

Court No. - 17

Case :- MATTERS UNDER ARTICLE 227 No. - 1848 of 2024

Petitioner :- Umakant Shukla

Respondent :- Add. Distt. And Sessions Judge Lko. Court No. 8 And Another

Counsel for Petitioner :- Mohd Shadab Khan

Hon'ble Manish Mathur,J.

1. Power filed by Mr. Ram Kumar Verma and Mr. Vinod Kumar Paryani, Advocates on behalf of opposite party no.2 is taken on record.
2. Heard learned counsel for the petitioner, Mr. Ram Kumar Verma and Mr. Vinod Kumar Paryani for the respondent no.2. Opposite party no.1 being merely proforma in nature, notice is hereby dispensed with.
3. Learned counsel for respondent no.2 has submitted that he does not wish to file any counter affidavit and that the petition itself may be decided finally.
4. Petition under Article 227 of the Constitution of India has been filed challenging orders dated 16.02.2023 and 02.12.2023 passed by the Additional and Sessions Judge, Lucknow in Rent Appeal No.16 of 2017, whereby two successive applications for commission have been rejected.
5. Learned counsel for the petitioner submits that opposite party no.2 had filed an application under Section 21(1)(a) of the Uttar Pradesh Building (Regulation of Letting, Rent and Eviction) Act, 1972 which was registered as P.A. Case no.5 of 2014 for release of shop no.17 situate as per location indicated in the plaint. It has been submitted that during the course of proceedings, petitioner, who is the tenant of the premises in question, attained knowledge of the fact that the landlord's husband had another shop in the name and style of 'Raj Cloth

Store' on the main road of the market and therefore had indicated the said fact in the statement denying bonafide need of the landlord. It is submitted that during the course of proceedings, the petitioner filed application C-31 for commission of the shops allegedly held by the husband of the landlord. The said application was rejected vide order dated 30.10.2015, whereafter he moved another application C-43 which was also rejected vide order dated 15.07.2017 and the PA case was thereafter decided in favour of the landlord vide judgment and order dated 19.07.2017, whereafter Rent Appeal has been filed.

6. Learned counsel for the petitioner further submits that during course of appeal, the petitioner has filed the aforesaid applications, one for inspection of the property held by the landlord's husband and another application for inspection of shop no.17 which is under tenancy of the petitioner. It is submitted that aforesaid applications were filed to prove the submission of petitioner that the landlord had adequate alternative accommodation available with her and therefore there was no question of any bonafide need whereas the second application pertains for exact measurement of the shop under tenancy of petitioner in order to prove that its size would be inadequate for use as business establishment for which the application under Section 21(1)(a) of the Uttar Pradesh Building (Regulation of Letting, Rent and Eviction) Act, 1972 had been filed. It is submitted that the appellate Court has erroneously rejected the aforesaid applications without adverting to the aforesaid propositions.

7. Learned counsel for the petitioner has placed reliance upon **Okhla Enclave Plot Holders Welfare Association vs. Union of India and others** reported in (2009) 17 SCC 375 and **Vijai Kumar vs. Addl. District Judge, Small Causes Court, Meerut and another** reported in *Allahabad Rent Cases*, 1996(2) 659.

8. Learned counsel for opposite party no.2 has refuted submissions of learned counsel for petitioner with the submission that the aforesaid applications have been rightly rejected by the Court concerned since they had been filed only to delay the proceedings of Rent Appeal which is pending consideration since 2017. It is submitted that the appellate Court has rightly recorded its finding that the aforesaid applications have been filed only to create evidence, which is impermissible. He has placed reliance upon **Sushil Chandra Gupta vs. Prescribed Authority/ Civil Judge (Sr. Div.) Hardoi & Ors.** reported in *(2017) 2 ARC 147*

9. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is evident that by means of impugned orders, applications for commission submitted by petitioner/ tenant have been rejected primarily on the ground that petitioner has failed to support his claim by any documentary evidence and therefore commission cannot be permitted to create evidence. It is evident from the record that at the stage of prescribed authority as well, the petitioner had filed two applications for commission bearing numbers C-31 and C-43, which have been rejected by the trial Court. At the appellate stage as well, two fresh applications have been submitted for commission in the same manner as were submitted before the prescribed authority.

