

Nidhi vs Ram Kripal Sharma (D) Thr. Lrs on 7 February, 2017

Equivalent citations: AIR 2017 SUPREME COURT 814, 2017 (2) ALJ 765, AIR 2017 SC (CIVIL) 908, (2017) 121 ALL LR 905, (2017) 172 ALLINDCAS 152 (SC), (2017) 1 KER LT 690, (2017) 2 CIVILCOURTC 668, (2017) 1 WLC(SC)CVL 400, (2017) 2 KCCR 156, (2017) 1 RENTLR 547, (2017) 1 KER LJ 708, (2017) 2 MAD LJ 210, (2017) 2 SCALE 276, 2017 (5) SCC 640, (2017) 3 UC 1951, (2017) 1 RENCRCR 223, (2017) 1 ALL RENTCAS 568, AIR 2017 SC (CIV) 908

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Bench: R. Banumathi, Dipak Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1008 OF 2017

[ARISING OUT OF SPECIAL LEAVE PETITION (C) NO.19117 OF 2013]

NIDHI

.... Appellant

Versus

RAM KRIPAL SHARMA (D) THROUGH LRs.

.... Respondents

J U D G M E N T

R. BANUMATHI, J.

This appeal by way of special leave is preferred against the order dated 23.01.2013 passed by the High Court of Judicature at Allahabad in Writ Appeal No.19835 of 2003, wherein the High Court affirmed the order passed by Additional District Judge, Moradabad, thereby setting aside release order dated 29.10.1991 passed by the Prescribed Authority.

2. Brief facts of the present case are that the appellant is the owner and landlord of the premises in question, which is a non-residential accommodation. Allegedly, the premises was let out by ancestors of the appellant's family when they did not require the premises for personal use as the previous owner of the accommodation Smt. Krishna Devi wife of Kunwar Mahendra Pratap Singh had adequate place to reside in. After the demise of Smt. Krishna Devi, appellant Nidhi became the

owner of the premises in question and continued to receive rent from the respondent. The appellant filed a release application being PCS No.97 of 1987, under Section 21(1)(a) of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as U.P. Act XIII of 1972), seeking possession of the suit premises on the ground of her bona fide personal requirement. The appellant alleged that she is in need of the premises as the appellant wants to accommodate her grandparents in the demised house who live in village and are in need of care and medical treatment. Moreover, the appellant alleged that she and her younger sister required separate room for study. It was alleged that the respondent carries out the said hotel business for namesake only and is being carried out by the servant of the respondent. It was further alleged by the appellant that the respondent's main business is that of a sweet shop and he has sufficient means to take some other place on rent to run his hotel business.

3. Respondent-tenant admitted the tenancy in the property in dispute and resisted the application for release of accommodation, claiming that the appellant and her sister live in a big house called Kath Mahal which has sufficient space comprising of large rooms and large halls. It was averred that the grandparents of the appellant are big landlords in the village and live in a palatial house there and they are unable to climb stairs in the suit premises. Also, the alleged business of sweet shop is run by his son and the entire family is dependent upon the income from hotel business.

4. Upon consideration of evidence and on hearing the parties, the Prescribed Authority held that the balance of convenience lies in favour of the appellant and taking into consideration the social status of family and that the grandparents of the appellant want to live with her parents, found that the appellant bona fide requires the premises and vide order dated 29.10.1991 allowed the application for release of suit premises. The Prescribed Authority directed the appellant-landlord to compensate the respondent by giving him a sum equivalent to two years of rent before taking possession.

5. Respondent-tenant challenged the aforesaid order by way of Rent Control Appeal No.72 of 1991 under Section 22 of U.P. Act XIII of 1972, before the Additional District Judge at Moradabad, who vide order dated 04.02.2003, allowed the appeal and set aside the order passed by the Prescribed Authority holding that the appellant's need for the suit premises is not based on bona fide requirement and her need for accommodation is not immediate or pressing.

