SUPREME COURT OF INDIA

Ram Kumar Barnwal

Vs

Ram Lakhan (Dead)

(Arijit Pasayat and L. S. Panta, JJ)

14.05.2007

JUDGMENT

DR. ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Allahabad High Court. By the impugned judgment the High Court came to the conclusion that even if it is found that the decisions of the Courts below are erroneous in law, the matter needs to be remanded to the prescribed authority. A release petition was filed by the appellant claiming to be the landlord under Section 21 of the Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the 'Act').

The background facts as projected by the appellant are as follows:

Appellant is the owner and the landlord in respect of disputed shop situated in Mohalla Asifganj, Azamgarh City, Uttar Pradesh. In the year 1947 respondent no.1 Ram Lakhan was inducted as a tenant in the shop in question on monthly rent of Rs.40/- by the then owner. In the year 1952 the disputed shop was purchased by the appellant's mother Smt. Pyari Kunwar. After the death of his mother, appellant became owner of the property. Family of the appellant at that time was very small. Since appellant had no commercial space available he was carrying on business in a shop belonging

to one Shri Jagannath which he had taken on rent. During the pendency of the case before the High Court, the appellant was evicted from the said shop and he has no other premises to carry on the business. Appellant has three sons. Apart from the disputed shop, the appellant had another small shop adjacent to it. As appellant's son Asthbujhi Prasad wanted to carry on business the said shop is being used by him. Appellant's two other sons are unemployed and one of them has completed Chartered Accountancy course. Due to non- availability of commercial space, the said son Kameshewar Prasad had to set up his office at a distance of 100 Kms. Since respondent no.1 was repeatedly committing default in payment of rent to the mother of the appellant, a suit had been filed (Suit no. 23 of 1970) for ejectment of respondent no.1 on the ground of default. Though suit was decreed upto second appeal stage, in appeal the order of ejectment was set aside by this Court by judgment dated 30.11.1976, as respondent no.1 had started depositing rent under Section 30 of the Act. In 1980, appellant moved an application under Section 21(1)(a) of the Act. The same was resisted by the respondent. The Prescribed Authority on the report of the Commissioner, who was appointed to make inspection of the premises, held that the eviction petition was not maintainable. The First Appellant Authority upheld the order of rejection by the Prescribed Authority. Appellant filed a writ petition before the High Court questioning correctness of the judgment and order dated 22.4.1983 of the Appellate Authority affirming order of the Prescribed Authority. Appellant brought to the notice of the High Court that he had been evicted from the tenanted premises where he was carrying on business and, therefore, he was left with no accommodation to earn his livelihood. The High Court, as noted supra, held that even if it is found that the findings of the courts below are erroneous in law the matter has remanded to the Prescribed Authority as the release application was filed quarter of century ago, and bona fide need, and comparative hardship change by the passage of time. The writ petition was dismissed granting liberty to the appellant to file fresh release application.

Learned counsel for the appellant submitted that the approach of the High Court is clearly erroneous. It is settled position in law that subsequent events can be taken note of. The High Court, even though referred to the relevance of the subsequent events erroneously came to the conclusion that even if the judgment and order passed by the courts below are erroneous in law, the matter will have to be remanded to the Prescribed Authority. There is no such requirement in law. In fact, after noticing that the release application was filed about quarter of century back, it is really unfortunate that the High Court instead of deciding the matter dismissed the writ petition granting liberty to file fresh release application. In other words, instead of shortening litigation the High Court's order would mean unnecessary prolongation of litigation.

Learned counsel for the respondent on the other hand supported the orders of the High Court and the courts below.

It is to be noted that the original tenant has expired during the pendency of the proceedings before this Court and the legal heirs have been substituted in terms of this Court's 16.8.2005 passed in I.A. No.3.

The question relating to relevance of subsequent events during pendency of proceedings has been examined by this Court in many cases.

In Pasupuleti Venkateswarlu v. The Motor & General Traders Â it was observed as follows:

"3. Two submissions were advanced by Sri K. S. Ramamurthy to salvage his client's case. He argued that it was illegal for the High Court to have taken cognizance of subsequent events, disastrous as they proved to be. Secondly, he urged that once the High Court held-as it did- that the appellate tribunal acted illegally in remitting the whole case to the Rent Controller, it could not go further to dismiss his whole eviction proceedings, a misfortune heavier than would have been, had he not moved the High Court at all.

4. We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice-subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myraid. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments (subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. On both occasions the High Court, in revision, correctly took this view. The later recovery of another accommodation by the landlord, during the pendency of the case, has as the High Court twice pointed out, a material bearing on the right to evict in view of the inhibition written into Section 10(3)(iii) itself. We are not disposed to disturb this approach in law or finding of fact.

