

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 10082 of 2023

Petitioner :- Shri Thakur Ji Baldau Ji And Shree Krishnaji Swami Sri
Satuwa Baba Nyas

Respondent :- Vinit Keshari

Counsel for Petitioner :- Tarun Agrawal

Counsel for Respondent :- Sharad Malviya

Hon'ble Prakash Padia,J.

1. Heard Shri Tarun Agrawal, learned counsel for the petitioner and Shri Sharad Malviya, learned counsel appearing on behalf of sole -respondent.
2. The present petition has been filed inter-alia with the prayer to set aside the order dated 13.09.2023 passed by District Judge, Varansi in Rent Appeal No.153 of 2023 (Vinit Keshari Vs. Thakur Ji Baldau Ji).
3. The facts in brief as contained in the petition are that the dispute pertains to tenancy of Shop No.11 situated in CK 62/19, 20, 21 and 22 jointly Kashipura (West), Ward Chowk, Varanasi-221001. The petitione is owner and landlord of the aforesaid property. Since after service of notice by the petitioner upon the respondent for non payment of rent, the premises in question was not vacated hence proceedings were initiated by moving an application for eviction as per the provisions contained under the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 and a case was registered as Case No.275 of 2023. The rent authority has allowed the application filed by the petitioner vide order dated 27.06.2023.
4. Aggrieved against the aforesaid, appeal was filed by the respondent before the District Judge, Varanasi, which was numbered as Rent Appeal No.153 of 2023. After filing of aforesaid appeal in order to avoid payment of pre-deposit the respondent came up with an innovative story

that the petitioner in connivance with the police administration broken the respondent's lock and put their own lock by filing Writ A No.13347 of 2023 and challenged the order passed by the rent authority. The aforesaid writ petition was disposed of by this Court vide its judgement and order dated 18.08.2023, which reads as follows:-

"1. Petitioners have preferred the present petition inter-alia with the following prayers:-

"(A). Issue an order or direction, to set aside the impugned order dated 30.6.2023 passed by respondent No.1 in Case No.288 of 2023 Computer Case No.D202314700000288 Shri Thakur Ji and others vs. Awadhesh Pandey under Section 21(2) of U.P. Nagariya Parisar Kiradari Viniman Adhiniyam, 2021.

(B). Issue an order or direction to direct the respondents No.2 to 6 to open the locks of the shops of the petitioners forthwith failing which the petitioners shall suffer huge loss which cannot be compensated in any manner.

(C). Issue an order or direction which this Hon'ble Court may deem fit and proper under the fact and circumstances of the case.

(D). Award the cost of this petition in favour of the petitioners."

2. On the request made by the counsel for the petitioners, prayer no.A has already been deleted from the prayer clause of the petition. Insofar as the prayer no.B is concerned, it is argued that wholly illegally locks were put up by the State-authorities with the help of the landlord on the shop of the petitioners without any authority of law. It is further argued that though the appeal was filed well within time as prescribed under Section 35 of the Act, 2021 before the expiry of the statutory period locks were put up on the shops of petitioners.

3. In response to the same, it is argued by the counsel appearing on behalf of respondents that on the Rent Appeal filed by the petitioners an order has already been passed on 16.08.2023 by which the appeal was admitted fixing 18.09.2023 for hearing. It is further argued by the counsel for the respondents that while arguing the matter on appeal, no point regarding put up of locks on the shops of the petitioners were raised or placed before the appellate court. The order passed by the In-charge District Judge, Varanasi dated 16.08.2023 in one of the appeal being Rent Appeal No. 143 of 2023 ((Arun Kumar Yadav vs. Shree Thakur Ji Baldau), is reproduced below:-

"Case called out. Ld. counsel for both the sides are present. Applicant / appellant ld. counsel urged that Order dated 26.07.2023 has been complied and the requisite rent has been deposited.

Respondent ld. counsel pressed on his application 17C stating that till the requisite amount / court fees as mentioned in the application is not deposited. The appeal cannot be admitted as the requisite court fees paid is insufficient and appellant / applicant has failed to deposit 50% fifty percent of the amount due.

As far as court fees is concerned. It is between the applicant / appellant and court.

Even if the Court fees paid is insufficient then it is a curable may which can be seen at the later stage also. This appeal has been filed against the Order dated 30.06.2023 passed by Rent Authority, Varanasi.

Also, at the stage of admission, another application 20C has been moved stating that Writ Petition has been filed in the Hon'ble High Court and there may be a chance that a contradictory order / judgment be passed by this Tribunal. On this account also, it has been pleaded that till the Order is passed by the Hon'ble High Court in above referred Civil Misc. Writ Petition, the Appeal may not be admitted. Above objection has been raised via application 20C.

