Bhagwan Das vs Smt. Jiley Kaur And Another on 27 August, 1990

Equivalent citations: AIR1991SC266, 1991SUPP(2)SCC300, AIR 1991 SUPREME COURT 266, 1990 ALL. L. J. 881, 1991 (1) RENTLR 411, 1992 (1) RENCJ 612, 1991 (1) RENCR 403, 1991 (1) ALL RENTCAS 377, 1991 (2) SCC(SUPP) 300

Bench: N.D. Ojha, J.S. Verma

JUDGMENT

1. This appeal by special leave has been preferred against the judgment of the Allahabad High Court dismissing a writ petition filed by the appellant. Facts necessary for the decision of this appeal may be stated in a nutshell.

2. Respondent No. 1, Smt. Jiley Kaur, is the landlord, within the meaning of the said expression as contained in the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'the Act') of a shop which is in the occupation of the appellant as a tenant. An application was made by respondent No. 1 for the release of the said shop under Section 21(1)(a) of the Act on the ground that two of her sons had grown up and were unemployed and the shop was needed to enable them to carry on business. The application was contested by the appellant on the ground that the need of the landlord was not bona fide and that in any view of the matter greater hardship shall be caused to him in case an order of eviction was passed, than the hardship, which was likely to be caused to respondent No. 1 in the event of the application for release being dismissed. On a consideration of the evidence produced by the parties, the Prescribed Authority agreed with the case set up by the appellant in his defence and dismissed the application for release. Aggrieved by that decision, respondent No. 1 preferred an appeal which was allowed by the District Judge, Ghaziabad. He came to the conclusion that the need of the landlord was bona fide and that greater hardship would be caused to her in the event of her application for release being dismissed then the hardship which may be caused to the appellant on the Said application being allowed. It is this order which was challenged in the writ petition before the High Court which was dismissed by the judgment appealed against.

3. It has been urged by learned Counsel for the appellant that the District Judge has committed an error in reversing the order of the Prescribed Authority on both the points referred to above. In support of his plea that the finding of the District Judge on the question of bona fide need of the landlord was erroneous, he has urged that apart from the two premises which have been noticed by the District Judge and which according to the appellant could be used as a shop by the sons of respondent No. 1, there was another shop in Mohalla Jatwara which even though had been taken into consideration by the Prescribed Authority has been completely ignored by the District Judge. From a perusal of the judgment of the District Judge, however, it appears that while bringing to his

notice alternative accommodations available to respondent No. 1, the said shop was not brought to his notice on behalf of the appellant. In our opinion, the reason, therefor, seems to be obvious. A perusal of the order of the Prescribed Authority indicates that this shop did not belong to respondent No. 1 but belonged to her sister, Smt. Chandro Devi. The Prescribed Authority adopted a curious reasoning in holding that this shop was also available to respondent No. 1. What has been stated in this behalf is that since the sister of the respondent No. 1 was the co-owner of the shop in dispute. "the applicant is still in a very good position by getting rent and also having many of the houses in possession." Apparently, the accommodation belonging to Chandro Devi, the sister of respondent No. 1, could not be treated to be an accommodation available to respondent No. 1 for being used by her sons to carry on business. As regards, the remaining two premises the finding of the District Judge that notwithstanding the fact that respondent No. 1 was possessed of those two premises, they could not be used for the purposes of business by the sons of respondent No. 1 for the reasons stated by him in his order is essentially one of fact based on appraisal of evidence and no exception can be taken to the stand of the High Court in not interfering with that finding in a writ petition.

4. It was then urged by learned Counsel for the appellant that the District Judge has ignored the provisions of Rule 16(2) of the Rules framed under the Act while considering the question of comparative hardship. We find it difficult to agree with the said submission also. Sub-rule (2) of Rule 16 which deals with a building let out for the purposes of business, prescribes certain factors which are to be taken into consideration while deciding the question of comparative hardship. Clause (a) in substance provides that the greater the period of occupation by the tenant the less the justification for allowing an application for release. Clause (b), on the other hand, prescribes that if the tenant has a suitable accommodation available to him to which he can shift without substantial loss there shall be greater justification for allowing the application for release. Clause (c) deals with the extent of the existing business of the landlord, whereas Clause (d) inter alia provides that where a son of the landlord has after a building was originally let out, completed his technical education and is not employed in Government service and wants to engage in self-employment, his need shall be given due consideration.

5. It is not a case where the District Judge can be said to be oblivious of the circumstance that the tenant was in occupation of the building since 1966 inasmuch as it is a fact which stands specifically mentioned in his order. Likewise, the fact that the tenant had no suitable accommodation available was indeed not in dispute and as such the District Judge cannot be said to be unaware of this circumstance either. So far as Clause (c) is concerned which deals with the existing business of the landlord, the District Judge has specifically dealt with the same. It cannot, therefore, be said that the provisions contained in Clause (c) were given a go-by. As regards Clause (d) it would be seen that two adult sons of the landlord after completing their education were unemployed and wanted to carry on business for self-employment. The principle contained in this clause constituted an outweighing circumstance in favour of the landlord. The order of the District Judge cannot, therefore, be said to be vitiated on this ground either.

