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DEEPAK TANDON & ANR.

v.

RAJESH KUMAR GUPTA

(Civil Appeal Nos. 1537-1538 of 2019)

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FEBRUARY 07, 2019

**[ABHAY MANOHAR SAPRE AND  
DINESH MAHESHWARI, JJ.]**

*Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972:*

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*s.21(1)(a) – Application under – Seeking eviction of tenanted premises – On the ground of bona fide requirement for commercial purpose – Competent Authority as well as Appellate Court, giving concurrent finding held that the tenant was liable to be evicted – Writ appeal u/Art. 227 of Constitution – High Court held that the*

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*application for eviction for commercial need was not maintainable by virtue of proviso to s.21, because the premises in question was essentially for residential purpose – Review against the order dismissed – On appeal, held : The plea of maintainability was not raised either before the prescribed Authority or before the appellate*

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*Court – In absence of such plea or issue, such plea cannot be raised for the first time before the third court – Nature of tenancy (whether commercial or residential) is not a pure question of law, but is a question of fact and hence such question was first required to be pleaded and then proved – If a tenancy is for composite purpose, landlord has the right to seek eviction either for his residential need*

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*or commercial need – High Court exceeded its jurisdiction in interfering with concurrent findings of fact – Rent Control and Eviction.*

**Allowing the appeals, the Court**

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**HELD: 1. The High Court committed jurisdictional error in setting aside the concurrent findings of the two Courts below and thereby erred in allowing the respondent's writ appeal and dismissing the appellants' application under Section 21(1)(a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 as not maintainable. [Para 17][688-G]**

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2. If the plea is not taken in the pleadings by the parties and no issue on such plea was, therefore, framed and no finding was recorded either way by the Trial Court or the First Appellate Court, such plea cannot be allowed to be raised by the party for the first time in third Court whether in appeal, revision or writ, as the case may be, for want of any factual foundation and finding. It is more so when such plea is founded on factual pleadings and requires evidence to prove, i.e., it is a mixed question of law and fact and not pure jurisdictional legal issue requiring no facts to probe. [Paras 21 and 22][689-C-D]

3. The respondent-tenant had not raised the plea of maintainability of the appellants' application under Section 21(1)(a) of the Act, 1972 in his written statement before the Prescribed Authority. Since the respondent failed to raise the plea of maintainability, the Prescribed Authority rightly did not decide this question either way. The respondent also did not raise the plea of maintainability before the First Appellate Court in his appeal and, therefore, the First Appellate Court was also right in not deciding this question either way. [Paras 18, 19 and 20][689-A-C]

4. The question as to whether the tenancy is solely for residential purpose or for commercial purpose or for composite purpose, i.e., for both residential and commercial purpose, is not a pure question of law but is a question of fact, therefore, this question is required to be first pleaded and then proved by adducing evidence. Therefore, such question could not have been decided by the High Court for the first time in third round of litigation in its writ jurisdiction simply by referring to some portions of the pleadings. [Paras 23 and 24][689-E-F]

5. If the tenancy is for composite purpose because some portion of tenanted premises was being used for residence and some portion for commercial purpose, i.e., residential and commercial, then the landlord will have a right to seek the tenant's eviction from the tenanted premises for his residential need or commercial need, as the case may be. [Para 25][689-G]

6. High Court exceeded its jurisdiction in interfering in the concurrent findings of fact of the two Courts below while

- A **allowing the writ appeal entirely on the new ground of maintainability of the application without examining the legality and correctness of the concurrent findings of the two Courts below. The High Court should have seen that the concurrent findings of facts of the two Courts below were binding on the writ Court because these findings were based on appreciation of evidence**
- B **and, therefore, did not call for any interference in the writ jurisdiction. [Paras 26 and 27][689-H; 690-A-B]**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1537-1538 of 2019.