As a matter before this Court has not even been admitted after the admission only, if any final order is passed by this Court then only the objection raised in 20C can be looked into. Since the Order has been passed by the Rent Authority and present appeal has been moved within time. Order dated 26-07-2023 has been complied as stated by Court official. Matter requires adjudication. Appeal is maintainable. Accordingly, it is admitted. Lower Court record be summoned. At this stage, no other relief has been pressed. Fixing 18-09-2023 for hearing of this Rent Appeal."

4. It is argued that identical orders were passed in other Rent Appeals.

5. Pursuant to the order dated 17.08.2023 passed by this Court, a report has been submitted by the Chief Judicial Magistrate, Varanasi. It is stated in the aforesaid report that on most of the shops, the shop numbers was not mentioned. Thereafter certain persons who were available on the spot were called for to determine the shop numbers and thereafter a report was submitted stating therein that on most of the shops locks were found. Lastly it is stated in the aforesaid report that only in order to maintain law and order, locks were put up on the close shops by the police authorities.

6. Now the question which is to be decided by this Court that whether the locks were put up on the shops during the pendency of the Rent Appeals or the locks were already there on the shops before the Rent Appeals were filed. This is a factual controversy which could not be decided by this Court under Article 226/227 of the Constitution of India.

7. In this view of the matter, the present petition is disposed of finally, directing the petitioners to move a proper application in this regard in their pending Rent Appeals. If such application is filed by the petitioners along-with the certified copy of this order within a period of one week from today, the appellate court where the Rent Appeals filed by the petitioners are pending is directed to decide the same, strictly in accordance with law, after providing an opportunity of hearing to all the parties concerned, most expeditiously and positively within a period of one week from the date of presentation of such an application before him.

8. Registry is directed to provide certified copy of this order to the counsel for the parties today itself."

5. It is argued that while deciding the aforesaid case, a direction was given by this Court to the petitioner of the aforesaid petition to move appropriate applications in the pending rent appeals within a week to the

effect that whether the locks were put up on the shops during the pendency of the Rent Appeals or the locks were already there on the shops before the Rent Appeals were filed and the Rent Appellate Tribunal was directed to decide the same within a further period of one week.

6. It is argued that pursuant to the same an application was filed by the appellants in the appeal, copy of which is appended as Annexure No.4 to the petition and objection have also been filed, copy of the same is appended as Annexure No.5 to the petition. On the said application, order dated 13.09.2023 was passed by the District Judge, Varanasi which is under challenge in the present petition.

7. Apart from various other arguments, it is argued by learned counsel for the petitioner that direction given by this Court as quoted above in paragraph 6 & 7 of the aforesaid judgment was not taken into consideration while passing the order impugned by the District Judge Varanasi. It is further argued that the District Judge Varanasi has failed to consider the specific plea of the petitioner that necessary pre-deposit as contemplated under Section 35 (Act, 2021) had been not paid, hence the order impugned passed by the District Judge is without jurisdiction. It is argued that the District Judge Varanasi has failed to record any cogent reason while allowing the aforesaid application.

8. Rejoinder to the same was also filed by Mr. Tarun Agrawal, learned counsel for the petitioner today in the Court, same is taken on record.

9. On the other hand it is argued by Shri Sharad Malviya, learned counsel, who put up his appearance on behalf of opposite party that the present petition filed by the petitioner under Article 227 of the Constitution of India is not maintainable and since the remedy lies to the petitioner to file a petition under Article 226 of the Constitution of India hence present petition is liable to be dismissed. Another objection has

been raised that in the affidavit filed by the petitioner the district has not been mentioned hence petition is a defective one and the same is also liable to be dismissed on this ground also.

10. In so far as merits of the case is concerned, it is also admitted by Shri Sharad Malviya, learned counsel for the respondent that the directions given by this Court as quoted above specially in paragraphs 6 & 7 were not taken into consideration by the District Judge, Varanasi while passing the order impugned.

11. It is further argued by Shri Sharad Malviya, learned counsel for the respondent that the keys of the premises in question has been handed over to his client and thereafter he is in peaceful possession over the shop in dispute. It is further argued that till the time the appeal is decided, the status quo as on today shall be maintained.

12. Pleadings have already been exchanged between the parties.

13. With the consent of counsel for the parties present petition is being disposed of at the admission stage.

14. In the counter affidavit two preliminary objections were raised. In so far as the first objection to the effect that petition filed under Article 227 is not maintainable is concerned, in the rejoinder affidavit filed by the petitioner it is stated that the Rent Tribunal has been constituted under Section 32 of the U.P. Regulation of Urban Premises Tenancy Act, 2021. He placed reliance upon Section 32 of the Act 2021, which read as follows :-

"Rent Tribunal" -The Rent Tribunal shall be presided over the District Judge himself or by Additional District Judge nominated by the District Judge in each district."

