

CASE NO.:
Appeal (civil) 5124 of 1998

PETITIONER:
Sushila

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RESPONDENT:
IInd Addl.District Judge, Banda & Ors.

DATE OF JUDGMENT: 17/12/2002

BENCH:
R.C.Lahoti & Brijesh Kumar.

JUDGMENT:
J U D G M E N T

BRIJESH KUMAR, J.

The dispute in this appeal relates to a shop under the tenancy of the respondent - Baij Nath. The petitioner-landlady had purchased the shop in question in the year 1977 from one Smt.Kanti Devi. It measures 2 x 5.3 meters. The petitioner moved a petition under Section 21 (1)(a) of the U.P.Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short 'the Act') on the ground of bonafide need to settle her major and married son in life, who was to start the business of electrical goods and utensils in the shop in question. The petition was contested unsuccessfully by the respondent-Baij Nath. The appeal preferred by the tenant-respondent was, however, allowed. The writ petition filed by the petitioner in the High Court was dismissed upholding the order of reversal passed in appeal, observing that under the writ jurisdiction findings of fact cannot be disturbed unless they are manifestly unjust. Hence, this appeal impugning the order of the High Court.

The appellant-landlady, as noted earlier, had purchased the disputed shop in August, 1977, when her children were not grown up. Her eldest son Prem Prakash was later married and had also passed some electrical certificate course from I.T.I. Banda but he remained unemployed. It was thus necessary to get the shop vacated for her son to start his own business in electrical goods and utensils. It may be mentioned here that there is another shop adjacent to the shop in question which too was purchased at the same time i.e. in the year 1977 by her husband who is carrying on his work as Goldsmith and money lending business in that shop. She had also come forward with a case that her relations with her husband have not been cordial but it has not been accepted by the courts below. The shop in question was initially in the tenancy of Mool Chand, father of the respondent Baij Nath who was carrying on kirana business in the said shop. After the death of Mool chand, Baij Nath started the business in that shop. According to the respondent it was not correct that shop in question was needed by the landlady. It has also been his case that at the time of the purchase of the shop in question petitioner knew that it was in occupation of the tenant. It was also alleged that husband of the appellant had purchased yet another shop in Chowk Bazar in the name of his brother-in-law Khunni; it has however not been found proved by the Courts.

According to the petitioner-landlady Baij Nath-the tenant has a shop in Gursahai Road as well as another shop

in Chowk Bazar which was purchased by him. In so far the shop in Gursahai Road is concerned, according to the respondent, prior to the death of his father Mool Chand he himself had been running his shop in Gursahai Road but after the death of Mool Chand he started his business in the shop in question and he established his son Rajendra Kumar in the shop in Gursahai Road. In regard to the other shop, his case is that it is a residential house and not a shop but it has not been accepted by the Prescribed Authority. It has also been found that the said shop is quite near to the shop in question. Considering all the facts and circumstances, the trial Court allowed the petition with a finding that the landlady had bonafide need which was more pressing as compared to that of the tenant and thus ordered for his eviction. The appellate court, while allowing the appeal filed by the tenant-respondent, held that the petitioner-landlady failed to prove that the shop was needed by her bonafide for her son. On the question of comparative hardship it has been held that in case the application is allowed the tenant would suffer greater hardship as he has been the tenant of the accommodation since a very long time. The appellate court has upset the findings recorded by the trial court which is though permissible but in doing so the whole approach of the appellate court seems to be quite unjustified and legally unsustainable. At one place the appellate court tried to doubt the certificate of Prem Prakash having undergone electrical training course from the Industrial Training Institute, Banda on the ground that his residence was shown as village Lukhtara whereas the industrial training institute was in Banda. It is then observed at another place that it had not been indicated as to what kind of job Prem Prakash could get in the government with the certificate he possessed. Yet another reason which strongly weighed with the appellate court was that as to why it could not be possible for Prem Prakash to work with his father at the latter's shop which is adjacent to the shop in question. Moreso, if phoopha (husband of the sister of father of Prem Prakash) could work with his father then Prem Prakash could also work there. We find that Prem Prakash is a young man who is unemployed. He is married and has children. There is every justification for him or for his mother to settle him in life independently. He cannot be compelled to join his father in his Goldsmith and money lending work in his small shop. In our opinion, he is entitled to start business of his own choice and independently. The appellate court took a view, as indicated above, which is palpably wrong and wholly unacceptable.

