Shamahad Ahmad & Ors vs Tilak Raj Bajaj (D) By Lrs. & Ors on 11 September, 2008

Author: C.K. Thakker

Bench: Lokeshwar Singh Panta, C.K. Thakker

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8067 OF 2004

SHAMSHAD AHMAD & ORS. ... APPELLANTS

VERSUS

TILAK RAJ BAJAJ (DECEASED)
THROUGH LRs. & ORS. ... RESPONDENTS

J U D G M E N T

C.K. THAKKER, J.

1. The present appeal is filed by the landlords against the judgment and order passed by the High Court of Uttaranchal on September 28, 2002 in Writ Petition No. 2067 (M/S) of 2001. By the impugned order, a Single Judge of the High Court of Uttaranchal reversed an order of eviction passed by the Additional District Judge III (FTC), Dehradun (Appellate Authority), dated May 25, 2001 in Rent Control Appeal No. 165 of 1995 and restored the order passed by the Prescribed Authority (First Additional Civil Judge, Senior Division), Dehradun dated November 18, 1995 in P.A. Case No. 53 of 1989 by which the application of the landlords for eviction of respondent-tenant came to be dismissed.

2. For appreciating the controversy in the present appeal, few relevant facts may be noted.

3. The appellants are landlords having Shop No.2 in Building No. 43 situated on Gandhi Road in the city of Dehradun. The respondents are heirs of one Prakash Chand. Initially, the property was let out to Prakash Chand, grandfather of the respondents who are heirs and legal representatives of said Prakash Chand. The tenancy was created in 1956 at a monthly rent of Rs.18.75 paise per month which was subsequently raised to Rs.25.50 paise.

4. It appears that the landlords served notice on October 3, 1988 to the tenant terminating his tenancy. A suit for possession was thereafter instituted being Eviction Suit No. 4 of 1989 titled Shamshad Ahmad & Ors. v. Prakash Chand in the Small Causes Court, Dehradun and the matter was sub-judice. During the pendency of the suit, landlords made an application to the Prescribed Authority 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') for possession of the suit shop on the ground that the landlords required the shop bona fide for carrying on business by Matloob Ahmad, husband of Smt. Kishwar Ahmad-applicant No.6 with Kum. Faraha Matloob, daughter of Smt. Kishwar Ahmad and Matloob Ahmad for running business in readymade garments.

5. It was the case of the landlords that Matloob Ahmad, husband of Smt. Kishwar Ahmad who was working in C.D. Account Service, was due to retire within a short period. He had no any other business of his own. Smt. Kishwar Ahmad, therefore, wanted to get possession of suit shop so that her husband Matloob Ahmad could carry on business in readymade garments with her daughter Kum. Faraha Matloob.

6. The tenant Prakash Chand filed a written statement controverting the facts stated and averments made in the application and contested the claim of the landlords. It was stated that landlords were having huge property in Dehradun. They were enjoying high status and were a `reputed family' in the city. They were very rich and having business in timber wood. They did not require the shop for doing business in readymade garments. Matloob Ahmad was in Government service and had not retired. It was also contended that even after retirement, he would not do business in readymade garments. Neither Matloob Ahmad nor Kum. Faraha Matloob had any experience in the business of readymade garments and on that ground also, the claim was not well founded. Moreover, both Smt. Kishwar Ahmad and Kum. Faraha Matloob were pardanasin ladies. For that reason also, they could not come in public and could not do any business. The application was filed only with a view to get the tenant evicted. Moreover, one suit which had already been instituted for getting possession on the ground that the property was in dilapidated condition and was required repairing, was pending and hence an application under Section 21 of the Act was not maintainable. It was stated that the tenant was very poor having a grocery shop. He was doing business since last about forty years. The income from the grocery shop run by the tenant from the suit shop was the only means of income for the entire family consisting of nine members. If eviction order is passed against the tenant, he would be deprived of livelihood and his family would starve. It was, therefore, submitted that the application was liable to be dismissed.

7. The Prescribed Authority, on the basis of the pleadings of the parties, considered the rival claims and perused the evidence led by both the sides. As far as maintainability of the application is concerned, it was held that such application was tenable. The ground put forward by the landlords in the application under Section 21 was totally different, distinct and independent of the suit filed by the landlords earlier and hence the application was not liable to be dismissed on that ground. It was also held that it could not be contended that pardanasin lady/ladies cannot do business. No such provision of law was brought to the notice of the Prescribed Authority so as to compel the Authority to dismiss the application on that count. Hence, even that ground also was not well founded for dismissing the application.