6. Aggrieved by the said order of the appellate court, the appellant filed Writ Appeal No.19835 of 2003 before the High Court of Judicature at Allahabad. The High Court upon consideration of the facts and materials placed on record before it and after hearing the contentions of the parties before it dismissed the writ appeal holding that the relief claimed originally has, by reason of subsequent development in circumstances, become inappropriate. The High Court found that when the statement of appellant was recorded, she was a student of B.Sc. and was of marriageable age and as the matter went before the appellate authority, the situation changed as the Court noticed that the appellant was married on 23.01.1996 and her husband was a member of Indian Revenue Service who was, at that time, posted at Delhi and subsequently in Mumbai. The High Court also observed that the sisters of the appellant also got married and were living with their husbands, elsewhere and that the alleged need had disappeared long back. The High Court relied on the judgments of this Court in *Hasmat Rai vs. Raghunath Prasad* (1981) 3 SCC 103 and *Kedar Nath Agrawal and Anr. vs.*

Dhanraji Devi and Anr. 2004 (4) AWC 3709 (SC), to take the cognizance of subsequent events.

7. Learned counsel for the appellant submitted that the first appellate court and the High Court have erroneously denied the relief sought by the appellant in the release application only because during the pendency of the appeal filed by the respondent, the appellant got married which is a subsequent development which would naturally take place and the appellant cannot be made to suffer on account of delay in adjudication. It was further contended that only because the husband of the appellant has been allotted a government accommodation, the need of the appellant did not disappear as the appellant required the scheduled premises for her own use and occupation as well as for the use and occupation of her family and the appellant requires the scheduled premises for herself as well as for her parents and grandparents and her bona fide requirement has not been properly considered by the High Court.

8. Per contra, learned counsel for the respondents submitted that this Court has in numerous cases held that in case of eviction on the ground of bona fide need and comparative hardship, the court must consider the subsequent changes in events to decide the bona fide requirement of the landlord. It was further submitted that in her release application, the appellant had set up her bona fide need but failed to substantiate her stand and hence the first appellate court and the High Court rightly dismissed the release application.

9. We have considered the rival contentions of learned counsel for the parties and perused the impugned order and other materials on record.

10. The point falling for consideration is whether the marriage of the appellant/landlady as subsequent event can extinguish the bona fide requirement of a landlady and disentitle her for the relief sought in the release application filed prior to her marriage.

11. Before proceeding further, it is apposite to have a look over the related provision under Section 21(1) of the U.P. Act which deals with proceedings for release of building under occupation of tenant, clause (a) of sub-Section (1) of Section 21 of the Act alone is germane in the present proceedings and the said clause reads as under:-

“21. Proceedings for release of building under occupation of tenant.- (1) The Prescribed Authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists namely-

(a) 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 any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust;

.....” An analysis of the above provision would show that the landlord of rented property is entitled to the vacant possession of his rented premises in the event of his bona fide requirement of the said premises for his own residential or professional requirements or for any person related to him.

12. In the facts of present case, the appellant-landlady herein was living in a small house with her family comprising four members and was not able to accommodate her ailing grandparents who used to visit them frequently for medication purposes and were willing to reside with them permanently as they were living alone in their village where nobody was there to look after them. Appellant in order to accommodate her grandparents with them and in the light of growing needs of her and her younger sister (who were then studying) filed the release application before the prescribed authority and the release order was granted by the prescribed authority in favour of the appellant/landlady directing respondent-tenant to handover vacant possession of suit premises to the appellant. As noticed earlier, during the pendency of appeal, preferred by the respondent-tenant, the appellant got married and settled with her husband. The first appellate court as well as the High Court took note of this as subsequent development and held that the requirement no longer subsists and the claim of personal requirement has disappeared. Of course, during the pendency of lis between the parties, situation underwent a change and the appellant got married to an Indian Revenue Service Officer and started residing with him in Delhi and Mumbai etc. Though the appellant is married and settled with her husband, her bona fide requirement cannot be said to have ended as she wanted the premises not just for herself but to accommodate her parents and grandparents in the suit premises so that they can live together. The family of the appellant is still said to be residing in rented premises in Moradabad, despite having their own suit premises to reside in. In the facts of present case, the change in subsequent events is not such that would deprive the appellant of her right to vacant possession of suit premises as it is a natural event that the daughter of the house would get married and settle with her husband. Though the appellant has got married and shifted to different accommodation with her husband, the actual bona fide requirement of premises is still the same, since her parents and grandparents are still residing separately from each other with no one to look after them. More so, the appellant got married but the family stays where it is and the bona fide requirement of premises for accommodation of parents remains the same. Being married and shifting to other place does not automatically result in extinguishing of bona fide requirement of the appellant as being the owner of property, she alone is to decide what she wants to do with her property.

