Mohd. Asif Naseer vs West Watch Company Through Its ... on 24 April, 2020

Equivalent citations: AIR 2020 SUPREME COURT 2006, AIRONLINE 2020 SC 514

Author: Vineet Saran

Bench: Vineet Saran, Hemant Gupta, M.R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2375 OF 2020
1.
[ARISING OUT OF SPECIAL LEAVE PETITION [C] NO.29649 OF 2016]

MOHD. ASIF NASEER …..APPEL

VERSUS

WEST WATCH COMPANY THROUGH ITS PROPRIETOR
……. RESPONDENT

JUDGMENT

Vineet Saran, J.

Leave granted.

2. This is an appeal filed by the landlord challenging the Judgment and Order of the High Court passed in Rent Control Writ Petition No.3457 of 2016, whereby the release application filed by the appellant has been rejected, and the Orders passed by the Prescribed Authority and the Appellate Authority, allowing the release application of the appellant landlord, have been set aside.

3. Brief facts of this case, relevant for the purpose of the present appeal, are that the appellant filed an application under Section 21(1)(a) of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the 'Rent Control Act') for release of Shop no.64 situated on the ground floor of the Building No.31/72, Mahatma Gandhi Marg, Hazratganj, Lucknow, the size of which is given as 42 square feet. The case of the appellant was that he had purchased the shop in question for his personal use, vide registered Sale Deed dated 29.10.2004. The respondent was a tenant of the shop in question on a monthly rent of Rs.15 and doing business of repair and sale of watches. After purchase of the said shop, the appellant requested the respondent to vacate the shop, to which the respondent initially agreed but later refused to vacate. The appellant, thus, filed the release application.

The case of the appellant was that the respondent (tenant) is a rich person who owns two buildings and the family of the respondent has other commercial accommodations in their possession in the main market of Hazratganj, Khurram Nagar and I.T. Crossing, Nirala Nagar in the city of Lucknow. Another application of the appellant for release of the adjoining Shop no.63 (having an area of 190 square feet) was also pending. The case of the appellant further was that he was a young man and wanted to start his own business of repair and sale of watches in the shop in question after its renovation, as at present he was assisting his father in the business of sale and repair of watches, and has vast experience of such business and that this shop in question would be suitable for his business. His case further was that his family consists of himself, his wife and one minor daughter and that he would be ready to pay two years rent as compensation to the respondent for vacating the said shop and that the need of the appellant was genuine, bona fide, pressing and urgent. He had further undertaken not to let out the shop in question in future and use the same for his personal business.

4. The respondent contested the release application and filed his written statement in which he admitted that the appellant was the landlord of the shop in question. It was stated that the father of the respondent was tenant of the shop in question since 1951 and was carrying on the business of repair and sale of watches and that the respondent had been helping his father in business since 1960. It was stated that the income from the said shop was his only source of livelihood and that in spite of his best efforts, he could not get another shop in the locality of Hazratganj, even though, he had applied for allotment of another shop to Rent Control and Eviction Officer, Lucknow. The respondent also stated that if the appellant was in genuine need, he would have purchased a vacant shop and not an old tenanted shop. It was also stated that the appellant never asked the respondent to vacate the disputed shop and that no notice with regard to the same was ever given to the respondent. The case of the respondent was that the appellant was in property business and his intention was to get the shop vacated, and after demolishing the existing building, raise multi□ storey building. The respondent further stated that he was in need of the shop in question and that his need was greater than that of the appellant and that even though the son of the respondent may be having another tenanted shop, but that would make no difference.

5. By its Order dated 04.10.2011, the Prescribed Authority allowed the release application, after holding that the appellant had given six months prior notice to the respondent, as was required under the Proviso of Section 21(1)(a) of the Rent Control Act and the release application was filed

after the expiry of three years of Sale Deed obtained by the appellant. The Prescribed Authority also held that the need of the appellant was bona fide and pressing and at present he had no shop in Lucknow and that there was no evidence on record to show that the respondent (tenant) had made any effort to search alternate accommodation. On the aforesaid grounds, and considering the comparative hardship, the Prescribed Authority allowed the release application.

6. The appeal filed by the respondent was dismissed by the Additional District Judge (Appellate Authority) vide Order dated 05.02.2016, whereby it was held that the relationship of landlord and tenant between the appellant and respondent was proved and also that the requisite notice of six months was given to the respondent. It further reaffirmed the view of the Prescribed Authority that the need of the appellant was bona fide and pressing and, thus, dismissed the appeal.

7. Aggrieved by the aforesaid Orders, the respondent filed Rent Control Writ Petition No.3457 of 2016, which has been allowed by the High Court, primarily after holding that no notice for eviction was given to the respondent, which was mandatory and there could be no presumption of service of notice sent "under certificate of posting". The High Court also presumed that the intention of the appellant was to purchase an old shop and after renovation or raising multi□storey building, sell it for profit and not to use it for his own business. While allowing the writ petition, the High Court held that "Release application is dismissed as not maintainable, for want of six months prior notice as required under Section (21)(1)(a) Proviso of the Act".