8. The Authority, however, observed that neither Matloob Ahmad nor Kum. Faraha Matloob had any experience in doing business in readymade garments. The Authority noted that Kum. Faraha had obtained B.A. degree but she had no experience in readymade garments. Nor Matloob Ahmad who was to retire, had any such expertise. The Authority, therefore, held that in absence of such experience, requirement pleaded by the landlords could not be said to be bona fide or genuine. The Authority also held that if the landlords wanted to do business in readymade garments, they would require an office room. They would also require sufficient space for preparation of readymade garments and godown for export of garments. In absence of such accommodation, it could not be said that the requirement was bona fide. The Authority proceeded to observe that family of the landlords was reputed family having high status in the society and they were living in high standard, doing business in timber wood and enjoying facilities of car, scooter, telephone, etc. It, therefore, could not be said that they were interested in doing business in readymade garments.

9. On the other hand, according to the Authority, tenant was in possession of the shop since about forty years wherein he was doing business in grocery articles. The entire family of the tenant was earning livelihood from the income of the said shop. Hence, even on the ground of comparative hardship, it was the tenant who would suffer greater hardship than the landlords. In view of the above findings, the Prescribed Authority dismissed the application for eviction of the tenant.

10. Being aggrieved by the order passed by the Prescribed Authority, the landlords preferred an appeal before the appellate authority. The Additional District Judge who heard the appeal, again appreciated the evidence on record. The learned Judge held that the Prescribed Authority had rejected the application on `flimsy' ground. The Authority did not appreciate the evidence on record in its proper perspective. The learned Judge noted that Matloob Ahmad, husband of applicant No.6 had already retired from service on December 31, 1993 after office hours. Obviously, therefore, applicant No.6 was right in praying for possession of shop for bona fide requirement of her husband as he was to do work and was not doing any other business. The learned Judge also noted that for doing business in readymade garments, no `expertise' was necessary and the Prescribed Authority was wholly wrong in rejecting the claim of the applicants on the ground that Matloob Ahmad was not `expert' in the said business. The learned Judge also noted that by the time the matter came up for hearing, Kum. Faraha Matloob who had acquired B.A. degree, had also obtained Law degree and had become an advocate. She was practising in Civil Court at Dehradun and she was in need of an office room. The lower appellate Court, therefore, held that the requirement of landlords of the suit shop was bona fide. A part of it was required for the purpose of doing business in readymade garments by Matloob Ahmad, husband of applicant No.6 and a part of it was required by Kum. Faraha Matloob for running an office as an advocate. According to the appellate Court, therefore, bona fide requirement of the landlords was proved.

11. Regarding comparative hardship, the appellate Court noted that no attempt whatsoever had been made by the tenant for getting alternative accommodation and hence it could not be said that if the order of eviction would be passed and application of landlords would be allowed, greater hardship would be caused to the tenant. Accordingly, an order passed by the Prescribed Authority was set aside and direction for eviction of tenant was issued.

12. The said order was challenged by the tenant by filing a writ petition in the High Court of Uttaranchal under Articles 226 and 227 of the Constitution. A Single Judge of the High Court, by a brief order, allowed the writ petition, set aside the decision of the appellate authority and dismissed the application filed by the landlords. The said order is challenged by the landlords in the present proceedings.

13. On November 22, 2004, leave was granted and final hearing of the appeal was fixed in the year 2005. The matter, however, could not be heard. An application for early hearing was filed by the appellants and on March 28, 2008, the Bench presided over by Hon'ble the Chief Justice of India directed the Registry to place the matter for final hearing in summer vacation. That is how the matter was placed before us.

14. We have heard learned advocates for the parties.

15. The learned counsel for the appellants strenuously contended that the High Court was wholly wrong in interfering with findings of fact recorded by the appellate Court. According to the counsel, the High Court was exercising jurisdiction under Article 226/227 of the Constitution and it was not open to the Court to enter into questions of fact or mixed questions of law and fact. After appreciating the evidence on record, the appellate Court held that bona fide requirement of landlords was proved. A finding was recorded that no greater hardship would be caused to the tenant if an order of eviction would be passed against the tenant. The findings were findings of fact and they ought to have been accepted by a writ Court as final.

