1988 Legal Eagle(SC) 645

IN THE SUPREME COURT OF INDIA

Equivalent Citations : 1989 AIR(SC) 255 : 1988 (4) JT 291 : 1988 (2) Scale 1450 : 1989 (1) SCC 1 : 1988 (Supp.3) SCR 722 : 1989 (1) UJ(SC) 244

Before : R.S.Pathak : S.Natarajan

Ammal Chandra Dutt
Versus
Second Additional District Judge

Case No. : 1201 of 1976

Date of Decision : 01-Nov-1988

Advocates Appeared:
Tandon Dileep, Mahto R.B.

HEADNOTE :
EVIDENCE ACT, 1872
Section 114 -- U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972, Rule 18(1) -- U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, Section 21(1) -- Second application for Eviction moved by the landlord -- Not necessarily barred under Rule 18 because the rule sets out rule of presumption and is not mandatory but serves as guidelines to avoid multiplicity 1 of the proceedings.
On reading, Rule 18(1) it may be seen that Rule does not prohibit or bar filing an application for reliease of any building months form the date of which a final order was passed in previous application made under Section 3 of 1947 Act or within a period of six months from the commencement of the Act. All that the rule says is that if a second application is made for release of the house on which permission to sue was sought for in the previous application on the same ground within a period of six months from the date of final order in that application or within six months from the commencement of the act whichever is later. The prescribed authority shall accept the findings in those proceedings as conclusive. The rule does not made at that a second application preferred on the same ground within a period of six months form the date of the order in the previous application or from the -- commencement of the Act must necessarily be dismissed as barred under the Rules.

U.P. URBAN BUILDING ACT 1972
Section 21(1) -- U.P. urban Buildings (Regulation of Letting Rent and Eviction) Rules, 1972, Rule 18(1) -- Civil Procedure Code 1908, Section 11 -- Evidence Act, 1872, Section 114 -- Bar against filing of second application for eviction Rule 18(1) is not mandatory but serves as guideline to avoid multiplicity of the proceedings -Rule provides that if a second application is made for release of the house on which permission to sue was sought for in the previous application on the same ground within a period of six months -- The prescribed authority shall accept the findings in those proceedings as conclusive -- Application filed in changed circumstances is not necessarily barred.

Rule 18(1) contains only a formula of presumption based on facts, it goes without saying that the prescription is only of a directory nature and not mandatory. It well settled that where the

situation and the context warrants it the word "shall" used in a section or rule of a stature has to be construed as may where the circumstances has changed since the rejection of the application for eviction under the 1947 Act the prescribed authority shall accept the findings in both proceedings as conclusive occuring in Rule 18(1) have to be read as the prescribed authority may accept the findings in those proceedings as conclusive. It is inequitable and unreaslistic to construe Rule 18(1) and containing an inaxorable legal prescription for rejecting a second application filed within the prescribed time limit soley on the basis of findings rendered in the earlier application.

Section 21(1) -- Eviction application for bonafide requirement -Partial eviction can be granted and two dwelling units can be created in a single tenanted premises.

STATUTES REFERRED:
1. Constitution of India,1950, Article 226
2. Evidence Act,1872, Section 114
3. Uttar Pradesh Urban Buildings (Regulation of Letting,Rent and Eviction) Act,1972, Section 21(1)
4. Uttar Pradesh Urban Buildings (Regulation of Letting,Rent and Eviction) Rules,1972, Rule 18(1)

JUDGMENT/ORDER:

Natarajan, J. :-

This appeal by special leave by a tenant is directed against the dismissal of Civil Misc. Writ No. 12204 of 1975 by the High Court of Allahabad.

2. The second respondent became the owner of a house bearing Municipal No. 140 (old No. 94-A) in Hewett Road, Allahabad under a gift deed executed in his favour by his mother in 1945. However, even in 1944, his father had leased the house to the appellant on a monthly rent of Rs. 30/- which after some years was raised to Rs. 35/-. The house is a three-storeyed building and the appellant was residing in the first and second floors and running a drug store belonging to his wife in the ground floor. Some years later the second respondent's father leased out an adjacent building also to the appellant for being used for the drug store business.

3. In 1967 it became necessary for the second respondent to seek recovery of possession of the house because his elder brother, with whom he was living, asked him to find accommodation elsewhere. Therefore the second respondent applied for permission under Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter referred to as the 1947 Rent Act) to the Prescribed Authority to file a suit for eviction against the appellant on the ground of urgent and reasonable requirement of the house for his own occupation. The Prescribed Authority rejected the application on November 10, 1967. After the 1947 Rent Act came to be replaced by the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter the 1972 Rent Act), the second respondent again sought the permission of the Prescribed Authority to file a suit against the appellant but this time he sought for recovery of possession of the leased premises either fully or partially. He averred in the application that since his brother had asked him to vacate his house he had taken up residence in a single room in the house of one Srivastava and was living there in great hardship and as such he wanted to recover possession of his house in its entirety failing which at least a portion of it. The Prescribed Authority refused to grant permission on the ground (that) the application had been made within a period of six months from the commencement of the 1972 Rent Act and hence it was barred by Rule 18(1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (hereinafter the Rules). The Appellate Authority, however, differed from the Prescribed Authority and granted permission to the second respondent to recover possession of the ground floor portion of the house alone. Thereupon the appellant moved the High Court under Article 226 of the Constitution for issuance of a writ to quash the order of the Appellate Authority

but did not meet with success and hence this appeal by special leave.