The petitioner's case that Baij Nath has one shop in the house purchased by him in Chowk Bazar, the respondent had admitted only to the extent that he had purchased the house but denied existence of any shop. To prove the fact, it appears that the petitioner-appellant filed copy of the sale-deed. The appellate court observed "on the other hand it is clear on perusal of the sale-deed that the sale-deed of only house was executed in favour of the opposite party". In this connection learned counsel for the petitioner has drawn our attention to the copy of the sale-deed which is on the record. The narration in the sale-deed is to the effect that the vendor had purchased the house as bounded in the sale-deed in Mohalla Chowk Bazar including the shop from one Duli Chand in 1937 and the aforesaid property was being transferred in favour of Baij Nath. It leaves no doubt that the sale-deed was in respect of the house as well as the shop. It is surprising to find that the appellate court came to the conclusion that the sale-deed was in respect of the house alone. This is a clear mis-reading

of the document. Therefore, the conclusion drawn by the appellate court that the sale-deed was only in respect of the house without including a shop is also vitiated. It is thus clear that Baij Nath has another shop at his disposal in Chowk Bazar.

We may now, at the very outset, point out that learned counsel for the respondent has very fairly and rightly conceded that he would not dispute the bonafide need of the petitioner for the shop to establish her son Prem Prakash. He has, however, submitted that the petition is liable to fail on consideration of comparative hardship of the tenant and the landlord, which shall be more to the tenant in the light of sub-rule (2) of Rule 16 of the U.P.Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972. The fourth proviso to Section 21(1) of the Act relevant in that connection reads as under :

"21.Proceedings for release of building under occupation of tenant.-

(1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds namely -

XX XX XXX
Provided also that the prescribed authority shall, except in cases provided for in the Explanation, take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed."

Sub-Rule (2) of Rule 16 is quoted below :

"16. Application for release on the ground of personal requirement [Sections 21(1)(a) and 34(8)] -

(1) xxx xxx

(2) While considering an application for release under clause (a) of sub-section (1) of Section 21 in respect of a building let out for purposes of any business, the prescribed authority shall also have regard to such facts as the following -

(a) the greater the period since when the tenant opposite party, or the original tenant whose heir the opposite party is, has been carrying on his business in that building, the less the justification for allowing the application;

(b) where the tenant has available with him suitable accommodation to which he can shift his business without substantial loss there shall be greater justification for allowing the application;

(c) the greater the existing business of

the landlords own, apart from the business proposed to be set up in the leased premises, the less the justification for allowing the application, and even if an application is allowed in such a case, the prescribed authority may on the application of the tenant impose the condition where the landlord has available him other accommodation (whether subject to the Act or not) which is not suitable for his own proposed business but may serve the purpose of the tenant, that the landlord shall let out that accommodation to the tenant on a fair rent to be fixed by the prescribed authority;

(d) where a son or unmarried or widowed or divorced or judicially separated daughter of a male lineal descendent of the landlord has, after the building was originally let out, completed his or her technical education and is not employed in Government service, and wants to engage in self-employment, his or her need shall be given due consideration.

(3) xxx xxxx "

Before considering the provisions contained in the above noted sub-rule, we may analyse the factual position. Both parties have large families. Father of the respondent Baij Nath had been running the kirana shop since long. The shop was purchased by the petitioner in the year 1977. Her husband had also purchased a shop at the same time which is adjacent to the shop in dispute. He is a goldsmith and also runs money lending business in his shop. Children of the petitioner have grown up in course of time and Prem Prakash meanwhile was married and has children. Prem Prakash is the eldest son. He is unemployed. He has two other brothers younger to him. So far Baij Nath is concerned, initially his father had been running his shop in the accommodation in dispute. Baij Nath was running his shop separately in Gursahai Road. Thus his business and shop were separate from his father Mool Chand. But on the death of Mool Chand he started his business in the shop in question and established his son in the shop which was being run by him in Gursahai Road. He also has a shop in Chowk Bazar which fact is well established by the sale-deed executed in his favour by his vendor. From the evidence on record it also transpires that there are other shops also around the area. Therefore, it cannot be said that he cannot run his shop in that area as found by the Prescribed Authority. As a matter of fact, in one of the rejoinder affidavits it is indicated that in some of the shops in Chowk Bazar he is also running a tailoring school. Be that as it may, the fact remains that at least one shop other than one in the tenancy is available to the tenant which fact he initially tried to suppress. As a matter of fact, he himself was initially settled in his own separate business in another shop in Gursahai Road and had shifted to the shop in question on the death of

his father handing over the other shop in Gursahai Road to his son for his proper settlement and employment. He could very well shift his son in the shop which was purchased by him in Chowk Bazar or if he wanted to shift from Gursahai Road he could himself have shifted to that shop. Presently, he has two shops; one for himself, the other for his son and at least one more in Chowk Bazar. So far as the petitioner is concerned, she has no other shop where she can establish her married son who is unemployed. In such circumstances, the only fact that the shop in question is in possession of the tenant since long will have no material bearing in deciding the question of comparative hardship. To say that son of the petitioner-landlady may remain unemployed but the shop in question must continue to remain in occupancy of the tenant to whom yet another shop is available in Chowk Bazar would not withstand the guidelines and tests laid down in sub-rule (2) of Rule 16 of the Rules of 1972.

