

Allahabad High Court

Anant Ram Jain vs Vith Additional District Judge ... on 28 May, 2004

Equivalent citations: 2004 (4) AWC 3009

Author: T Agarwal

Bench: T Agarwal

JUDGMENT Tarun Agarwal, J.

1. The petitioner is the owner and landlord of a building situate at Kotana Road in the town of Baraut, district Meerut. The respondent No. 3 is the tenant of a shop situate on the ground floor on a monthly rent of Rs. 208.33p. The petitioner filed an application under Section 21 (1) (a) of the U. P. Act No. 13 of 1972 for release of the shop showing the need for his third son Sanjay Kumar Jain. The petitioner alleged that his third son was a student of B.A. and was not good in studies and had failed in his B.A. examination and that he did not wish to study any further and therefore, wanted to start a business of shoes and chappals. The landlord contended that apart from the building in question, he had no other premises where he could set up the business for his son and therefore, he required the shop to set up the business for his third son Sanjay Kumar Jain. The tenant respondent No. 3 contested the release application and denied that the need of the landlord, to set up the business for his son, was borafide.

2. The prescribed authority dismissed the release application of the petitioner holding that the third son of the petitioner, namely, Sanjay Kumar Jain could carry on the business with his father, who was carrying on the business of shoes and chappals in a rented shop. The appellate court further found that the need of the tenant was greater than the need of the landlord.

3. Aggrieved by the order of the prescribed authority, the petitioner filed an appeal. The appellate court held that the need of the petitioner for his son was genuine and bona fide. The prescribed authority, however, found that the tenant would suffer greater hardship than the petitioner and on this basis dismissed the appeal of the petitioner.

4. The petitioner has now filed the present, writ petition assailing the orders of the prescribed authority and the appellate authority. During the pendency of the writ petition the petitioner's third son Sanjay Kumar Jain died on 8.2.1992. The petitioner. thereafter, moved a miscellaneous application dated 24.9.1992, praying that in view of the subsequent events, the petitioner's claim may be confined to the need of his fourth son, namely, Jitendra Kumar for setting up the business of general merchandise. By order-dated 8.9.1993, the Court directed that this application would be considered at the time of the hearing of the writ petition.

5. Heard Sri Atul Dayal. the learned counsel for the petitioner and Sri B. D. Mandhyan, the learned senior counsel assisted by Sri Om Prakash, the learned for the respondents.

6. The learned counsel for the petitioner submitted that in view of the subsequent events, the need of the petitioner be confined to the need for his youngest son and the shop may be released in favour of the petitioner to enable him to set up the business for his fourth son. On the other hand the learned counsel for the respondents contended that requirement for the shop shown in the

application under Section 21 of the Act was confined only to the need for the third son, namely, Sanjay Kumar Jain and the application was not filed for the need of the fourth son. The learned counsel submitted that since Sanjay Kumar Jain has died. the requirement for the release of the shop has come to an end and therefore, the writ petition has become infructuous and should be dismissed as such.

7. The learned counsel for the petitioner contended that the release application was not confined to the need for the third son, but was also confined for the need of the fourth son and therefore, the application of the petitioner filed under Section 21 of the Act would still survive.

8. In order to appreciate the rival submissions made by the learned counsel for the parties, it is essential to consider the averments made in the release application filed by the petitioner under Section 21 (1) (a) of the Act. In para 4 of the application, the petitioner has stated that the third son is studying in B.A. and that he is no longer interested in continuing in his studies and is unemployed and therefore, the petitioner wants to set up his son Sanjay Kumar Jain to do business from the shop in question and therefore, requires the shop in question for his third son Sanjay Kumar Jain. In para 10 of the application the petitioner against contended that the shop is bonafidely required for his son Sanjay Kumar Jain to set up the business of shoes and chappals and that the petitioner has no other premises where he could set up the business for his son Sanjay Kumar Jain. In para 5 of the application the petitioner, however, contended that his youngest son Jitendra Kumar Jain is studying in class IX and that he is not interested in his studies. The petitioner further stated in the said paragraph that the hands and legs of his youngest son are weak and that he is not mentally sharp and therefore, the petitioner also desired to set him up in some occupation.

9. These averments made in the application was subsequently, supported by the affidavit of the petitioner. The third son Sanjay Kumar Jain also filed his own affidavit stating therein that he is no longer interested in continuing his studies and that he has failed in his B.A. examination and that he is unemployed and that he would like to set up a business of shoes and chappals in the shop in question.

