

# ALLAHABAD HIGH COURT

Ashok Kumar

Vs.

VI Additional District Judge

Civil Misc. Writ Petition No. 4436 of 1987

(Ravi S. Dhavan, J.)

06.03.1987

## JUDGMENT

### **Ravi S. Dhavan, J.**

1. The petitioners are the landlord of an accommodation 18/200, Mohalla Kursawan, Kanpur. In this accommodation resides a tenant by the name of Laxmi Narain, arrayed as respondent No. 3. The landlord filed an application under Section 21 of U.P. Act 13 of 1972 seeking its release on the ground of personal need. This application under Section 21 was allowed ex parte. The landlord applied for enforcement of the order to evict this tenant under Section 23, and was successful in wresting the accommodation out from the hands of this tenant.

2. Subsequently, the tenant appeared before the Court of the Munsif Haveli, Kanpur, exercising powers as the Prescribed Authority. He pleaded that he had no knowledge of the proceeding which occasioned an ex parte order under Section 21 of the Act, and the ex parte order had been obtained by playing a fraud upon the Court. The Prescribed Authority examined the pleas of the tenant, Laxmi Narain, by giving an opportunity to the landlord also. On facts the Prescribed Authority found that the notices and summons and the Vakalatnama filed on behalf of the tenant, Laxmi Narain, had in fact been filed by some one other than, Laxmi Narain. In fact, the counsel named and mentioned in the Vakalatnama was untraceable and no counsel at the Bar was prepared to take the responsibility that a Vakalatnama was filed for and on behalf of the tenant. These were findings on facts, after the Prescribed Authority had made an enquiry to that effect. The Prescribed Authority found that, indeed, the tenant never received notices on the Section 21 application, nor

the summons of the Court. The exercise of receipt of these essential documents of his court was manufactured. So was the Vakalatnama. The Advocate who is supposed to have signed and accepted the Vakalatnama, did not exist. The Prescribed Authority has set it on record that these facts are discernible to the naked eye and were clear from the record. It is for this reason that the Prescribed Authority passed two orders which were otherwise equitable. The Prescribed Authority ordered (a) that the ex parte order by which Section 21 application had been decreed, would be recalled and consequently, (b) he further directed that the possession which had been wrested from the hands of the tenant, Laxmi Narain, would be restored to him. Thereafter, he directed that the application under Section 21 of the Act can proceed and considered on merits.

3. On behalf of the petitioner it is contended that the tenant ought not to be put into possession and the order of restitution may remain in abeyance. While retaining the possession of the accommodation, the petitioner-landlord desires the application for the release of it to be considered by the Prescribed Authority at an early date, This submission cannot be accepted. This Court is not oblivious of the facts of this case. The petitioner has virtually been charged with a fraudulent conduct in interfering with the course of justice in fabricating circumstances on the service of notice on the tenant-respondent. The petitioner found a fictitious lawyer for his tenant. The Prescribed Authority has rightly balanced the scales of justice, on the principle that an order obtained by fraud and collusion, must be set aside. This, in effect, is the principle contained in Section 44 of the Evidence Act, 1872.

4. The petitioner's conduct in the proceedings before the Prescribed Authority is not clean; and this is putting it modestly. Such a person cannot be encouraged to invoke the discretionary jurisdiction of this Court under Article 226 of the Constitution of India.

5. With such a background, this petition need dismissal. There is no illegality, manifest or otherwise in the Prescribed Authority's order in directing restitution of the tenant into the accommodation he occupied and thereafter the consideration of the landlord's application under Section 21 of the Act, on merits. In fact, the Prescribed Authority will ensure that the tenant is put back

into the premises which he had once occupied. The application for release under Section 21 will be considered on merits thereafter.

6. A certified copy of this order will be forwarded by the Registrar, High Court, to the Court of the Munsif Haveli/Prescribed Authority, Kanpur, in *Ashok Kumar and another v. Suman Kumar and another*<sup>1</sup>

7. The writ petition is dismissed, as no notice was issued to the respondent, there will be no order on costs.

Petition dismissed

Cases Referred.

1. Case No. 192 of 1979