6. While dealing with the question of comparative hardship learned Counsel for the appellant placed reliance on certain decisions dealing with Rule 16(1) of the Rules. We do not, however, find it

necessary to consider them inasmuch as the said sub-rule does not deal with an accommodation let out for purposes of business but deals with an accommodation let out for residential purposes, which in the instant case is not relevant.

7. Learned Counsel for the appellant then pointed out that, the District Judge has recorded a finding that in the instant case the hardship to the parties was equally balanced and on its basis has urged that in such a situation the benefit ought to have been given to the appellant by dismissing the application for release and the District Judge has committed an error in allowing the said application. The District Judge for the view which he took relied on a decision of the Allahabad High Court in which it was held that in such a situation the fact that the tenant had not proved by evidence that no alternative accommodation was available to him was a relevant factor, which would go against him. In this connection, learned Counsel for the appellant placed reliance on a decision of this Court in Bishan Chand v. Vth Addl. District Judge Bulandshar (U.P.) , where it was held that in the absence of an additional circumstance indicating that preference could be given to the landlord, order in his favour could not be made if the finding was one of equal hardship to both the landlord and the tenant. It was also pointed out in this case that the provisions of Rule 16(2) of the Act had not been considered at all. In our opinion, the said decision is clearly distinguishable. Firstly, the instant case was one where there was an outweighing circumstance in favour of the landlord namely that two of her sons after completing their education were unemployed and wanted to carry on business for self-employment. Secondly, as already seen above, it was not a case where the provisions of Rule 16(2) can be said to have been ignored by the District Judge. Thirdly, it was a case where there was even this additional circumstance that the appellant had brought no material on record to indicate that at any time during the pendency of this long drawn out litigation he made any attempt to seek an alternative accommodation and was unable to get it. In Mst. Bega Begum v. Abdul Ahad Khan , it was held that in deciding the extent of the hardship that may be caused to one party or the other, in case a decree for eviction is passed or is refused, each party has to prove its relative advantages or disadvantages and the entire onus cannot be thrown on the plaintiffs to prove that lesser disadvantages will be suffered by the defendants and that they were remediable.

8. Reliance was then placed by learned Counsel for the appellant on Gautam Chand Jain v. Sushila Kumari Jain In our opinion this decision also is not of any assistance to the appellant. It was a case where unlike the instant case more suitable alternative accommodation for the owner was available whereas no alternative accommodation could be found out for the tenant. What was emphasised by the learned Counsel for the appellant in this decision was that in course of hearing of the appeals in that case the matter was adjourned with a view to giving an opportunity to the landlord to suggest an alternative accommodation in the premises in dispute, but none could be suggested. According to learned Counsel, scarcity of accommodation is a circumstance of which judicial notice can be taken. It was urged that in this view of the matter the Court may take judicial notice of the fact, even though the tenant may not have brought any material on record of his own to indicate that he made any attempt to have an alternative accommodation but was unable to get the same, that no alternative accommodation was available to the appellant. In our opinion, the question as to whether in a given circumstance alternative accommodation is available or not is not a matter of which any judicial notice can be taken but is one which had to be proved by evidence as has been emphasised in Bega Begum's case (supra).

9. Lastly, reliance was placed on Amarjit Singh v. Smt. Khatoon Quamarain and it was emphasised on its basis that comfort of the landlord was not a relevant circumstance. In our opinion, even this case is hardly of any assistance to the appellant inasmuch as the District Judge has not allowed the application for release on the ground that it would be more comfortable to the respondent No. 1. No other point has been pressed.

10. In the result, we find no merit in this appeal. It is, accordingly, dismissed with costs which are assessed at Rs. 2,000/-.

11. A prayer has been made by learned Counsel for the appellant for grant of some reasonable time to the appellant to vacate the shop in question. Even though it is a case where the application for release was made about 15 years back in the year 1975 on the ground of personal need of the landlord we are of the opinion that since the appellant has been carrying on business in the shop in question, time till 31st December, 1990 may be granted to him to vacate the same. We, therefore, direct that the order of eviction of the appellant shall not be carried out till 31st December, 1990 subject to the condition that the amount of costs awarded as above is deposited in the Court of the District Judge, Ghaziabad by the appellant within four weeks from today and an undertaking is filed by him in this Court within the same period containing the usual terms. The amount of two years' rent, which according to learned Counsel for the respondent No. 1, has already been deposited in pursuance of the order passed by the District Judge can be withdrawn by the appellant. Likewise, the amount of costs of this Court which may be deposited by the appellant as aforesaid can be withdrawn by respondent No. 1.