8. Aggrieved by the said judgment, this appeal has been filed by way of this Special Leave Petition.

9. We have heard the learned counsel for the parties at length and have perused the records.

10. From the perusal of the judgment of the High Court, it is clear that the primary reason for allowing the Writ Petition was that there could be no presumption of service of notice as required under the Proviso to Section 21(1)(a) of the Rent Control Act. The finding of the fact with regard to comparative hardship of the landlord being higher than that of the tenant, as recorded by the Prescribed Authority and the Appellate Authority, has not been disturbed by the High Court, except for a mere mention in passing in the later part of the judgment, which cannot be considered to have upset the finding of fact with regard to comparative hardship, as recorded by the Authorities.

11. The case of the respondent (tenant) is that there was no notice issued by the appellant (landlord) to the respondent (tenant), which was mandatorily required under the aforesaid Section 21(1)(a) of the Rent Control Act. The relevant Section 21(1)(a) of the Rent Control Act is extracted as under:

> "Section 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—
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> (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;
>
> (b) .....
>
> Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no application shall be entertained on the grounds, mentioned in clause
>
> (a), unless a period of three years has elapsed since the date of such purchase and the landlord has given a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years.
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> (emphasis supplied)
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> 12. From the perusal of the aforesaid Proviso to the said Section, it is clear that no particular mode of giving notice by the landlord to the tenant has been provided for, meaning thereby that the same could be given orally or in writing;

and if in writing, it is not necessary that it should be sent only by registered post. What is required is that "the landlord has given a notice in that behalf to the tenant".

13. The Prescribed Authority, while recording the finding that the tenant was given notice for eviction, has considered the various facts leading to the recording of such finding. It is not that the Prescribed Authority has drawn a presumption of the notice having been served merely because it was said to have been sent under certificate of posting. The Prescribed Authority has held that the "respondent (tenant) while admitting the applicant as landlord had filed the application under Section 30(1) to deposit the rent in the Court". The Prescribed Authority recorded that it was after the notice had been sent in the year 2006 (on 25.07.2006) that an application under Section 30(1) of the Rent Control Act was filed by the respondent (tenant) in the year 2007 for deposit of rent in Court, after which, the suit was filed by the appellant in the year 2008. The said suit was admittedly after three years of the Sale Deed, which was executed on 29.10.2004. It was in this factual background that the Prescribed Authority held that the notice of six months required under Section 21 of the Rent Control Act was duly given by the landlord to the tenant before filing of the suit in the year 2008. The respondent-tenant had admitted the appellant as his landlord and filed an application to deposit rent in Court in the year 2007. It is not disputed that photocopy of the receipt dated 25.07.2006 of having sent the notice under certificate of posting was filed by the appellant (landlord) along with an affidavit before the Prescribed Authority; and the application of the respondent (tenant) for filing the carbon copy (instead of photocopy) of the receipt of under certificate of posting, was rejected by the Prescribed Authority on 21.04.2011, which Order had become final, as the same had not been challenged by the tenant and, thus, there was no occasion for the appellant to file the carbon copy of the receipt of under certificate of posting.

14. Section 34 of the Rent Control Act provides for the Prescribed Authority to receive evidence on affidavit. The relevant sub-section (1) of Section 34 of the Rent Control Act is extracted as under:

> "Section 34. Powers of various authorities and procedure to be followed by them. –(1) The District Magistrate, the prescribed authority or any appellate or revising authority shall for the purposes of holding any inquiry or hearing any appeal or revision under this Act have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908 (Act No. V of 1908), when trying a suit, in respect of the following matters namely,--
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> (a) summoning and enforcing the attendance of any person and examining him on oath;
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> (b) receiving evidence on affidavits;
> (c) inspecting a building or its locality, or issuing commission for the examination of witnesses or documents or local investigation;
> (d) requiring the discovery and production of documents;
> (e) awarding, subject to any rules made in that behalf, costs or special costs to any parts or requiring security for costs from any party;
> (f) recording a lawful agreement, compromise or satisfaction and making an order in accordance therewith;
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> (g) any other matter which may be prescribed.
> 2 to 8 .....
> (emphasis supplied)

15. In view of the aforesaid, it is clear that evidence adduced on affidavit was admissible before the Prescribed Authority. In the facts of the present case, when the appellant (landlord) had filed the photocopy of the receipt of having sent the notice under certificate of posting, along with an affidavit, which was accepted by the Prescribed Authority, and coupled with the attending circumstances as noticed by the Prescribed Authority, a specific finding of fact was recorded that due notice, as required under Section 21 of the Rent Control Act, had been sent by the appellant (landlord) and received by the respondent (tenant), which is fully justified in law. Such finding of fact was duly affirmed by the Appellate Authority. In our view, such finding of fact (which was not merely a presumption of service based solely on notice having been sent under postal certificate), having been arrived at on the basis of valid

reasons in the facts of the case, ought not to have been upset by the Writ Court.

