

Ram Lobhaya Sikand

Vs

The Additional District Judge and Others

Civil Appeal No. 663 of 1976

(P.N. Bhagwati, V.R. Krishan Iyer, Syed M. Fazal Ali JJ)

20.09.1976

JUDGMENT

BHAGWATI, J. -

The decision of the High Court in this case turns on the question as to whether the comparative hardship of the landlord and tenant was liable to be taken into account in considering whether or not an order of eviction should be passed against the tenant. The High Court took the view on the analogy of the Full Bench decision of the High Court in Chandra Kumar Shah v. District Judge (1976 Allahabad Weekly Cases 50 : AIR 1976 All 328 (FB)) which struck down Rule 16(2) of the rules framed under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 that Rule 16(1) which requires the comparative hardship of the landlord and tenant to be taken into account in deciding the question of eviction was ultra vires the Act and on this view, held that the hardship which would be caused to the tenant by passing an order of eviction was not required to be considered by the District Judge. This view taken by the High Court is assailed in the present appeal preferred by the appellant/tenant with special leave obtained from his Court. It is not necessary for us to go into the question whether the view taken by the High Court as regards the validity of Rule 16(1) is correct or not, since we find that, subsequent to the filing of the present appeal, Section 21 of the Act has been amended with retrospective effect by introduction of a proviso which requires that the comparative hardship of the landlord and the tenant shall be taken into account in the light of the factors prescribed by the rules and Rule 16 has been retrospectively validated by Section 27 of the amending Act. In view of these retrospective provisions enacted by the amending Act, the judgment of the High Court cannot stand and must be set aside. We accordingly allow the appeal, set aside the judgment of the High Court and remand the case to the High Court with a direction to dispose of the writ petition in the light of the amended Section 21 read with Rule 16. When the writ petition goes back to the High Court, it will be open to the appellant to raise all such points as are available to him. The High Court will try to dispose of the writ petition as expeditiously as possible. There will be no order as to costs.

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