A bare perusal of Rules 16 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972, makes it clear that the rule only prescribes certain factors which have also to be taken into account while considering the application for eviction of a tenant on the ground of bonafide need. Sub Rule 2 of Rule 16 quoted earlier relates to the cases of eviction from an accommodation for business use. Clause (a) of Sub Rule 2 provides, greater the period of tenancy less the justification for allowing the application; whereas according to Clause (b) in case tenant has a suitable accommodation available to him to shift his business, greater the justification to allow the application. Availability of another suitable accommodation to the tenant, waters down the weight attached to the longer period of tenancy as a factor to be considered as provided under Clause (a) of Sub Rule 2 of Rule 16. Yet another factor which may in some cases be relevant under clause (c) is where the existing business of the landlord is quite huge and extensive leaving aside the proposed business to be set up, there would be lesser justification to allow the application. The idea behind sub clause (c) is apparent i.e. where the landlord runs a huge business eviction may not be resorted to for expansion or diversification of the business by uprooting a tenant having a small business for a very long period of time. In such a situation if eviction is ordered it is definitely bound to cause greater hardship to the tenant.

In the case in hand we find that even though the period of tenancy of the respondent is no doubt long but availability of another shop to him where he can very well shift his business as found by the Prescribed Authority, neutralises the factor of length of tenancy in the accommodation in dispute. We further find that the landlady has no other shop where she can establish her son who is married and unemployed. There is nothing on the record to indicate that the business of father of Prem Parkash is so huge or that it is a very flourishing business so as to attract application of Clause [c] of Rule 16(2). As observed earlier it is clear that length of period of tenancy as provided under clause (a) of Sub Rule 2 of Rule 16 of the Rules, 1972 is only one of the factors to be taken into account in context with other facts and circumstances of the case. It cannot be a sole criterion or deciding factor to order or not the eviction of the tenant. Considering the facts in the light of Rule 16 pressed into service on behalf of the respondent, we find that according to the guidelines provided therein balance tilts in favour of the unemployed son of the landlady whose need is certainly bonafide and has also been so accepted by the respondent before us.

It may be mentioned that we are not taking into account of Clause (d) of Sub Rule 2 Rule 16 of the Rules; where yet another factor is to be borne in mind, in favour of releasing the shop, if the person has some technical education to his credit but not employed in any government service and wants to engage in self-employment. The Petitioner had shown that her son Prem Parkash had undergone a training course in household electrical wiring and had obtained a certificate from Industrial Training Institute, Banda. He did not get any government job and wanted to be self-employed by starting a shop of electrical goods and utensils. The Prescribed Authority considered this factor but we find that the appellate court expressed doubt on the fact that the certificate related to Prem Parkash being lead by the fact that his residence was shown as village Lukhtara, undisputedly that village also falls in the district of Banda. It was also observed by the appellate court that it could not be shown as to what government job Prem Parkash could get by virtue of the certificate he had obtained from Industrial Training Institute, Banda. The whole approach to the point was misdirected. Be that as it may, we make it clear that even by excluding the factor of Prem Parkash being technically educated, otherwise as well we find that the need and requirement of the landlady is bonafide even after considering the same in the light of Rule 16 of the Rules and in the background of comparative hardship which we find would be more to the landlady, in the event of disallowing the application for eviction.

In view of the above discussions we feel that the appellate court was in error in setting aside the order passed by the trial court allowing the application of the petitioner-landlady and the High Court also erred in dealing with the matter mechanically.

In the result, the appeal is allowed with costs throughout. The judgments and orders passed by the High Court as well as the appellate court are set aside and the order passed by the Munsif (Prescribed Authority) Banda allowing petitioner's application for eviction of tenant-Baij Nath is restored.

The shop being in possession of the respondent no.1 since long, we allow him four months' time to hand-over its vacant possession to the petitioner-landlady, on his clearing all the arrears of rent, if any, and on continuing to pay the same regularly and further on furnishing the usual undertaking to that effect in this court within a period of four weeks from today.