16. Learned Counsel for the respondent-tenant has, in support of his submissions, relied on the decision of this Court in the case of Ram Suresh Singh vs. Prabhat Singh (2009) 6 SCC 681, which would not be of much relevance, as the same relates to a criminal trial where the issue of determining the age of juvenile was under consideration. The same was under the provisions of Juvenile Justice Act, where the Evidence Act was clearly applicable, which is not so in matters under the Rent Control Act, where evidence can also be led on affidavit.

The other case of U.Sree vs. U.Srinivas (2013) 2 SCC 114, relates to Hindu Marriage Act, where also the Evidence Act is applicable. The question there was with regard to certain document, which had been filed and not proved. The same was filed without being accompanied by an affidavit, whereas in the case at hand, the receipt under certificate of posting was filed along with an affidavit, which is permissible under Section 34 of the Rent Control Act.

The other case of Shiv Kumar vs. State of Haryana (1994) 4 SCC 445, relates to Industrial Disputes Act. In the said case, this Court held that in the facts of that case, where reliance was placed only on service under certificate of posting without any other circumstances and proof, there could be no presumption of service of notice. Reliance was placed on Rule 76 A(2) of the Industrial Rules which provided for a specific manner of service. Such is not the position in the present case, where the Act provides for notice to be given, without providing the manner in which it is to be given. As such, this case will also not be of direct relevance to the case at hand.

17. On the contrary, in the case of Sumitra Devi vs. Sampuran Singh (2011) 3 SCC 556, which has been relied upon by learned Senior Counsel for the Appellant, this Court has held that “it will all depend on the facts of each case whether the presumption of service of notice sent under postal certificate should be drawn. It is true that as observed by the Privy Council in its above referred judgment, the presumption would apply with greater force to letters which are sent by registered post, yet, when facts so justify, such presumption is expected to be drawn even in the case of a letter sent under postal certificate.” Considering the facts and circumstances of that case, this Court held the notice sent under certificate of posting to be sufficient service.

In the case of Ranju vs. Rekha Ghosh (2007) 14 SCC 81, this court was considering a case where one month’s notice was to be given to the tenant for eviction. After considering the provisions of the relevant Tenancy Act, Transfer of Property Act and the Bengal General Clauses Act, it was held that “clause (6) provides mere “one month’s notice”; in such event, the said notice can be served in any manner and it cannot be claimed that the same should be served only by registered post with acknowledgement due.” In the facts of that case, it was held that service of notice sent under certificate of posting was sufficient. Similar is the case at hand, where the Act provides for that ‘the landlord has given a notice…’, without specifying the mode of such notice, and in the facts of the present case, notice sent under postal certificate has rightly been held to be proper service.

While considering a case of service of notice under the Companies Act, this Court, in the case of V.S. Krishnan vs. Westfort Hi□Tech Hospitals (2008) 3 SCC 363, has held that service of notice sent under certificate of posting would be sufficient where "there are materials to show that notices were sent, the burden is on the addressee to rebut the statutory presumption."

18. It may be so that mere receipt of notice having been sent under certificate of posting, in itself, may not be sufficient proof of service, but if the same is coupled with other facts and circumstances which go to show that the party had notice, the same could be held to be sufficient service on the party. In the present case, the law permits filing of a document (receipt of under certificate of posting in this case) to be filed along with an affidavit, which has been done so in this case. Further, there was clear admission of the respondent (tenant) that the appellant was his landlord (for which sale deed had been supplied to the tenant) and subsequent act of the respondent (tenant) depositing the rent under Section 30(1) of the Rent Control Act in the Court and other attending circumstances, as have been considered by the Prescribed Authority, would all clearly go to show that there was sufficient proof of service of notice, which finding of fact has been affirmed by the Appellate Authority, and we see no reason for the Writ Court to have unsettled such concurrent findings of fact.

19. Further, the Prescribed Authority as well as the Appellate Authority have given clear finding of fact that the hardship of the appellant (landlord) was greater than that of the respondent (tenant) and, thus, allowed the release application, which finding has not been specifically considered or categorically upset by the Writ Court. Such finding of fact also does not require any interference by this Court.

20. In such view of the matter, we are of the considered opinion that this appeal deserves to be allowed.

Accordingly, this appeal stands allowed. The judgment of the Writ Court is set aside and the release application of the appellant (landlord), which was allowed by the Prescribed Authority, and affirmed by the Appellate Authority, stands affirmed. The respondent (tenant) is directed to vacate the premises in question and hand over possession to the appellant (landlord) within six months from today.

No order as to costs.

.....J. [R. Banumathi] .....J. [Vineet Saran] New Delhi;

April 24, 2020.