner by saying that the protection of Section 10 of the CPC was not available to the Petitioner.

9. In view of the aforesaid discussion, it is not necessary to address to the question as to whether the provisions of Section 10 of CPC could at all be invoked in the proceedings pending before the prescribed authority or in appeal against its order under the Act, although in some reported decisions a view to that effect has been expressed.

10. For what has been stated above, the writ petition is devoid of merit and is accordingly dismissed.