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RAMESH CHANDRA BHANDARI

v.

RAM SINGH SALAL

(Civil Appeal No. 575 of 2016)

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JANUARY 18, 2016

**[J. CHELAMESWAR AND ABHAY MANOHAR SAPRE, JJ.]**

*U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972:*

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*s. 21(1)(a) – Eviction petition by appellant-landlord – Eviction sought on the ground of bona fide need of appellant-Army Official to start business for his physically disabled son – Second round of litigation – Eviction petition allowed by High Court, however respondent-tenant granted 2 years' time to vacate the suit shop – On appeal, held: High Court rightly allowed the eviction petition – However, in the absence of any justifiable cause alleged by the respondent to prove extreme hardship as also in the absence of any statutory provision or any contract between the parties to that effect, the High Court was not justified in exercising its discretion and grant 2 years' time to respondent to vacate the suit shop – High Court should have appreciated the fact that the said process of litigation has consumed 20 years and the hardship suffered by the appellant is more as compared to the respondent.*

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*Object and purpose of – Held: Act of 1972 is a legislation which provides for regulation and control of letting and rent of the accommodation – It regulates and control eviction of tenants from accommodations – It provides for expeditious trial of eviction cases on ground of bona fide requirement of certain categories of landlords – Amended s. 21 provides a statutory deeming presumption of the need set up by landlord who are serving or retired Indian soldier or their widows, to be sufficient if he sought eviction for his personal requirement or for the benefit of any member of his family – Object is to relieve such landlord from the hardship so that he is able to get the premises vacated early for his personal use – Appellant-landlord was denied this benefit due to long pendency of*

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*the case – Respondent-tenant granted 7 months time to vacate the premises subject to certain conditions.* A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 575 of 2016

From the Judgment and Order dated 31.08.2015 of the High Court of Uttarakhand at Nainital in Writ Petition No. 1696 of 2012 (M/S). B

Dr. Sushil Balwada, Abhishek Anand Rai, Divya Pandey for the Appellant.

Manoj Swarup, Lalita Kohli, Abhishek Swarup, Charu Singhal, M/s. Manoj Swarup & Co. for the Respondent. C

The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.** 1. Leave granted.

2. This appeal is filed against the judgment and order dated 31.08.2015 passed by the High Court of Uttarakhand at Nainital in Writ Petition No. 1696 of 2012 (M/s) whereby the High Court allowed the writ petition filed by the appellant-landlord thereby granting the decree for eviction against the respondent in relation to the suit shop but at the same time further granting two years' time to the respondent to vacate the suit shop. D

3. Facts of the case lie in a narrow compass. They, however, need mention in brief to appreciate the short controversy involved in the appeal. E

4. The appellant is the plaintiff whereas the respondent is the defendant. F

5. The appellant is the owner/landlord of the suit premises, which is situated at Almora (Uttaranchal). The appellant was an Army official who retired in 1983. He let out the suit premises (shop) to the respondent on a monthly rent of Rs.800/-, who carries on his business in the suit shop. G

6. The appellant filed an application under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act") against the respondent seeking his eviction from the suit premises. The eviction was sought on the ground H

A of appellant's *bona fide* need for starting a business for his son who is physically disabled.

7. The respondent denied the need and contested the eviction petition filed by the appellant. The matter reached to this Court at the instance of the appellant in the first round of litigation which eventually ended in granting liberty to the appellant to file a fresh eviction petition on the changed circumstances against the respondent for his eviction from the suit shop.

8. This is how the second round of litigation again started in 1997 between the parties out of which this appeal arises. The ground for seeking eviction was *bona fide* need for the son to start business based on subsequent events. The Prescribed Authority/Civil Judge (Sr. Division) Almora, Uttarakhand by his order dated 08.05.2009 in Rent Case No. 2 of 2006 decreed the appellant's eviction petition and accordingly directed the respondent to vacate the suit shop within 2 months. It was held that the appellant's need to seek eviction as pleaded in the petition is *bona fide* and that he has no other alternative suitable accommodation of his own in the city where his son can carry on the business.

9. Against the said order, the respondent filed an appeal being Rent Appeal No. 3 of 2009 before the District Judge, Almora, who by order dated 10.07.2012 allowed the appeal and set aside the judgment passed by the prescribed authority.