16. The counsel also contended that even though Kum. Faraha was selected and appointed in Judiciary, bona fide requirement of Matloob Ahmad, husband of applicant No.6, who had retired in 1993 remained for running business in readymade garments. A clear cut and unequivocal finding was recorded by the appellate authority that the said requirement was proved. Not only the High Court had no jurisdiction to interfere with the said finding, in fact, the said finding has not been disturbed. Once the finding in favour of the landlords had been recorded, it could not be said that the requirement of the landlords was not bona fide.

17. As to comparative hardship, the appellate authority expressly stated that no attempt whatsoever had been made by the tenant from which it can be shown that there was an attempt by him to get alternative accommodation but he could not get such accommodation. On the contrary, according to the counsel, the tenant had left Dehradun and settled down in Delhi.

18. The counsel also submitted that crucial date for the purpose of deciding requirement of the landlord is the date of institution of suit or proceeding and not the date when final order is passed by a Court or Authority. In the present case, the date on which an application under Section 21 of the Act was filed, the landlords needed the shop for bona fide requirement. Subsequent events could not deprive them from getting possession of the suit shop.

19. On all these grounds, it was submitted that the order passed by the High Court deserves to be set aside by restoring the order of the appellant authority and by confirming the order of possession

granted by the Additional District Judge, Dehradun.

20. The learned counsel for the tenant, on the other hand, supported the order passed by the High Court. He submitted that when the Prescribed Authority dismissed the application filed by the landlords and the appellate authority allowed such application, the High Court was fully justified in entering into the findings recorded by the appellate authority.

21. He also submitted that subsequent events were required to be considered. In view of the fact that Kum. Farah was selected by the Public Service Commission and was appointed as a Judge, the so called requirement as a practising advocate and having an office for that purpose did not survive. The said development was a relevant consideration and the High Court was right in setting aside the order of eviction. Even otherwise, as per settled law, the need and necessity of the landlord for getting possession of properly must continue to remain till the proceedings are finalized.

22. The trail Court, submitted the learned counsel, was right in observing that neither Matloob Ahmad nor Kum. Faraha had experience in business in readymade garments and in absence of expertise, no order of eviction could be passed against the tenant. According to the counsel, the tenant is in possession of the shop since last fifty years. It was true that the tenant had shifted from Dehradun to Delhi but it was really of a temporary nature. In no way, it would suggest that the tenant was not in need of the shop or that he had permanently shifted to any other place. In fact, the business is going on in the suit-shop.

23. The counsel also submitted that the Prescribed Authority was right in observing that the landlords belonged to high strata of society having business in timber wood. Even in early 1990s, they were having facilities of car, scooter, telephone, etc. Obviously, they would not do business in readymade garments.

24. The counsel urged that taking into consideration all these facts, the Prescribed Authority refused to make an order of eviction against the tenant. The said finding ought not to have been disturbed by the appellate Court and the High Court was, therefore, compelled to interfere with the order passed by the appellate authority. It was, therefore, submitted that the appeal deserves to be dismissed.

25. Having heard learned counsel for the parties, in our opinion, the appeal deserves to be allowed.

26. So far as the larger question, namely, whether subsequent events can be taken into consideration by an appellate, revisional or writ Court, we express no opinion in view of the fact that the appeal can be decided without entering into the said controversy. We may, however, note that learned counsel for both the sides referred to leading decisions of this Court. In some of the cases, the Court held that the crucial date for deciding requirement of a landlord is the date of institution of suit/proceeding. In other cases, however, a contrary view has been taken. There is thus a cleavage of opinion on that vexed issue. We leave the matter there.

27. On merits, in our judgment, the submission of the learned counsel for the appellants is well founded that the Prescribed Authority was wrong in dismissing the application filed by the

landlords. We had already observed that the Prescribed Authority negatived the contention of the tenant that the application was not maintainable. It, therefore, entered into the merits of the matter and decided it against the landlords. It observed that applicant No.6 hailed from "a reputed family of Dehradun" and "they had a very big business of timber wood". It also noted that applicant No.6 had been enjoying the facilities of car, scooter, telephone, etc.

28. In our opinion, the grievance voiced by the learned counsel for the appellants is well founded that the above grounds and reasons were irrelevant and extraneous so far as the requirement of the landlords was concerned. The authority can undoubtedly decide whether the need or requirement of landlords was or was not bona fide. It can record a finding against the landlords if such requirement is not proved. But the authority cannot decline the prayer of the landlords on the ground that they belonged to upper class society having facilities of car, etc. Similarly, the Prescribed Authority was wrong in commenting on the experience of the landlords in business of readymade garments. Again, the authority went wrong in stating that if the applicants wanted to do business in readymade garments, they needed `an office' and place of godown for preparation of readymade garments to be exported.

