

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1692 of 2006

BASANTI DEVI & OTHERS APPELLANTS

VERSUS

RAJANA DEVI AGRAWAL & OTHERS RESPONDENTS

ORDER

This is a tenant's appeal by special leave. The landlady (Shakuntla Devi) filed Suit No. 48 of 1993 before the Prescribed Authority/II Additional Civil Judge, Allahabad for eviction of the tenant (Sangam Lal) under Section 21 (1)(a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 ("Act" for short). The eviction petition was in regard to a shop with two doors measuring about 16" x 8". The landlady alleged that the premises was required bona fide to enable her son Amit Kumar Agarwal to carry on his business. The said petition was resisted by the tenant. The Prescribed Authority, by order dated 6.5.1995, allowed the eviction petition and directed the tenant to vacate the premises within one month. In the said order, after considering the evidence, the Prescribed Authority recorded a finding of fact that the
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suit shop was required by the landlord bona fide for the business of her son and that the hardship that would be caused to the landlord by refusing eviction will be greater than the hardship that is likely to be caused to the tenant by ordering eviction.

2. The tenant died and his wife and children (appellants) filed an appeal (Rent Control Appeal No. 185 of 1995) before the District Judge, Appellate Authority. The appeal was dismissed by order dated 23.8.2003 affirming the findings of fact recorded by the Prescribed Authority.

3. The order dated 23.8.2003 was challenged by the appellants in Civil Writ Petition No. 41162 of 2003 before the High Court Allahabad. The landlady having died during the pendency of the said proceedings, her legal representatives including Amit Kumar Agarwal for whose need the eviction petition was filed, were impleaded as respondents.

4. The High Court found no reason to interfere with the finding of facts recorded by the Prescribed Authority and affirmed by the Appellate Authority. However, as the appellants-tenants contended that another tenant of the respondents name Chanchal Kumar Kesarwani had in the meanwhile vacated a nearby shop and also filed an affidavit of the said Chanchal Kumar Kesarwani to that effect that he had vacated the shop, the High Court held that the said shop which was in the possession of Chanchal Kumar Kesarwani should be given to the appellants-tenants as alternative accommodation keeping in view the spirit and principle of Rule 16(1)(c) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972. We extract below the operative portion of the impugned judgment:

"In view of the statement of Chanchal Kumar Kesarwani on oath that he vacated the shop, it appears to be imminently just and proper and perfectly in accordance with the spirit and principle of Rule 16 (2)(c) of the Rules framed under the Act that the shop vacated by Chanchal Kumar must be given to the petitioner in lieu of the shop in dispute. Learned counsel for the respondent landlord has got no objection to the same. Accordingly, the judgments passed by the courts below are modified to the extent that the petitioner must vacate the shop in dispute and hand over its possession to the landlord and the shop which was in tenancy of Chanchal Kumar Kesarwani must be given to the petitioner on rent. The petitioner must pay Rs. 1500/- per month as

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rent of the said shop. If the parties are unable to affect the exchange amicably by themselves, then the same must be done by Prescribed Authority. The Prescribed Authority shall affect the exchange simultaneously using such force as may be

necessary. Chanchal Kumar Kesarwani, having filed affidavit to the effect that he has already vacated the shop and delivered its possession to the landlord, can have no right to interfere in delivery of the said shop to the tenant petitioner. Prescribed Authority must effect simultaneous exchange within three months from the date of receipt of certified copy of this order."

The said order of the High Court is challenged in this appeal by special leave.

5. The appellants have not been able to make out any ground for interfering with the concurrent findings regarding bona fides and hardship recorded in favour of the landlady.

6. Learned counsel for the appellants contended that he has instructions to submit that Chanchal Kumar Kesarwani had not vacated the shop in his occupation and Civil Revision No. 27 of 1997 filed by the landlady against the said Chanchal Kumar Kesarwani is still pending. He, therefore, submitted that the order passed by the High Court directing

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that the said shop should be given to the appellants is not capable of being implemented and, therefore, the appellants cannot be directed to vacate the schedule shop. This contention, to say the least, amounts to blowing hot and cold. Before the High Court, when the landlady stated that the Chanchal Kumar Kesarwani had not vacated the shop and the matter was still pending in Civil Revision No. 27 of 1997, the appellants asserted that Chanchal Kumar Kesarwani had vacated and also got an affidavit to be filed by Chanchal Kumar Kesarwani stating that he had vacated his shop. Acting on the said assertion by the appellants and the affidavit filed by Chanchal Kumar Kesarwani, the High Court directed that the shop which was earlier in the possession of Chanchal Kumar Kesarwani should be given to the appellants. Even that direction was given, not because of any right made out by the tenants, but on equitable grounds.

Having taken a specific stand before the High Court and getting an order on that basis the appellants are estopped from now contending that the Chanchal Kumar Kesarwani had not vacated the shop. This aspect is however irrelevant as the High Court has observed that the Prescribed Authority

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shall ensure that the premises are to be simultaneously exchanged. At all event, even if the Chanchal Kumar Kesarwani had not vacated the premises for any reason, that cannot be a ground for denying relief to landlady. It can only be a ground to deny alternative accommodation to the appellants. The finding that the need of the landlady for the premises is bona fide and greater hardship will be caused to the landlady has not been set aside by the High Court.

7. We, therefore, find no reason to interfere with the impugned judgment of the High Court and the appeal is, accordingly, dismissed with costs of Rs. 5000/- payable to respondents.

.....J.
[R.V. RAVEENDRAN]

.....J.
[LOKESHWAR SINGH PANTA]

NEW DELHI
MAY 30, 2007

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IT E M NO.1 0 1

COURT NO.5

SEC T I O N XI

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B A S A N T I D E V I & O R S .

Appellant (s)

V E R S U S

R A J A N A D E V I A G R A W A L & O R S .

Respondent(s)

(With office report)

Date: 30/ 0 5 / 2 0 0 7 This Appeal was called on for hearing today.