10. Felt aggrieved by the said judgment, the appellant filed writ petition before the High Court. By impugned order, the High Court allowed the petition and while restoring the order of the prescribed authority and ordering respondent's eviction from the suit shop, granted 2 years' time to the respondent to vacate the suit shop.

11. The appellant has filed this appeal feeling aggrieved only against that part of the order by which the High Court has granted 2 years' time to the respondent to vacate the suit shop.

12. So far as the respondent is concerned, he has not filed any appeal against the impugned order.

13. Heard learned counsel for the parties.

14. Submission of the learned counsel for the appellant was only one. According to him, the High Court having rightly allowed the appellant's eviction petition by accepting the *bona fide* need of the

appellant erred in granting two years' time to the respondent to vacate the suit shop. Learned counsel urged that granting of 2 years' time to the respondent to vacate the suit shop virtually nullified the effect of the impugned order because despite holding the appellant's need to be *bona fide*, the appellant is not in a position to use the suit shop for two years due to directions in the impugned order and hence the very purpose of filing the eviction petition and obtaining the eviction order has been frustrated. He submitted that to obviate the hardship likely to be suffered by the respondent due to passing of the eviction order against him, the High Court could have taken care of such issue by granting the respondent some reasonable time which is usually of two or three months to vacate the suit shop but by no stretch of imagination the High Court could have granted 2 years' period and that too without there being any justifiable cause alleged by the respondent in the pleadings. Learned counsel, therefore, urged that having regard to the facts and circumstances, this Court, if consider it proper, may grant some reasonable time of 2 or 3 months to the respondent to vacate the suit shop.

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15. Learned counsel for the respondent, however, supported the impugned order contending that it does not call for any interference.

16. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to accept the submission of the learned counsel for the appellant as in our opinion, it has substance.

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17. In our considered view, the High Court having rightly allowed the appellant's writ petition by accepting the need of the appellant to be the *bona fide* need of his son for starting a business in the suit shop was not justified in granting 2 years' time to the respondent to vacate the suit shop. In the absence of any justifiable cause alleged by the respondent to prove extreme hardship and further in the absence of any statutory provision or any contract between the parties to that effect, there was no justification on the part of the High Court to exercise its discretion and grant 2 years' time to the respondent to vacate the suit shop.

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18. The High Court, in our view, should have appreciated the fact that the present litigation was the outcome of the second round of litigation after conclusion of the first round which began in 1986 and reached up to this Court and in this process this litigation consumed 20 years. In these circumstances the hardship is suffered more by the appellant as compared to the respondent.

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A 19. The Act in question is a legislation which provides for regulation and control of letting and rent of the accommodation. It regulates and control eviction of tenants from accommodations and for other matters connected therewith as incidental thereto. It further provides for expeditious trial of eviction cases on ground of *bona fide* requirement of certain categories of landlords. The State legislature, in its wisdom further considered appropriate to give more benefit to the landlords who are serving or retired Indian soldier or their widows and accordingly amended Section 21 by Act No.17/1985. This amendment *inter alia* provides a statutory deeming presumption of the need set up by such landlord to be sufficient if he seeks the eviction for his personal requirement or for the benefit of any member of his family. The object behind this amendment is to relieve such landlord from the hardship so that he is able to get the building/accommodation vacated early for his personal use. In this case, we find that this benefit was denied to the appellants due to long pendency of the case.

D 20. Be that as it may, in the light of foregoing discussion and having regard to all facts and circumstances of the case and as offered by the appellants, we grant time to the respondent up to "31<sup>st</sup> August, 2016" to vacate the suit shop subject to the respondent depositing with the appellants the entire arrears of rent, (if there are arrears) up to date at the rate paid by the respondent within one month and further subject to respondent paying to the appellants the rent at the same rate up to 31<sup>st</sup> August, 2016 as damages by way of use and occupation including cost amount awarded by this Court within one month and furnish undertaking before this Court within one month to vacate the suit shop within the time fixed by the Court.

F 21. In view of foregoing discussion, the appeal succeeds and is allowed in part. Impugned order is modified to the extent indicated above.

22. Cost of appeal is quantified at Rs.10,000/- to be payable by the respondent to the appellants.

G Nidhi Jain

Appeal allowed.