

**Court No. - 6**

**Case :-** WRIT - A No. - 1000097 of 1995

**Petitioner :-** Whorra Brothers

**Respondent :-** Smt. Kastoori Devi And Another

**Counsel for Petitioner :-** Virendra Mishra,Alok Sinha,Sandeep Dixit

**Counsel for Respondent :-** B.C.Agarwal,Piyush Kumar Agarwal,Varadraj S. Ojha

**Hon'ble Pankaj Bhatia,J.**

**C.M. Application Nos.33153 of 2016 and 33155 of 2016**

1. Heard learned counsel for the parties.
2. These are application for condonation of delay in filing application for substitution and amendment and application for substitution and amendment.
3. The cause shown in the affidavit filed in support of the applications, the applications are allowed and the delay is condoned.
4. Learned counsel for the petitioners is permitted to incorporate the necessary substitution/amendment during the course of the day.

**Order on Writ Petition**

1. Heard learned counsel for the petitioners and Shri Gaurav Mehrotra along with Ms. Alina Masoodi, learned counsel for the respondent nos.1/2 and 1/3 as well as Shri Piyush Kumar Agarwal, learned counsel for the respondent nos.1/1 and 1/4.
3. The present petition has been filed challenging an order dated

15.05.1995, whereby the appeal preferred by the landlady against the order rejecting the application for release was allowed.

4. The facts in brief as emerged from the documents on record indicate that the respondent no.1 (since deceased) had granted a premises bearing No.498/239 at Faizabad Road, Lucknow comprising of total covered area 385.35 square meters and open land area 142.25 square meters on monthly rent of Rs.187.50 to M/s Whorra Brothers. Subsequently when the landlady wanted the said premises for setting up the business of her son, who had completed his graduation, a release application was filed seeking release of the premises under Section 21(1)(a) of the U.P. Act No.13 of 1972 pleading that the said premises was required for the son of the landlady, who wanted to set up the manufacturing business. The said application was opposed by the tenant on the ground that there was no need for the premises as set up in the application under Section 21(1)(a) of the U.P. Act No.13 of 1972. Simultaneously, it was pleaded that the landlady owned several premises, which could be used, the details of the properties owned by the respondent no.1, which included the plot of land and land situate at Ghazipur, the other properties described were the residential premises as well as premises owned by the husband of the landlady. The release application came to be dismissed mainly on the ground that the landlady could not substantiate her contention with regard to the bonafide need. The said application came to be dismissed vide order dated 09.08.1992.

5. Aggrieved against the said order, the landlady preferred an appeal under Section 22 of the U.P. Act No.13 of 1972. During pendency of the appeal, affidavits were also exchanged in between the parties. The documents as indicated in para 24 of

the writ petition were filed, which included balance sheet, profit and loss account. The appellate court took the affidavits on record and thereafter, proceeded to decide the appeal. While deciding the appeal, it was observed that the initial tenant of the landlady was M/s Whorra Brothers, who did not do any work in the tenanted premises. It was also recorded that in the year 1973 another firm in the name of M/s Whorra Brothers and Company was incorporated and the partners of the said new firm were in occupation of the accommodation in question.

6. It was also recorded that no balance sheet of M/s Whorra Brothers was filed and all the balance sheet, profit and loss account of M/s Whorra Brothers and Company were filed. It was also observed that inclusion of M/s Whorra Brothers and Company, whose partners are different and distinct from M/s Whorra Brothers amounted to a vacancy as prescribed under Section 12 of the U.P. Act No.13 of 1972. With regard to the bonafide need as alleged, the appellate court recorded that it is the landlady, which can decide the premises, which is suitable for the needs as set up and the tenant cannot dictate any terms. It was also recorded that there was no loss of goodwill, as the premises under tenancy was being used for manufacturing goods, which were sold at Delhi and thus, the loss of goodwill was also not being established by the tenant. After recording these two findings on bonafide need and comparative hardship as also to the effect that no efforts were made by the tenant to search for any alternative accommodation during pendency of the release application, ultimately the appeal came to be allowed. The said order is under challenge before this Court.