5. The law we have set out is of ancient vintage. We will merely refer to Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri Â which is a leading case on the point. Gwyer C.J., in the above case, referred to the rule adopted by the Supreme Court of the United States in Patterson v. State of Alabama Â 294 US 600, 607) :

We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. and in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered. and said that that view of the Court's powers was reaffirmed once again in the then recent case of Minnesota v. National Tea Co. Â 309 US 551, 555. Sulaiman J., in the same case Â relied on English cases and took the view that an appeal is by way of a re- hearing and the Court may make such order as the Judge of the first instance could have made if the case had been heard by him at the date on which

the appeal was heard, (emphasis, ours). Varadachariar J., dealt with the same point a little more comprehensively. We may content ourselves with excerpting one passage which brings out the point luminously (at p. 103) :

It is also on the theory of an appeal being in the nature of a re-hearing that the courts in this country have in numerous cases recognized that in moulding the relief to be granted in a case on appeal, the court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against."

To similar effect is the decision of this Court in Om Prakash Gupta v. Ranbir B. Goyal Â It was, inter alia, observed in that case as follows:

"11. The ordinary rule of civil law is that the rights of the parties stand crystalised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied:(i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; (iii) that such subsequent event is brought to the notice of the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In Pasupuleti Venkateswarlu v. The Motor & General Traders Â , this Court held that a fact arising after the lis, coming to the notice of the Court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the Court cannot be blinked at. The Court may in such cases bend the rules of procedure if no specific provision of law or rule of fairplay is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The court speaking through Krishna Iyer, J. affirmed the proposition that court can, so long as the litigation pends, take not of updated facts to promote substantial justice. However, the court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy. (ii) rules of procedure may be bent if no specific provision or fairplay is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautious, and (iv) the rules of fairness to both sides should be scrupulously obeyed.

12. Such subsequent event may be one purely of law or founded on facts. In the former case, the Court may take judicial notice of the event and before acting thereon put the parties on the notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 of the Code Of Civil Procedure, 1908. Such subsequent event the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties. In Trojan & Co. v. R.M.N.N. Nagappa Chettiar Â his Court has held that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has

to be found; without the amendment of the pleading the Court would not be entitled to modify or alter the relief. In Sri Mahant Govind Rao v. Sita Ram Kesho and Ors. (1898) 25 Indian Appeals 195 (PC), their Lordships observed that, as a rule, relief not founded on the pleadings should not be granted.

13. Power of the Court to take note of subsequent events, specially at the appellate stage, came up for consideration of a Full Bench of Nagpur High Court presided over by Justice Sinha (as His Lordship then was) in Chhote Khan v. Mohammad Obedalla Khan, Â 1953 AIR(Nag) 361. Hidayatullah, J. (as His Lordship then was) held, on a review of judicial opinion, that an action must be tried in all its stages on the cause of action as it existed at the commencement of an action. No doubt, Courts 'can' and sometimes 'must' take notice of subsequent events, but that is done merely 'inter partes' to shorten litigation but not to give to a defendant an advantage because a third party has acquired the right of the plaintiff. The doctrine itself is of an exceptional character only to be used in very special circumstances. It is all the more strictly applied in those cases where there is a judgment under appeal. His Lordship quoted the statement of law made by Sir Asutosh Mookerjee, J. in a series of cases that merely because the plaintiff loses his title 'pendente lite' is no reason for allowing his adversary to win if the corresponding right has not vested in the adversary but in a third party. In the case at hand, the defendant-appellant has simply stated the factum of proceedings initiated by HUDA against the plaintiff- respondent in an affidavit very casually filed by him. He has not even made a prayer to the Court to take notice of such subsequent event and mould the relief accordingly, or to deny the relief to the plaintiff-respondent as allowed to him by the judgment under appeal, much less sought for an amendment of the pleadings. The subsequent event urged by the defendant-appellant is basically a factual event and cannot be taken cognizance unless brought to the notice of the Court in accordance with established rules of procedure which if done would have afforded the plaintiff-respondent an opportunity of meeting the case now sought to be set up by the appellant. We do not think this Court would be justified in taking notice of a fact sought to be projected by the appellant in a very cavalier manner. The fact remains that the present one is a landlord-tenant dispute and we cannot upset the relief granted by the courts below and the High Court to the plaintiff-respondent by relying on the doctrine of eviction by title paramount as it cannot be said that the proceedings initiated by HUDA against the plaintiff-respondent have achieved a finality or are such proceeding wherein the plaintiff-respondent cannot possibly have any sustainable defence."

Earlier in Ramesh Kumar v. Kesho Ram Â 7, it was held as follows:

"6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief. In Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri Â Chief Justice Sir Maurice Gwyer observed: (AIR p.6):

"But with regard to the question whether the court is entitled to take into account legislative changes since the decision under appeal was given, I desire to point out that the rule adopted by the Supreme Court of the United States is the same as that which I think commends itself to all three

members of this Court. In Patterson v. State of Alabama Â 1934 (294) US 600, Hughes C.J. said:

'We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. and in determining what justice does require, the court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered'.

And in Pasupuleti Venkateshwarlu v. The Motor & General Traders Â Justice Krishna Iyer said: (SCC p. 772, para 4).

"We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice-subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myraid."

Above being the position the High Court was not justified in disposing of the writ petition in a summary fashion. We accordingly set aside the order of the learned Single Judge and remand the matter to the High Court for fresh consideration keeping in view the principles set out above in the background facts. Since the matter is pending since long, we request the High Court to dispose of the matter within a period of four months from the date of receipt of a copy of this judgment.

The appeal is allowed to the aforesaid extent. No costs.