15. Learned counsel for the petitioner also placed reliance upon the

following judgements :-

(i) LIC Vs. Nandini J. Shah and others (2018) 15 SCC 356 (para 58)

(ii) Mahendra Kumar Jain Vs. Appellate Rent Tribunal, Ajmer and others -2021 SCC Online Raj 3133

(iii) Kuldeep Singh and others Vs. Additional Sessions Judge and others, CMWP No.153 of 2013 decided on 08.05.2015 (Para 22)

16. It is further argued that the language of Article 227 of the Constitution of India confers power of superintendence of tribunals to the High Court. It is further argued that in case of **Radhey Shyam and another Vs. Chhabi Nath and others reported in (2015) 5 SCC 423** it is held that the petition under Article 226 would not be maintainable. The Full Bench of the High Court of Rajasthan in the case of **Mehendra Kumar Jain Vs. Appellate Rent Tribunal, Ajmer and others** reported in **AIR 2022 Raj 7 (FB)** pleased to held that the judicial orders passed by the Rent Tribunal and Appellate Rent Tribunal are not amenable to the writ jurisdiction under Article 226 of the Constitution of India and legality of said judicial orders can only be questioned by invoking the power of Superintendence of this Court under Article 227 of the Constitution.

17. The following two legal questions were under consideration before the Full Bench of the Rajasthan High Court namely (I) Whether the appeal against the judgement of the Single Bench, reversing/upholding the judgement of the Appellate Rent Tribunal and/or the Rent Tribunal, would be maintainable before the Division Bench of this court under Rule 134 of the Rajasthan High Court Rules of 1952 ? (II) Whether the writ petition filed against the judgement of the Appellate Rent Tribunal and the Rent Tribunal by very nature of the dispute, would be considered to have been filed under Article 227 of the Constitution of India, irrespective of invocation of Article 226 of the Constitution of India in

the pleadings ?. The question no.2 is relevant in so far as the controversy involved in the present case is concerned, the question no.2 has been answered in paragraph 85 of the judgement, which reads as follows :-

"85. In the result, we answer the questions referred in terms that the Rent Tribunal and the Appellate Rent Tribunal constituted under the Act of 2001, while adjudicating the disputes between landlord and tenant, exercising the judicial power of the State, discharge judicial functions, which are akin to judicial functions discharged by civil Courts and thus, keeping in view the law laid down by the Hon'ble Supreme Court in various decisions including in Radhey Shyam and Life Insurance Corporation of India, the judicial orders passed by the Rent Tribunal and the Appellate Rent Tribunal are not amenable to writ jurisdiction under Article 226 of the Constitution and the legality of said judicial orders can only be questioned by invoking power of superintendence of this Court under Article 227 of the Constitution and thus, no intra-Court appeal would be maintainable against the orders passed by the learned Single Judge of this Court in such proceedings."

18. After going through the same, the Court is of the opinion that preliminary objection raised by learned counsel for the respondent regarding maintainability of the petition under Article 227 of the Consitution of India is no force and the same is rejected.

19. In so far as second objection is concerned, it is argued by counsel for the petitioner that mistake is only typographical and in the Aadhar Card appended along-with the affidavit and in all other places district Varanasi has been duly mentioned. It is stated in paragraph 12 of the affidavit that Shri Shashidhar Pandey is indeed resident of Varanasi and the Aadhar Card appended with the main petition is indeed genuine. In this view of the matter, the Court is of the opinion that the aforesaid objection is also no force and is hereby rejected.

20. It reveals from perusal of the record that though certain directions were given by this Court to the Rent Appellate Authority while deciding the matter on 18.08.2023 but while passing the order impugned aforesaid

directions were not taken into consideration hence the Court is of the opinion that the order passed by the Appellate Authority dated 13.09.2023, which is under challenged in the present petition is bad in the eyes of law. This fact is also admitted by Shri Sharad Malviya, learned counsel for the respondents.

21. In this view of the matter, the order dated 13.09.2023 passed by District Judge, Varansi in Rent Appeal No.153 of 2023 is liable to be set aside and the same is hereby set aside.

22. As agreed by the counsel for the parties and also in the peculiar facts and circumstances of the case, the court below namely Rent Appellate Tribunal before whom the aforesaid appeal is pending along-with various other similar appeals, is directed to decide the same expeditiously and positively within a period of six weeks from from the date of submission of certified copy of this order unless there is any legal impediment. Till the time rent appeal is decided, status quo as on today shall be maintained.

23. It is made clear that the party will not take any unnecessary adjournment.

Order Date :- 13.10.2023
Pramod Tripathi