4. A few facts may first be noticed before the appellant's contentions are set out and examined Admittedly, the second respondent became the owner of the leased premises in the year 1945 under a gift settlement made by his mother and except the leased building he has no other house. It is also an admitted fact that when the first application for permission to sue was made, the second respondent was living with his brother but subsequently he had to move out of that house and take up residence in a single room in a building belonging to one Srivastava. A Commissioner appointed by the Court had inspected the room occupied by the second respondent and found that the second respondent was faced with acute shortage of space and that the bath room and latrine were situated in the ground floor which was in the landlord's occupation. While the prayer in the first application was for the release of the entire house, the prayer in the second application was for release of the whole house or in the alternative for the release of at least a portion of the house.

5. Coming now to the contentions of the appellant, who is a member of the bar and who appeared in person and argued the case for himself, they were as follows :-

1. The application made under the 1972 Rent Act was a second application for release of the house on the same ground of requirement and hence it was barred under Rule 18(l) of the Rules since it had been made within six months from the commencement of the 1972 Rent Act.

2. The High Court's view that the second application was not barred under Rule 18(l) because it is the circumstances of requirement and not the nature of the requirement that would constitute the ground of eviction is erroneous and unsustainable.

3. The Act and the Rules do not permit the creation of two dwelling units in a building covered by a single tenancy and hence the grant of permission for partial eviction is bad in law.

4. The Appellate Authority has erred in rendering a finding against the appellant in the matter of comparative hardship merely because the appellant had another building adjacent to the leased premises for running the drug store.

5. In any event, the Appellate Authority and the High Court have failed to notice that without the ground floor, the first and second floors cannot be used as residence because the bath and toilet rooms are situated only in the ground floor.

6. The learned counsel for the second respondent, besides refuting the above contentions of the appellant, argued that the appeal itself has become unsustainable because the appellant has vacated the building in the year 1976 itself and taken up residence in another house belonging to his wife and consequently by reason of Explanation (1) to Section 21 of the 1972 Rent Act, he is disentitled to dispute the second respondent's right to recover possession of the house.

7. We will now consider the contentions of the appellant in seriatim. In so far as the first contention is concerned, it suffers from a fallacy in that it is founded upon a misconstruction of Rule 18(l). The Rule in question is worded as under :-

18. Avoidance of multiplicity of proceedings (Sections 38(4) and 41).-(1) Where an application of a landlord against any tenant for permission to file a suit for eviction under Section 3 of the old Act, on any ground mentioned in Section 21(1) has been finally allowed or rejected on merits either before or after the commencement of the Act, whether by the District Magistrate or on revision by the Commissioner or the State Government or under clause (i) or clause (m) of Section 43(2) by the District Judge, and the landlord instead of filing a suit for eviction makes an application under Section 21 on the same ground within a period of six months from such decision or from the commencement of the Act, whichever is later, the Prescribed Authority shall accept the findings in those proceedings as conclusive." (Emphasis supplied)

Provided that the period during which the operation of any permission as aforesaid is stayed by order of any court or authority shall be excluded in computing the said period of six months.

(2).....omitted.

On a reading of Rule 18(l), it may be seen that the Rule does not prohibit or bar the filing of an application for release of any building on any ground mentioned in S. 21(l) within a period of six months from the date on which a final order was passed in the previous application made under S. 3 of the 1947 Rent Act or within a period of six months from the commencement of the Act. All that the Rule says is that if a second application is made for release of the house on which permission to sue was sought for in the previous application or the same ground within a period of six months from the date of the final order in that application or within six months from the commencement of the Act, whichever is later, "the prescribed authority shall accept the findings in those proceedings as conclusive." The Rule only sets out a rule of presumption to be followed by the Prescribed Authority for dealing with an application for release on the same ground without a sufficient interval of time between the filing of the two petitions. The Rule does not mandate that a second application preferred on the same ground within a period of six months from the date of the order in the previous application or from the commencement of the Act must necessarily be dismissed as barred under the Rules. The first contention of the appellant is therefore obviously misconceived and cannot therefore be sustained.

8. In so far as the second contention is concerned, the appellant is right when he says that the earlier application under Section 3 of the 1947 Rent Act and the later application under Section 21(1) of the 1972 Rent Act should be construed as having been made on one and the same ground, viz. bona fide requirement of the premises by the second respondent for his own occupation. The High Court has however taken the view that the ground of eviction in the two applications is not the same because different sets of circumstances would constitute different grounds and such a test is satisfied in this case. We do not think it necessary to go into the question whether the High Court's view is correct or not because even if we treat the two applications as having been made on the same ground, the second application would not attract the operation of Rule 18(1). Since the Rule contains only a formula of presumption based on facts, it goes without saying that the prescription is only of a directory nature and not of a mandatory nature. In this context we may appositely refer to the following passage in Phipson on Evidence (Thirteenth Edition), at pages 4 and 5) :-

"Presumptions are either of law or fact. Presumptions of law are arbitrary consequences expressly annexed by law to particular facts; and may be either conclusive, as that a child under a certain age is incapable of committing any crime; or rebuttable, as that a person not heard of for seven years is dead, or that a bill of exchange has been given for value.