7. Counsel for the petitioners, argues that the Prescribed Authority in its order had rejected the contention of the landlady in respect of bonafide need and without upsetting the

said findings, the appellate court could not have allowed the appeal and re-appreciated the evidence at the appellate stage.

8. It is further argued that during pendency of the appeal, evidences in the form of affidavits were filed, however, the same were taken admitted on the date of hearing and the said affidavits were neither exhibited nor could be read into evidence. He further argues, based upon a supplementary affidavit filed that M/s Whorra Brothers and Company had entered into a partnership agreement sometime in the year 1970 and thus, their tenancy stood regularized by virtue of Section 14 of the U.P. Act No.13 of 1972. It was also pleaded through supplementary affidavit that during pendency of the petition, the respondents have acquired certain properties, which can be used for their bonafide need as such, in view of the subsequent development, the bonafide need stands vanished. He thus argues that the writ petition deserved to be allowed.

9. Counsel appearing for the respondents, on the other hand, oppose the arguments as made by learned counsel for the petitioners, it is specifically pointed out that in the counter affidavit, it was specifically pleaded that the supplementary affidavit as filed on 20.05.2023 indicates that the same has been filed by Shri S.C. Whorra admitting that he was a partner of Whorra Brothers and Company. It was specifically pleaded that Whorra Brothers and Company and M/s Whorra Brothers are two different and separate entities and Whorra Brothers and Company came into existence on 01.04.1973 and was not in existence prior thereto. The list of partners was also indicated in the said paragraph, the said paragraph in the counter affidavit contained in paragraph no.12 has not been specifically denied in the rejoinder affidavit.

10. In light of the said, it is argued that the order of appellate

authority does not require any indulgence. It is pointed out that in paragraph no.10 of the counter affidavit dated 17.03.2011 filed in response to supplementary affidavit dated 17.02.2011, it is specifically pleaded that no rent has been paid to the respondents no.1 since 01.04.1979 and in response thereto, no rejoinder affidavit has been filed till date. He further argues that no activity is being carried out over the premises in question. He thus argues that while deciding the writ petition, this Court should also consider the equity, which is clearly against the petitioners on the ground of non payment of rent.

11. Considering the submissions made at the bar, it is clear that the U.P. Act No.13 of 1972 was incorporated and provided for restriction on the common law rights of the landlord in respect of rent and circumstances in which the vacation can be sought as are prescribed under the Act. The common law rights of the landlord were circumscribed by virtue of U.P. Act No.13 of 1972 as prescribed under the Statute. In the terms of circumscribed rights, an application under Section 21(1)(a) of the U.P. Act No.13 of 1972 was filed seeking release of the accommodation for setting up a factory for the son of the landlady who had graduated and wanted to start his own manufacturing activity, the said effort was resisted by the then tenant and the petitioners herein by taking grounds that several accommodations were available with the landlady, which could be used for the purposes for which release was sought. The Prescribed Authority, rejected the release application on the ground that the specific need for the tenanted premises could not be established. In appeal, the appellate court rightly appreciated the need and held that it is the landlady, who has to indicate the need and is person suited for deciding the place, where the need as alleged can be carried out. The tenant does not have any authority to right or dictate as to which premises available with the landlady

would be best suitable for the purposes for which the release is sought. The appellate court, categorically held that the tenanted premises was taken by M/s Whorra Brothers, the petitioners herein, however, the same was being used by another partnership firm namely M/s Whorra Brothers and Company, which was contrary to the mandatory provisions contained in U.P. Act No.13 of 1972 and would incur the vice of Section 12 of the U.P. Act No.13 of 1972. Clearly, the setting up of another firm namely M/s Whorra Brothers and Company was a case of sub tenancy although, the proceedings do not arise out of the declaration of vacancy proceedings under Section 12 of the U.P. Act No.13 of 1972, however, the same has material bearing while deciding the release application.