10. The prescribed authority considered the bond fide need of the petitioner in relation to the need of the petitioner's son Sanjay Kumar Jain only. The appellate court also considered the need of the third son Sanjay Kumar Jain and came to the conclusion that the petitioner's need was bond fidely required to set up the business of the third son.

11. The petitioner in the writ petition also contended that the need was for his son Sanjay Kumar Jain and that the shop was bona fidely required to set up the business for his third son Sanjay Kumar Jain. In this regard paragraphs 14, 15 and 19 of the writ petition are quoted hereunder :

"14. That the shop in dispute was needed by the petitioner for his son Sanjay Kumar Jain as he had given up his studies and wanted to settle in life before he could get married as he has become of marriageable age.

15. That the petitioner wanted to set up his son in the business of shoes and chappals in the shop in dispute and for the said purpose the petitioner arranged for sufficient financial resources.

19. That the main contention of the petitioner in his release application was that he wanted the shop in dispute for his son for carrying the business of shoes and chappals as his son was unemployed and he wanted to settle himself. It was also contended that the need of the petitioner is bona fide and he would suffer greater hardship in case the release application was rejected. It was also contended that the respondent No. 3 had alternative accommodation where he could shift his business without any inconvenience or hardship."

12. From the aforesaid, it is clear that the petitioner had filed the application under Section 21 for release of the shop on the ground of setting up the business of his third son Sanjay Kumar Jain and the evidence to that effect was led by the parties. Even though, the petitioner had made a mention in para 5 of the application with regards to his fourth son, that he wanted to set up his fourth son in some occupation, in my view, the averments were merely a desire and not a bona fide need. Further, no evidence was led to set up the need of his fourth son Jitendra Kumar Jain. Thus, the submission of the learned counsel for the petitioner that the petitioner had filed the application for release of the shop in favour of both his sons is incorrect. The release application was only confined to the need of the petitioner's third son Sanjay Kumar Jain.

13. The learned counsel for the petitioner contended that in view of the fact that Sanjay Kumar Jain had died, the need of the petitioner's son be substituted and the shop be released in favour of the petitioner to enable him to set up the business for his fourth son. The petitioner contended that subsequent events could be taken into consideration and in regard to this proposition, the petitioner had placed reliance on three judgments of the Supreme Court in *S. N. Kapoor v. Basant Lal Khatri and Ors.*, 2002 (1) SCC 329 ; *Om Prakash Gupta v. Ranbir B. Goel*, 2002 SC and FB RC 101 and *Vishwas Rao Dada Saheb v. Shanker Rao D. Kalyankar*, 2001 (1) ARC 228.

14. It is well-settled that in certain circumstances, subsequent events can be taken into consideration. The subsequent developments and altered circumstances sometimes becomes relevant in adjudicating the nature and character of the claim and these subsequent developments can be considered at any stage of the proceedings. The Court has the power to take note of subsequent events.

15. However in the present case, the petitioner is now asking that the need for his fourth son be considered for releasing the shop in question. In my view, this plea cannot be permitted nor can the same be considered in a writ jurisdiction. The petitioner is required to set up the need for his fourth son Jitendra Kumar Jain for which he has to place the requisite pleadings in his application filed under Section 21 of the Act. In the absence of any pleading with regard to the need of his fourth son, the petitioner cannot be permitted to contend that the Court should consider the need for his fourth son.

16. In *M/s. Trojan and Company v. R. M. M. N. Nagappa Chettiar*, AIR 1953 SC 235, the Supreme Court held that the decision of a case cannot be based on the grounds outside the pleadings of the

parties and it is the case pleaded that has to be found. The Supreme Court further held that unless an amendment is made in the pleadings, the Court would not be entitled to modify or alter the relief. Thus, a relief not founded on the pleadings cannot be granted by the Court.

17. As I have already held earlier, the release application was confined to the need of the petitioner's third son only. The application dated 24.9.1992, filed by the petitioner to take note of the subsequent events praying that the need of the petitioner be confined for setting up the business of general merchandise for his fourth son, namely, Jitendra Kumar Jain, cannot be taken into consideration, inasmuch as there is no application for amendment of the pleadings. Until and unless the pleadings are amended and the need of the youngest son. is disclosed, the relief of release of the premises cannot be considered nor can it be granted.

18. In view of the fact that the petitioner's third son Sanjay Kumar Jain has died for which purpose the release application was filed. In my view, the said release application has become infructuous. Consequently, no relief can be granted in the present writ petition. It is open to the petitioner to move a fresh application under Section 21 of the Act for release of the shop for setting up the business for his four youngest son. Consequently the writ petition is dismissed. However, there shall be no order as to costs.