

## **Bhagwati Prasad Gupta vs Prakash Bhalotia on 9 December, 1980**

**Equivalent citations: AIR1981SC1172, (1981)3SCC329, 1981(13)UJ4(SC), AIR 1981 SUPREME COURT 1172, 1981 ALL. L. J. 707, (1981) ALL RENTCAS 434, 1981 ALL CJ 458, 1981 UJ (SC) 4, (1981) 2 RENCER 280, 1981 (3) SCC 329**

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**Bench: A.P. Sen, D.A. Desai**

### **JUDGMENT**

D.A. Desai, J.

1. How unrealistic and utterly unrelated to fact situation, a Court proceeding becomes, is disconcertingly demonstrated in this appeal.

2. A tenant under a decree of eviction is the appellant. Special leave was granted in view of the submission that the building of which the suit premises formed part was constructed in 1970 and was, therefore, not covered by U.P. Act 13 of 1972 and, therefore, the tenant had no protection of the said Act. When the appeal was taken up for hearing on 31st October, 1980. Mr. Yogeshwar Prasad, learned Counsel for the landlord respondent stated that the appellant tenant has kept the suit premises locked and is not using it and has shifted his business to a shop situated in Mian Bazar locality in Gorakhpur city. Mr. S.K. Mehta, learned Counsel for the appellanttenant countered this statement saying that the appellant is carrying on the business in the suit premises and the statement of Mr. Yogeshwar Prasad is not correct. It was further stated on behalf of respondent to the Court that not only the premises are kept locked but they are in such disuse that the electric connection has been severed and the board of the shop has also been removed.

3. In view of the statement and the denial it was difficult to reach some affirmative conclusion one way or the other. We were of the opinion that the facts should not be doctored and truth must not be the casualty in the Court. We, therefore, directed Mr. R. Narasimhan, Registrar (Judicial) to contact the District Judge, Gorakhpur on phone and request him either personally or through his trusted subordinate to ascertain by personal visit whether the shop in question is kept closed and whether it is not being used for the purpose for which it was let and also whether the electric line is disconnected. Simultaneously he was requested to visit Mian Bazar locality to ascertain whether the appellanttenant has started his business in a shop in that locality with board placed on the shop.

4. The Learned District Judge, was very co-operative and he directed learned Civil Judge Gorakhpur

to personally visit the premises in which the appellant was carrying on business in the name of Gupta Refrigeration center in Bhatolia Market, Gorakhpur. The report which he submitted on phone and in writing may be re-produced to appreciate its importance and also to demonstrate how truth becomes the first casualty in the Court. It reads as under:

In compliance to your honour's order I have personally visited the premises in which Sri. B.P. Gupta (tenant-appellant) claims to be carrying on business in the name of Refrigeration center in Bhalotia Market Gorakhpur City. I found that the shop was closed and there has been dust on the shutters of the said premises. It appears that, this premises is closed since long and at present it is not used for carrying on business. I have minutely seen the electric line. The electric line of this premises is disconnected. There was no Sign Board in the name of Gupta Refrigeration center. However, Gupta Refrigeration center was written on the wall of the aforesaid premises which too was dim and faded.

I have also visited Mian Bazar North Gate now known as Maya Bazar (North Gate.). There I found a premises abutting the road in which business under name and style of Gupta Refrigeration & Electrical Works (Sales & Service) is carried on. The shop was open. A big Sign Board was affixed there. I entered the shop and found a person named Sri Bhaguti Pd. Gupta sitting on the sofa inside the Shop. Report is submitted.

5. It is thus indisputable that the appellant-tenant has not only vacated the suit premises but the premises are kept locked and are in disuse and he has shifted his business to Mian Bazar now known as Maya Bazar. The shop visited by the learned Judge had the Sign Board with the name plate "Gupta Refrigeration and Electrical Works (Sales and Service)". Further the suit shop is in disuse and there is no board and the electric line of the premises is disconnected.

6. Here is a tenant who was vociferously haranguing to the Court that he is in dire need of the suit premises and his business would be totally ruined and that he would suffer irreparable loss if he is evicted from the suit shop. This is entirely false and need not be re-stated. However, an ingenious affidavit has been filed by him in which he merely denies that he has shifted his business. This is too feeble an attempt to traverse what stares in our face and such prevarication must be rejected as unworthy of examination. The consequence, therefore indicated in our order dated 30th October, 1980 must ensue. It would be abuse of the process of this Court under Articles. 136 to further examine the appeal of the appellant on merits. We accordingly dismiss the appeal with no order as to costs.