

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 15637 of 2024

Petitioner :- Hari Shankar

Respondent :- Rakesh Kumar

Counsel for Petitioner :- Pankaj Agarwal

Counsel for Respondent :- Akanksha Gaur

Hon'ble Ajit Kumar,J.

1. Supplementary affidavit filed by learned counsel appearing for petitioner as well as supplementary affidavit filed by learned counsel appearing for respondent landlord are taken on records.
2. Heard Shri Pankaj Agarwal, learned counsel appearing for petitioner and Ms. Akansha Gaur, learned Advocate appearing for respondent landlord.
3. By means of this petition filed under Article 227 of the Constitution, petitioner has questioned the order passed Prescribed Authority granting release in favour of landlord respondent qua demise premises under Section 21 (1) (a) of U.P. Urban Buildings (Regulation of letting, Rent and Eviction) Act, 1972 (for short 'Act No. 13 of 1972') on the point of *bona fide* need. Petitioner unsuccessfully questioned the order in appeal and, hence, the order passed by the appellate authority dated 18.10.2024 is also under challenged.

4. The main argument that has been advanced questioning the findings returned by the Prescribed Authority as well as the court of appeal by learned counsel appearing for petitioner Mr. Agarwal, is that he had lead sufficient document of GST forms qua registration of firm, namely, Sanskar Traders which demonstrated the GSTIN number of the business which was both in the name of father and the son and the son was since paying tax, therefore, the son cannot be said to be doing business absolutely in subordination of his father and this also corroborated the averments made in the written statement by the petitioner that there were three shops in possession of landlord respondent, out of which in two shops business was going on. It is submitted that even if the son was doing business of the father, since there were two shops in possession of the landlord respondents, therefore, one of the shops could have gone to the needy son very conveniently and, hence, the need was not a *bona fide* one.

5. In support of his above submission, learned counsel for petitioner has taken the Court to page Nos. 49 to 53 of the supplementary affidavit which are receipt of the Goods and Service Taxes in which the TIN number of the firm is there showing that the business was in the name of Akash Varshney and since it was a proprietorship firm, therefore, it was sufficiently

proved that the entire business was being run by Akash Varshney, the son and he was, therefore, running the business independently. It is further submitted that the court of appeal had not adverted to this aspect of the matter at all and even while it referred to these documents, it did not deal with them and merely relied upon the statement made by the tenant petitioner before the Prescribed Authority that both father and son were doing business jointly. It is thus, submitted that the judgment and order passed by the Prescribed Authority and the order affirming the judgment by appellate authority are both suffering from the vice of perversity having overlooked the relevant documents.

6. *Per contra*, Ms. Akansha Gour, learned Advocate appearing for respondent landlord, meeting the arguments advanced on behalf of petitioner submitted that the release application itself was filed in the year 2020 whereas the documents that have been brought on record in the form of GST receipts to demonstrate that business was being run as proprietorship firm of son Akash Varshney, was only of the year running between 2017-2018. She submitted that in 2018, the GSTIN number came to be cancelled and a new proprietorship firm in the name of Sanskar Traders with father Rakesh Varshney as proprietor of the firm came into existence with effect from 10.09.2018.

7. In support of her above submission she has also filed a supplementary affidavit in which the GST receipts have been brought on record which contain GSTIN number in the name of proprietorship firm of Rakesh Varshney. She has also argued that since this document which has been filed at page 53 of the supplementary affidavit by the petitioner was there before the courts below and which itself demonstrated that the GSTIN registration of the proprietorship firm in the name of Akash Varshney have stood cancelled, the court below rightly placed reliance upon the statement of the petitioner that both the father and son were doing business in the year 2020 jointly. The document, therefore, according to her sufficiently demonstrated that son was virtually a helping hand to his father in the business which was being run chiefly by the father in the year 2020 when the release application came to be filed.

8. It is also argued by Ms. Gour that the theory of three shops set up by petitioner was also not correct because the survey commission report sufficiently demonstrated that there were only two shops that were found during survey on the spot.

9. Having heard learned counsel for respective parties, their arguments raised across Bar, the only point that I see requires consideration and that has also been pressed by learned counsel for

petitioner, is as to whether the court of appeal was justified in ignoring the GST receipts while arriving at a finding that *bona fide* need was there to grant release and so was rightly done by the Prescribed Authority.

10. From the perusal of the documents that have been brought on record by means of supplementary affidavit filed by petitioner, he admits that these were the only documents in the form of GST receipts that were led in evidence and evidence is always said to be relevant and cogent to return a finding on facts and issues if it relates to a fact position as to the consideration of a point on the date of institution of the case. Relevancy of documents as to the facts in issue would therefore, would be determinable as to status on the date of institution of the case. In the present case I find that the document that has been lead in evidence by the petitioner in support of the averment made in the written statement that son was independently settled in a business in the name of Sanskar Traders were not of the year 2020 and onwards while the release for *bona fide* needs was set up in the year 2020 for the first time. Any document that showed that GST receipts were issued in the name of Sanskar Traders with Akash Varshney as proprietor of the firm would have been relevant had it been of the relevant year of release case being instituted. Moreover, I find that the 2018 GST

receipt showed itself that the GSTIN number standing in the name of Sanskar Traders with Akash Varshney as proprietor came to be cancelled. A document evidencing a *factm* of cancellation of registration of firm for GST would not have been relevant enough in support of the averments that son Akash Varshney was doing independent business. Evidence is led to prove a fact, relevant to issue. So evidence becomes a medium to prove a fact pleaded. Evidence of course, can be oral or documetary. A party not able to prove a fact would be certainly leading documentary evidence or material but such evidence must be relevant to the fact in issue. Sometime an inference can be drawn from a document filed but in instant case since the GSTN receipt itself showed that Sanskar Trader's TIN in the name of Akash stood cancelled, only adverse inference could have been drawn. The court of appeal, therefore, was fully justified in ignoring the said document and placing more reliance upon the averments made by the petitioner himself that son was doing business with his father. Even otherwise the document brought on records by means of supplementary affidavit of the landlord respondents shows that since September, 2018 onwards the firm stood registered in the name of Rakesh Varshney only as proprietor of the firm.

11. Thus, if the son has been doing business with his father, he has

every right to get settled independently in a business and father is absolutely justified in setting up a need for the release of the shop in question to settle his son. Need therefore, was liable to be rendered as *bona fide* and I do not see any manifest error either in law or on facts in the orders passed by the Prescribed Authority as well as by the appellate court.

12. Petition lacks merits and is accordingly dismissed.

Order Date :- 9.1.2025

Nadeem