

Non-reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.1002 OF 2010

VISHWANATH PRASAD JAISWAL

.....APPELLANT

VERSUS

SATYA NARAIN SHARMA

.....RESPONDENT

J U D G M E N T

J.S.KHEHAR, J.

This is an appeal filed at the behest of the landlord, whose plea for eviction against the respondent-tenant was turned down, by the impugned order dated 03.12.2007, passed by the High Court of Judicature at Allahabad (hereinafter referred to as 'the High Court'). It is essential to record, that eviction at the behest of the appellant was sought under Section 20(2)(c) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'the 1972 Act'). Section 20(2)(c) aforementioned of the 1972 Act is being extracted hereunder:

"20(2) A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following

grounds, namely:

(a) XXX XXX XXX

(b) XXX XXX XXX

(c) that the tenant has without the permission in writing of the landlord made or permitted to be made any such construction or structural alteration in the building as is likely to diminish its value or utility or to disfigure it."

In order to succeed under the provision extracted above, a landlord must establish, firstly, that the tenant without the permission of the landlord, had effected construction or structural alteration in the rented building. The fulfilment of the first condition would not *per se*, entitle a landlord, the right to evict the tenant. In addition to the aforesaid pre-requisite, it is essential for a landlord to further establish, either that, the said construction or structural alteration had diminished the value of the building, or that, it had diminished the utility of the building, or that, it had disfigured the building.

The building leased out by the appellant to the respondent is a house. In the lease deed executed between the parties on 01.03.1987, the description of the rented premises, was depicted as under:

"Description of the rented shop

The shop is located in a house Plot No. C-21/3B-4-1 Mohalla Maldahiya, Varanasi and whose boundary is as under:-

East - House No.C-21/3B-4
A shop in possession of Smt.Subhagi Devi

West - A portion of House No.C-21/3 in occupation of the second party

North - Govt. Road

South - Portion of the House No.C-21/3B
in possession of the Second
Party"

A perusal of the above description reveals, that there were shops/houses on three sides of the rented shop. Naturally, therefore, the Government Road was on the side facing the verandah, in front of the shop.

The allegation made by the appellant-landlord, against the respondent-tenant, on the subject of unauthorised construction/structural alteration is to the effect, that the shifting of the shutter affixed on the shop, had resulted in a structural alteration of the shop, which at the time of the lease was 22 ft.x11½ ft. By removing the aforesaid shutter, and by installing the said shutter at the opposite end of the verandah, the dimensions of the shop had been increased to 30ft.x11½ ft. It is in the background of the aforementioned understanding of the unauthorised construction/structural alteration, that we must further determine, whether by the aforesaid action of the respondent, he had diminished the value of the premises, and/or had diminished the utility of the building, and/or had disfigured it? A positive finding on any of the above, would make out a claim, for the appellant-landlord under Section 20(2)(c) of the 1972 Act.

There is no material on the record of this case, to establish any of the aforementioned ingredients. It is in the aforesaid circumstances, that we may venture to determine a finding on the said issues, at our own. Undoubtedly, the shop premises

leased out by the appellant to the respondent originally measured 22ft.x11½ ft. Even if the dimensions of the shop have been increased to 30 ft.x11½ ft., it is not possible for us to record a conclusion, that the value of the shop has been decreased, nor the utility of the shop has been reduced. On the contrary, by increasing the dimensions of the shop, it may legitimately be concluded, that its value and utility had been enhanced. The only remaining question is, whether by removing the shutter from its existing location, and by installing it at the opposite end of the verandah, the respondent has disfigured the premises? In our considered view, there is no material on the record of this case, to arrive at such a finding.

For the reasons recorded hereinabove, it is not possible for us to accept, that the appellant-landlord, has been able to establish, the ingredients of the ground of eviction, envisaged in Section 20(2)(c) of the 1972 Act.

It is also relevant to notice, that the action of the respondent-tenant, in shifting the shutter (details whereof have already been narrated above), had resulted in the issuance of a show cause notice to the rival parties herein, by the Varanasi Development Authority (on 20.08.1991). The appellant-landlord replied to the same pleading innocence, by asserting that the shifting of the shutter, was the handiwork of the respondent-tenant. The respondent-tenant in his reply (dated 30.08.1991) to the show cause notice, sought compounding of the action. In the appellate proceedings, arising out of the above show cause notice, the appellant-landlord was exonerated from the imposition of any

penalty. The appellate authority, however, determined the issue against the respondent-tenant. The respondent-tenant had filed Writ Petition No.1995 of 1996, before the High Court of Judicature at Allahabad (before its Lucknow Bench) to assail the order passed in the aforementioned appellate proceedings. The same is stated to be pending before the High Court. In our considered view, not only that the above proceeding does not create any right of eviction, rather the appellant-landlord having been exonerated, cannot claim any prejudice on the basis of the proceedings initiated by the Varanasi Development Authority. We are, therefore, not in a position to accept, the contention advanced on behalf of the appellant-landlord, that the respondent-tenant was liable to be evicted, because of the proceedings initiated by the Varanasi Development Authority.

For the reasons recorded hereinabove, we find no merit in the instant appeal and the same is accordingly dismissed.

JUDGMENTJ.
(JAGDISH SINGH KHEHAR)

.....J.
(SHIVA KIRTI SINGH)

.....J.
(ARUN MISHRA)

NEW DELHI;
DECEMBER 4, 2014.