Presumptions of fact are inferences which the mind naturally and logically draws from given facts, irrespective of their legal effect. Not only are they always rebuttable, but the trier of fact may refuse to make the usual or natural inference notwithstanding that there is no rebutting evidence."

Besides it is a well-known principle that in the interpretation of statutes that where the situation and the context warrants it, the word "shall" used in a Section or Rule of a statute has to be construed as "may". The present context is one such where the words "the Prescribed Authority shall accept the findings in those proceedings as conclusive" have to be read as "the Prescribed Authority may accept the findings in those proceedings as conclusive" because the findings are based upon existence of facts.

9. We may now set out the reasons as to why the prescription in Rule 18(1) should be construed as only directory and not mandatory. In the first place, the Rule envisages two kinds of situations, one of them where the second application is made within an interval of six months from the date on which final orders were passed in the previous application and the other where the second

application is made beyond an interval of six months, which may even go up to several years, as in this case where the interval was over five years, but within six months of the Act coming into force. Surely, the legislature would not have intended that the interval factor in the two sets of situations should be visited with the same consequences by adopting a rigid and inflexible application of the prescriptive guideline given in R. 18(1). The second factor is that even if the interval factor is the sole criterion for the application of the formula contained in R. 18(1), the legislature could not have intended that even where drastic changes had taken place subsequent to the disposal of the earlier application, the. prescribed authority should shut his eyes to the realities of the situation and blindly and mechanically apply the Formula in R. 18(l) and reject the second formula in application. To cite a few examples it may be that after the disposal of the first application, the landlord had been rendered houseless due to the house occupied by him falling rains or being down due to decay or heavy rain or being destroyed by fire. Could any one say that irrespective of the changes that have taken place, the findings rendered in the previous application would have the force of relevancy till the period of six months fixed under the Rule has expired? It is, therefore, manifest that the rule of presumption enunciated in R. 18(l) is only to serve as a guideline to be followed by the prescribed authority if he finds the circumstances to remain unchanged and the finding rendered in the earlier application to have relevance even with reference to the facts set out in the second application. The Rule is intended to avoid multiplicity of proceedings as the very heading given to the rule would make it clear. It will therefore be inequitable and unrealistic to construe R. 18(l) as containing an inexorable legal prescription for rejecting a second application filed within the prescribed time limit solely on the basis of the findings rendered in the earlier application.

10. In this case we have already referred to the fact that after the first application was rejected, the living conditions of the second respondent had changed materially. He had been turned out of his brother's house and forced to take up residence in a single room belonging to a third party and live there in great discomfort and hardship. In the plight in which he was placed, he was even prepared to accept partial release of the house if he could not get release of the entire premises. The long interval of time between the rejection of the first application and the date of making the second application, viz. about five years and the significant changes that had taken place during the interval in the living conditions of the second respondent undoubtedly rendered irrelevant the earlier findings and such being the case the rule of presumption given in Rule 18(l) can have no application or relevance to the second application. Viewed in this manner, we do not think the Appellate Authority or the High Court has committed any error in granting the relief of partial release of the house to the respondent. Hence the second contention of the appellant has also to fail.

11. So far as the third contention is concerned, viz. the impermissibility of creating two dwelling units in a single tenanted premises, the argument fails to note that Section 2l (1) provides for an order of eviction being passed against a tenant "from the building under tenancy or any specified part thereof." (Emphasis supplied). We do not therefore find any error in the second respondent being granted the relief of partial eviction.

12. As regards the fourth contention, it is admitted that the appellant had been given an additional building by the second respondent's father for being used for the drug store business. Since the appellant was using the ground floor in the suit premises only for running his wife's drug store and was not living therein, the Appellate Authority cannot be said to have committed any error in taking the view that in the matter of comparative hardship the second respondent would be the more affected person if eviction was not ordered than the appellant by an order of partial eviction being passed because he had another building and could conveniently shift his business to that building.

13. Coming to the last contention of the appellant, viz. the unsuitability of the first and second floors for residential purposes without the use of the bath and toilet rooms in the ground floor, it is open to the appellant to move the Prescribed Authority for directions being given to the second respondent to make suitable provision in the ground floor for the appellant and his family members to have access to and make use of the bath and toilet rooms in the ground floor.

As regards the contention of the respondent that the appellant and his wife are now living in a house belonging to the appellant's wife and as such the appellant is precluded under Explanation (i) to Section 21(l) of the 1972 Rent Act from resisting the second respondent's suit for eviction, we are unable to make any pronouncement on it because of lack of evidence in support of that plea and besides the appellant would say that the house now occupied by him and his wife is the subject matter of a litigation between his wife and her uncle .

14. In the light of our conclusions, the appeal fails and is according dismissed. There will, however, benoorder as to costs.

Appeal dismissed