29. The complaint of the learned counsel for the landlords is that the authority was wholly wrong in holding that for doing business in readymade garments, there must be need and necessity of office or place for preparation of garments or godown. It was equally wrong in coming to the conclusion that for such business `technical education' was necessary. The appellant authority, therefore, rightly set aside the said finding describing the ground weighed with the authority as `flimsy'.

30. The counsel is also right in submitting that admittedly, Matloob Ahmad had retired from service. Even if the tenant was right in submitting that the landlords belonged to a higher strata of society, it did not mean that all throughout his life after retirement, Matloob Ahmad, husband of applicant No.6 should not do any work. If he wanted to get himself engaged in doing some business, it could not be held that he would not be entitled to possession of property for doing business since he was rich and even without doing any business, he could maintain himself. A finding as to bona fide requirement for doing readymade business by Matloob Ahmad has been expressly recorded by the appellant authority. The said finding was a finding of fact. Neither it could have been interfered with, nor it has been set aside by the writ court. In view of the above position, the High Court was wrong in allowing the writ petition.

31. As observed earlier, statutory remedy has been provided under the Act against an order passed by the Prescribed Authority by filing an appeal before the District Judge (Section 22). There is no further remedy under the Act. The tenant, in the circumstances, approached the High Court by filing a petition under Articles 226 and 227 of the Constitution.

32. Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a Court of Appeal or a Court of Error. It can neither review nor reappreciate, nor reweigh the evidence upon which determination of a subordinate Court or inferior Tribunal

purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior Court or Tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts and inferior Tribunals within the limits of law.

33. In Chundavarkar Sita Ratna Rao v. Ashalata S. Guram, (1986) 4 SCC 447, this Court stated;

> "Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Articles 226 and 227 of the Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities".

34. Even prior to Chundavarkar, in Babhutmal Raichand Oswal v. Laxmibai R. Tarta & Anr., (1975) 1 SCC 858, dealing with supervisory power of a High Court under Article 227 of the Constitution, Bhagwati, J. (as His Lordship then was) stated;

> "If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts".

(emphasis supplied)

35. In State of Maharashtra v. Milind, (2001) 1 SCC 4, this Court observed;

> "The power of the High Court under Article 227 of the Constitution of India, while exercising the power of judicial review against an order of inferior Tribunal being supervisory and not appellate, the High Court would be justified in interfering with the conclusion of the Tribunal, only when it records a finding that the inferior Tribunal's conclusion is based upon exclusion of some admissible evidence or consideration of some inadmissible evidence or the inferior Tribunal has no jurisdiction at all or that the finding is such, which no reasonable man could arrive at, on the materials on record".

36. In State v. Navjot Sandhu, (2003) 6 SCC 641, this Court reiterated;

> "Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised `as the cloak of an appeal in disguise'." (emphasis supplied)

37. While dealing with petitions under the present statute, the above principles have been followed.

38. In Om Prakash & Ors. v. Sunhari Devi (Smt.) & Ors., (1993) 2 SCC 397, a similar question came up for consideration before this Court. There an application under Section 21 ((1)(a) of the present Act was filed by the landlords against the tenants on the ground that they bona fide required the tenanted premises, a shop, for their own use. The Prescribed Authority dismissed the eviction petition holding that the applicants' requirement was not bona fide and greater hardship would be caused to the tenants than to the landlords. The landlords filed an appeal and the appellate authority allowed the same holding that the requirement of the landlords was genuine and bona fide. It also recorded a finding in favour of the landlords on the question of comparative hardship.

39. The High Court of Allahabad in a petition by the tenants, set aside the finding recorded by the appellate authority and dismissed the eviction application. Aggrieved landlords approached this Court.

40. Allowing the appeal, setting aside the order passed by the High Court and restoring that of the appellate authority, this Court held that even in second appeal, the High Court should restrict itself to question of law. It was all the more so, in a writ petition. When findings were recorded by the appellate authority, the High Court was wrong in interfering with the said findings and in setting aside the order of eviction, observed this Court.

41. In Ranjeet Singh v. Ravi Prakash, (2004) 3 SCC 682, again this Court while interpreting the provisions of the Act in question, held that the High Court, while exercising powers under Articles 226 and 227 of the Constitution, cannot act like an appellate Court and re-appreciate or revaluate the evidence while exercising certiorari or supervisory jurisdiction. Only a patent error which did

not require establishment by lengthy and complicated arguments or by long drawn process of reasoning is amenable to certiorari jurisdiction. If two opinions were reasonably possible, the finding arrived at one way or the other by the appellate authority, cannot be disturbed.