- C From the Judgment and Order dated 03.08.2016 of the High Court of Judicature at Allahabad in Writ A. No. 32311 of 2014 and order dated 24.03.2017 in Civil Misc. Review Application No. 275082 of 2016 in Writ A. No. 32311 of 2014.

- D Avi Tandon, Ms. Deepti Tandon, Anish Agarwal, Omar Waziri, Ms. Meghna Tandon, T. Mahipal, Advs. for the Appellants.

Nitin Bhardwaj, Baij Nath Patel, Advs. for the Respondent.

The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.** 1. Leave granted.

- E 2. These appeals are filed against the final judgment and order dated 03.08.2016 passed by the High Court of Judicature at Allahabad in Writ Appeal No. 32311 of 2014 and the order dated 24.03.2017 in Civil Misc. Review Application No. 275082 of 2016 in Writ Appeal No. 32311 of 2014.

- F 3. A few relevant facts need mention hereinbelow to appreciate the short controversy involved in these appeals.

- G 4. The appellants are the applicants and the respondent is the opposite party in the application filed by the appellants herein under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'The Act, 1972') before the Prescribed Authority, Allahabad.

- H 5. The appellants are the owners and the landlord of the House No. 18/15, Hastings Road (1/5 Nyay Marg), Tandon Quarters, Allahabad (hereinafter referred to as "suit house"). They have let out the suit house to the respondent as their tenant on monthly rent.

6. The appellants filed an application (P.A. No.20/2011) before the Prescribed Authority under Section 21(1)(a) of the Act, 1972 against the respondent(tenant) seeking his eviction from the suit house. The eviction was sought on the ground of the appellants' *bona fide* need for doing and continuing with their business operations in the suit house. The appellants alleged *inter alia* that presently they are carrying on their business operations in a tenanted premises, which is hardly 50-60 mtr. away from the suit house. The appellants alleged that they have no other suitable accommodation of their own in the city where they can do their business and hence the application in question seeking release of the suit house for their personal *bona fide* need.

7. The respondent filed his reply. The respondent, however, admitted that the appellants are carrying on their business operations in the place pointed out by them but, according to him, they were not paying any rent for use and occupation of the said place to its owners because the owners of the said house were in relation with them. The respondent then pointed out that the appellants also have their own one shop in the city, which is still lying vacant and, therefore, the appellants can accomplish their need by using the said shop.

8. The Prescribed Authority, by order dated 10.01.2013, allowed the application. It was held that, there exists a relationship of the landlord and tenant between the parties in relation to the suit house; the appellants' need for carrying on their business operation is *bona fide*; and the appellants do require the suit house to carry on their business in the suit house. It was also held that the place pointed out by the respondent where the appellants could carry on their business operation was not sufficient and, therefore, the respondent was liable to be evicted from the suit house to enable the appellants to do and carry on their business operations in the suit house.

9. The respondent felt aggrieved by the said order and filed appeal (Rent Control Appeal No.52/2013) before the District Judge, Allahabad. By order dated 30.05.2014, the District Judge dismissed the appeal and affirmed the order of the Prescribed Authority.

10. The respondent felt aggrieved by the said order and carried the matter to the High Court under Article 227 of the Constitution of India. By impugned order, the Single Judge of High Court allowed the writ appeal and set aside the orders of the Appellate Court and Prescribed

- A Authority and dismissed the appellants' application filed under Section 21 (1)(a) of the Act, 1972.

11. The High Court allowed the writ appeal mainly on the ground that the application filed by the appellants under Section 21(1)(a) of the Act, 1972 was not maintainable. The High Court held that the pleadings of the parties indicate that the tenancy in question was essentially for residential purpose because out of four rooms, the respondent was using three rooms for residence and one room for shop, whereas the appellants sought respondent's eviction for their commercial need which, according to the High Court, was not permissible by virtue of proviso to Section 21 of the Act, 1972. The High Court, therefore, did not examine the findings of the two Courts below on merits, which were answered in appellants' favour.