13. The legislations made for dealing with such landlord-tenant disputes were pro-tenant as the court tends to bend towards the tenant in order to do justice with the tenant; but in the process of doing justice the Court cannot be over zealous and forget its duty towards the landlord also as ultimately, it is the landlord who owns the property and is entitled to possession of the same when he proves his bona fide beyond reasonable doubt as it is in the case before this Court.

14. First appellate court as well as the High Court observed that during the pendency of the appeal, the appellant got married, her husband a member of Indian Revenue Service (IRS) posted at Delhi, Mumbai and other places and this subsequent event has extinguished the personal requirement of the appellant. In the impugned judgment, the High Court referred to number of judgments Hasmat

Rai and Another vs. Raghunath Prasad (1981) 3 SCC 103; Ramesh Kumar vs. Kesho Ram (1992) Suppl. (2) SCC 623 and other judgments.

15. Ordinarily, rights of the parties stand crystallised on the date of institution of the suit. However, the court has power to take note of the subsequent events and mould the relief accordingly. Power of the court to take note of subsequent events came up for consideration in a number of decisions. In Om Prakash Gupta vs. Ranbir B. Goyal (2002) 2 SCC 256, this Court held as under:-

“11. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In Pasupuleti Venkateswarlu v. Motor & General Traders (1975) 1 SCC 770 this Court held that a fact arising after the lis, coming to the notice of the court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the court cannot be blinked at. The court may in such cases bend the rules of procedure if no specific provision of law or rule of fair play is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The Court speaking through Krishna Iyer, J. affirmed the proposition that the court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the Court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautious, and (iv) the rules of fairness to both sides should be scrupulously obeyed.

Om Prakash Gupta's case was referred with approval in Ram Kumar Barnwal vs. Ram Lakhan (Dead) (2007) 5 SCC 660.

16. Though the court has the power to take note of the subsequent events, court has to consider the effect of subsequent development on the bona fide need of the landlord. For the purpose of coming to the conclusion on bona fide need of the landlord, comparative hardship to the parties will have to be taken into consideration. As discussed above, in the present case, the appellant got married during the pendency of the appeal and settled with her husband; still her requirement to accommodate her parents and grandparents continued. Appellant has established her bona fide requirement for accommodating her parents and grandparents in the suit premises merely because

the appellant got married amidst the proceedings does not extinguish her claim for the relief of possession of the suit premises. In our view, the subsequent event, namely, marriage of appellant does not extinguish her requirement considering the comparative hardship, it is to be pointed out that the respondents have another business of sweet shop and thus, is not going to suffer if ordered to vacate the suit premises as they can shift the place of business to some other place without suffering any loss of occupation, whereas the parents of the appellant would be subjected to hardship as she has no other premises to accommodate her grandparents as well as her parents. While taking note of the subsequent events, the High Court has not considered the comparative hardship to the appellant and erred in declining the relief to the appellant.

17. In the result, the appeal is allowed, the impugned order of the High Court is set aside and the order passed by the prescribed authority i.e. Court of Second Upper Civil Judge, Moradabad dated 29.10.1991 is restored. The appellant shall deposit the compensation before the prescribed authority payable to the respondent within four weeks from today. The respondent shall handover the possession of the suit premises within one month from the date of deposit of the amount, failing which the respondent- tenant shall be liable for committing contempt of this Court. No costs.

.....J. [DIPAK MISRA]J. [R. BANUMATHI] New Delhi;

February 07, 2017