42. In Mst. Bega Begum & Ors. v. Abdul Ahad Khan (dead) by L.Rs. & Ors., (1979) 1 SCC 273, this Court held that rent control laws must be construed reasonably. They should be interpreted in such a way as to achieve the object of enabling landlord to evict tenant where the statute grants such right in favour of landlord.

43. Dealing with the Jammu and Kashmir Houses and Shops Rent Control Act, 1966, the Court observed that `reasonable requirement' undoubtedly postulates that there must be an element of `need' as opposed to a mere `desire' or `wish'. The distinction between `desire' and `need' should doubtless be kept in mind. That does not, however, mean that even a genuine need should be treated as nothing more than a desire or wish. The connotation `need' or the word `requirement' should not be artificially expanded nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such construction would defeat the very purpose of the Act, which affords facility of eviction of the tenant to the landlord on certain specified grounds.

44. In the case on hand, a finding had been recorded by the appellate authority that requirement of the landlords for doing business by Matloob Ahmad, husband of applicant No.6 was bona fide and genuine. Thus, the requirement of the landlords was established. The said finding stands today. The High Court by a cryptic order, without disturbing the said finding which was based on appreciation of evidence, set aside the order of eviction against the tenant, inter alia, observing that Matloob Ahmad was a `retired person' and was getting pension and was living in his village at a distance of five kilometers from Dehradun. It is no doubt true that the tenancy was created before about fifty years but that should not be a ground for depriving the landlord for doing business if the requirement of the landlord is bona fide and reasonable.

45. The learned counsel for the landlords also stated that in May 2001, the order of eviction was passed by the Additional District Judge, Dehradun and the appeal was allowed. When the said order was challenged by the tenant in the High Court, the High Court asked the tenant to inform the Court as to when they would vacate the premises.

46. The order passed by the High Court on August 24, 2001 reads as under;

> "Put up on 7-9-2001. On that day the petitioners shall inform this Court as to when they are going to vacate the premises."

47. Finally, however, the petition was allowed by the same Judge, the order passed by the appellate authority was set aside and the application filed by the landlords for possession of property was dismissed.

48. Regarding comparative hardship, nothing has been stated by the tenant as to whether any attempt has been made by him to get alternative accommodation and he failed to get such accommodation. In the circumstances, in our opinion, the appellate authority was right in observing that there was no evidence to show that no shop was available to the tenant. It is quite possible, as noted by the appellate authority, that the tenant might have to pay more rent. But that would not preclude the landlords from getting possession of the suit- shop once they had proved genuine need of the property.

49. It was also submitted by the learned counsel for the landlords that the tenant is not using the suit shop and has shifted to Delhi. In a counter affidavit filed by Sudhir Kumar Bajaj in this Court on November 3, 2004, the deponent has mentioned his address as resident of 126, Dhamawala, Dehradun "having temporarily come down to Delhi". In the affidavit in rejoinder, applicant No.2 stated that Sudhir Kumar Bajaj is permanently residing in Delhi since last more than one year. The rejoinder was filed on 16th November, 2004. It is further stated that the premises in dispute is vacant and is locked.

50. In view of the facts and circumstances in their entirety and on the findings recorded by the appellant authority, we have no hesitation in holding that the High Court was not right in interfering with the order passed by the appellate authority and in dismissing the application of the landlords. The said order, therefore, deserves to be set aside and we do accordingly.

51. For the foregoing reasons, the appeal is allowed. The order passed by the High Court is set aside and the order of eviction recorded by the appellant authority and the Additional District Judge III on 25th May, 2001 is restored.

52. The learned counsel for the tenants, at this stage, prayed for grant of time to vacate the suit shop stating that the tenant is doing business in the suit shop and if he is evicted immediately, enormous hardship would be caused to him. Prima facie, in our opinion, the learned counsel for the landlords is right in submitting that the tenant is not using the property. But on overall considerations, we are of the view that ends of justice would be met if we grant time upto March 31, 2009 on usual undertaking being filed by the respondents herein. Such undertaking shall be filed on affidavit within a period of four weeks from today, a copy of which should be given to the learned counsel for the appellants.

53. The appeal is allowed accordingly. On the facts and in the circumstances of the case, however, there shall be no order as to costs.

.....J. (C.K. THAKKER) NEW DELHI,
.....J. September 11, 2008. (LOKESHWAR SINGH PANTA)