10. The trial Court, while passing order dated 16.02.2023 rejecting the application no. C-16, has specifically indicated that although a submission has been advanced by the petitioner/ tenant that the husband of landlord is in use and occupation of the shop, but has failed to submit any documentary evidence to establish the same. Perusal of the application C-16 dated 28.01.2021 indicates that commission is being sought for spot inspection to note down necessary information pointed out by the parties or their counsel on spot. There is no averment as to the nature and necessity of the spot inspection of a property

which is not under tenancy of petitioner. Only a blank assertion has been made that the landlord's husband has a shop on the main road in the name of 'Raj Cloth Store'. Neither the location nor boundaries of the aforesaid shop have been indicated in the application which is clearly vague in nature.

11. Even otherwise, the appellate court has also rejected the application on the ground that first of all the tenant was required to have produced any documentary evidence to support the claim that the landlord's husband had an alternative accommodation available which could be used by the landlord and therefore commission cannot be issued mainly for creating evidence.

12. This Court does not find any exception with reasoning indicated in the impugned order dated 16.02.2023. In the considered opinion of this Court, in case the tenant was making an allegation of alternative accommodation being available with the landlord, it was incumbent upon him to have adverted or place on record some documentary evidence to prove the same, whereafter only, he may have sought the commission since it is settled law as also enunciated in the case of **Sushil Chandra Gupta (supra)**, that commission cannot be directed for creation of evidence and can be done only in support of evidence which is already on record.

13. With regard to impugned order dated 02.12.2023, it is evident that the same has rejected application registered as C-18 filed by the tenant for commission to inspect the premises under tenancy bearing shop nos.9, 10 and 17. The aforesaid application has also been rejected that in case any such commission is directed, it would nullify the findings recorded in the order dated 16.02.2023, which has become final between the parties. The order also reiterates the fact that commission cannot be issued for creation of evidence and can be only for purposes of corroboration of evidence which is already on

record.

14. Perusal of application for commission brings out the fact that primary assertion made by the tenant for commission of the aforesaid shops is that the shop no.17 is quite small having an area of only 24 sq. ft. and therefore commission is required to inspect the premises and note down the material which is pointed out in the commission on the spot by the authorities.

15. The fact as to whether the shop would or would not satisfy the bonafide need of the landlord is a factor to be considered by the appellate authority in terms of evidence which is already on record and is proved to its satisfaction. The aspect of the shop being too small for use and occupation and for the reasons of bonafide need cannot be adjudicated upon on the basis of a commission.

16. In view of the aforesaid, this Court does not find any exception to the impugned order dated 02.12.2023 as well.

17. Learned counsel for the petitioner has placed reliance on judgment rendered by Co-ordinate Bench of this Court in case of **Vijay Kumar (supra)**. A perusal of aforesaid judgment does not indicate any proposition of law which would attain the status of precedent required to be followed. The direction was issued on the facts and circumstances of the case which was before the Court. There is no law laid down in the aforesaid judgment that commission is to be issued as a matter of right for creation of evidence. Similarly, in the case of **Okhla Enclave Joint Account Committee and others (supra)**, the directions have been issued on the facts and circumstances of the case itself without any precedent to be required to be followed.

18. In the considered opinion of this Court, the aforesaid judgments are inapplicable in the facts and circumstances of the case.

19. Considering the aforesaid, this Court does not find any

exception to the impugned orders dated 16.02.2023 and 02.12.2023 in Rent Appeal No.16 of 2017. The petition being devoid of merits is accordingly **dismissed**.

20. Parties to bear their own costs.

Order Date :- 23.4.2024

Arnima