12. The present petition has been filed by M/s Whorra Brothers, there is no averment in the entire writ petition or in any of the affidavits filed that M/s Whorra Brothers and M/s Whorra Brothers and Company were same entity, the entire proceedings demonstrate the manner in which, the tenant, who had created a sub tenancy and did not pay any rent since 1979, has succeeded in frustrating the efforts of the landlady since the year 1982 the manner in which, it has been contested reveals that constantly, the efforts were made by the petitioners to deny the adjudication of the case even before this Court, the writ petition is pending since 1995. There is no material to suggest that the petitioners had paid any rent since 1979 as argued by counsel for the respondents. Abuse of process of law is writ large in the present case.

13. In the back drop of the facts recorded above, the first contention of counsel for the petitioners that the appellate court could not have allowed the appeal and re-appreciated the evidence, merits rejection for the sole reason that the appeal is a

continuation of the suit and the appellate court is well and duly empowered to exercise the jurisdiction for reaching just conclusion including appreciation of evidence.

14. The second argument is that the supplementary affidavit filed by the petitioners has indicated that M/s Whorra Brothers and Company had entered into a partnership agreement in the year 1970 and thus their tenancy stood regularized by virtue of Section 14 of the U.P. Act No.13 of 1972, also merits rejection inasmuch as the material on record indicate that M/s Whorra Brothers and Company was incorporated and started business in the year 1973, which was after the date of incorporation of the U.P. Act No.13 of 1972 i.e. 13.03.1972. The said argument is further liable to be rejected as no such claim was made before the appellate authority, there were no material to suggest that M/s Whorra Brothers and Company was the tenant prior to incorporation of U.P. Act No.13 of 1972 and thus could claim the benefit of Section 14 of the U.P. Act No.13 of 1972. The said argument is further liable to be rejected as M/s Whorra Brothers and Company is not even a petitioner before this Court.

15. The next argument of counsel for the petitioners is that subsequent events, which have been brought on record through supplementary affidavit to indicate that the respondents had acquired certain properties, which can be used satisfying the bonafide need, merits rejection as none of the properties, can be said to be useful for the purpose for which the release was sought. In any case this argument was not available to the petitioners, who is not even in occupation and premises continues in occupation by a sub tenant M/s Whorra Brothers and Company, thus said argument is also rejected.

16. For all the reasons recorded above, the appellate order does

not require any interference, the writ petition deserves to be dismissed and is accordingly **dismissed**.

17. Counsel for the petitioners based upon the instructions states that he does not want any time for vacating the premises and cannot give any undertaking to that effect in terms of the instructions received by him.

18. In the present case, release was sought for establishing business of the son of the landlady, who had graduated sometime in the year 1981 and was unemployed and wanted to set up a manufacturing unit continues to be deprived of his right to fulfill his desire to establish a business of manufacturing over span of almost 40 years, the entire generation of the son is lost. The tenant has not paid rent since 1979, considering the quantum of premises under occupation by the sub tenant of the petitioners, a cost of Rs.15 lakhs is imposed upon the petitioners, which shall be paid by the petitioners jointly and severally within a period of two months from today, failing which the District Magistrate, Lucknow shall recover the cost as arrears of land revenue from the petitioners indicated in the memo of parties.

19. The executing court is directed to ensure that the premises in the vacant condition is handed over to the substituted heirs of the landlady within a period of three weeks from today. A report shall be submitted by the executing court to this Court indicating the compliance of the order of execution.

20. After two months, the District Magistrate, Lucknow shall also submit a report as to whether he has recovered the amount of costs imposed upon the petitioners.

21. Let a copy of this order be sent to the District Judge,



Lucknow as well as to the District Magistrate, Lucknow for its compliance in the manner as indicated above, while parting with the said case, this Court records its concern for the manner in which the landlady has been harassed and entire career of her son for establishing commercial undertaking stands jeopardized by an unscrupulous tenant without payment of any rent, who has delayed the proceedings for more than 45 years.

**Order Date :- 27.3.2025**

Anupam S/-