12. Against the said order, the appellants filed the review application before the High Court, which was also dismissed.

- D 13. The appellants (applicants-landlord) have felt aggrieved by the orders of the High Court in appeal and the review and filed these appeals by way of special leave in this Court.

E 14. So, the short question, which arises for consideration in these appeals, is whether the Single Judge was justified in allowing the respondent's writ appeal and was, therefore, justified in dismissing the appellants' application filed under Section 21 (1)(a) of the Act, 1972 as not maintainable.

15. Heard Mr. Avi Tandon, learned counsel for the appellants and Mr. Nitin Bhardwaj, learned counsel for the respondent.

- F 16. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeals, set aside the impugned order and restore the orders of the Prescribed Authority and the Appellate Court (District Judge).

G 17. In our considered opinion, the High Court committed jurisdictional error in setting aside the concurrent findings of the two Courts below and thereby erred in allowing the respondent's writ appeal and dismissing the appellants' application under Section 21(1)(a) of the Act, 1972 as not maintainable. This we say for the following reasons.

- H 18. First, it is not in dispute that the respondent (opposite party) had not raised the plea of maintainability of the appellants' application

under Section 21(1)(a) of the Act, 1972 in his written statement before the Prescribed Authority. A

19. Second, since the respondent failed to raise the plea of maintainability, the Prescribed Authority rightly did not decide this question either way.

20. Third, the respondent again did not raise the plea of maintainability before the First Appellate Court in his appeal and, therefore, the First Appellate Court was also right in not deciding this question either way. B

21. Fourth, it is a settled law that if the plea is not taken in the pleadings by the parties and no issue on such plea was, therefore, framed and no finding was recorded either way by the Trial Court or the First Appellate Court, such plea cannot be allowed to be raised by the party for the first time in third Court whether in appeal, revision or writ, as the case may be, for want of any factual foundation and finding. C

22. Fifth, it is more so when such plea is founded on factual pleadings and requires evidence to prove, i.e., it is a mixed question of law and fact and not pure jurisdictional legal issue requiring no facts to probe. D

23. Sixth, the question as to whether the tenancy is solely for residential purpose or for commercial purpose or for composite purpose, i.e., for both residential and commercial purpose, is not a pure question of law but is a question of fact, therefore, this question is required to be first pleaded and then proved by adducing evidence. E

24. It is for this reason, such question could not have been decided by the High Court for the first time in third round of litigation in its writ jurisdiction simply by referring to some portions of the pleadings. F

25. In any case and without going into much detail, we are of the view that if the tenancy is for composite purpose because some portion of tenanted premises was being used for residence and some portion for commercial purpose, i.e., residential and commercial, then the landlord will have a right to seek the tenant's eviction from the tenanted premises for his residential need or commercial need, as the case may be. G

26. Seventh, the High Court exceeded its jurisdiction in interfering in the concurrent findings of fact of the two Courts below while allowing

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A the writ appeal entirely on the new ground of maintainability of the application without examining the legality and correctness of the concurrent findings of the two Courts below, which was impugned in the writ appeal.

B 27. Eighth, the High Court should have seen that the concurrent findings of facts of the two Courts below were binding on the writ Court because these findings were based on appreciation of evidence and, therefore, did not call for any interference in the writ jurisdiction.

28. In the light of the aforementioned eight reasons, we are of the considered opinion that the impugned order is not legally sustainable.

C 29. In view of the foregoing discussion, the appeals succeed and are hereby allowed. The impugned order is set aside. As a consequence, the orders passed by the Prescribed Authority and the first Appellate Authority are restored.

D 30. The respondent is, however, granted three months' time to vacate the suit house from the date of this order subject to the condition that he furnishes the usual undertaking in this Court and pays to the appellants the entire arrears of rent up to date as per the agreed rate of rent or the rent determined by the Prescribed Authority in its order in the Court below and further pay three months' rent at the same rate by way  
E of use and occupation in advance along with the arrears of rent.