

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 2174 (M/S) of 2017

Tahir Petitioner

versus

Gopal Krishna Verma Respondent

Mr. Siddhartha Sah, Advocate for the petitioner.

Mr. B.C. Pande, Sr. Advocate assisted by Mr. Gopal K. Verma, Advocate for the respondent.

U.C. Dhyani, J. (Oral)

By means of present writ petition, the petitioner seeks following reliefs, among others:

- (i) issue a writ, order or direction in the nature of certiorari quashing the order dated 05.08.2017, passed by Prescribed Authority / Civil Judge (Sr. Div.), Nainital, in rent control case no. 02 of 2016, Gopal Krishna Verma vs Tahir.
- (ii) issue a suitable writ, order or direction allowing the application preferred by the petitioner / tenant for cross-examination of witnesses filed in the aforesaid rent control case no. 02 of 2016, Gopal Krishna Verma vs Tahri, pending in the court of Prescribed Authority / Civil Judge (Sr. Div.), Nainital.

2) An application for release was moved by the respondent-landlord under Section 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'Act no. 13 of 1972'). The proceedings are pending before learned Prescribed

Authority / Civil Judge (Sr. Div.), Nainital in Rent Control Case no. 02 of 2016, which is pending since 2016. The landlord concluded his evidence (in the form of affidavits). The release application was fixed for tenant's evidence. At this stage, the tenant moved an application for cross-examination of landlord and his witnesses, which was dismissed by learned Prescribed Authority. Feeling aggrieved against the same, present petition has been filed by the tenant-petitioner.

3) The proceedings under Act no. 13 of 1972 are summary in nature, in which the evidence is largely based upon the affidavits and counter affidavits filed on behalf of the parties. Cross-examination of any witness is, although, permissible only when it is necessary in the case. Hon'ble Allahabad High Court has observed in *Writ Petition no. 24472 (M/S) of 1995, Kripal Singh vs Prescribed Authority, Haldwani, Nainital and another*, as under:

“The principle that a party is to be permitted to cross-examine on the principle of natural justice cannot be accepted in every case. Oral examination in all cases is not contemplated. Even in disciplinary inquiries in exceptional cases oral evidence may not be insisted upon as held in Hira Nath Mishra v. Principal, Rajendra Medical College, AIR 1973 SC 1260 and State of Haryana v. Rattan Singh, AIR 1977 SC 1512. If a party wants to cross-examine, he has to give the necessary facts in the application as to why the cross-examination is necessary. The Prescribed Authority will give the reasons either for allowing or refusing the cross-examination. The reasons disclosed in the order of the

Prescribed Authority will show whether he acted fairly or not. Considering every aspect of the matter, the Authority under the Provisions of U.P. Act no. 13 of 1972, can permit the cross-examination of a deponent of an affidavit only when it is necessary in the case.”

4) In the instant case, the tenant-petitioner has not been able to show as to why the cross-examination of the landlord and his witnesses is necessary, for whatever he wants to elicit from such witnesses, he can file affidavit before the Prescribed Authority in this behalf.

5) A decision of *Ayaaubkhan Noorkhan Pathan vs State of Maharashtra and others*, (2013) 4 SCC 465, has been placed before this Court, in which Hon’ble Apex Court has held in paras 24, 31 and 36, as below:

“24. A Constitutional Bench of this Court in *State of M.P. v. Chintaman Sadashiva Waishampayan*, AIR 1961 SC 1623, held that the rules of natural justice require that a party must be given the opportunity to adduce all relevant evidence upon which he relies, and further that, the evidence of the opposite party should be taken in his presence and that he should be given the opportunity of cross-examining the witnesses examined by that party. Not providing the said opportunity to cross-examine witnesses, would violate the principles of natural justice.

31. It is a settled legal proposition that an affidavit is not “evidence” within the meaning of Section 3 of the Evidence Act, 1872. Affidavits are, therefore, not included within the purview of the definition of “evidence” as has been given in Section 3 of the

Evidence Act, and the same can be used as “evidence” only if, for sufficient reasons, the court passes an order under Order 19 of the Code of Civil Procedure, 1908. Thus, the filing of an affidavit of one’s own statement, in one’s own favour, cannot be regarded as sufficient evidence for any court or tribunal, on the basis of which it can come to a conclusion as regards a particular fact situation.

34. Therefore, affidavits in the light of the aforesaid discussion are not considered to be evidence, within the meaning of Section 3 of the Evidence Act. However, in a case where the deponent is available for cross-examination, and opportunity is given to the other side to cross-examine him, the same can be relied upon. Such view, stands fully affirmed particularly, in view of the amended provisions of Order 18 Rules 4 and 5 CPC. In certain other circumstances, in order to avoid technicalities of procedure, the legislature, or a court / tribunal, can even lay down a procedure to meet the requirement of compliance with the principles of natural justice, and thus, the case will be examined in the light of those statutory rules, etc. as framed by the aforementioned authorities.”

6) It may be noted here that Ayaaubkhan Noorkhan Pathan’s case (*supra*) was not a Prescribed Authority case and the facts of present writ petition and Pathan’s case are at variance with each other. Although, this Court agrees with the submission of learned counsel for the petitioner that if the High Court has given a direction for expeditious disposal of some case, that cannot be a ground for not permitting anybody to place his case

properly. In other words, if Hon'ble High Court has given a direction that a particular case should be decided expeditiously, the same does not mean that the provisions of law, much less the procedure, are to be given a go bye. Any case has to be decided essentially in accordance with law.

7) This Court in para 5 of the judgment rendered by it in *Harjinder Singh @ Billa vs Harvansh Lal, 2016 (2) U.D. 370*, has held as under:

“The gravamen of controversy, in the instant case, is – whether such cross-examination is necessary or not? Respondent's witnesses, who are his son and daughter-in-law, are living in America. They have already filed their affidavits before learned Prescribed Authority, who has discussed the issue, although in brief. The Prescribed Authority did not find it to be a fit case in which the cross-examination of the respondent's witnesses was desired. Under the law, the Court has been given power, in a P.A. case, for production of the deponent for cross-examination, if it is necessary. The provision itself is clear that the court has it's discretion to permit for cross-examination and such discretion is exercised only when cross-examination is necessary. The necessity for cross-examination depends upon the facts and circumstances of each case. It is not in every case that once the application is filed for cross-examination, it has to be permitted as a general rule. It is true that the veracity of averments made in the affidavits can be tested by cross-examination, but unless it is established that the veracity of facts stated in the affidavit is necessary to be tested by cross-examination, the party must give reasons as to

which particular facts and under what circumstances and reasons, such cross-examination is necessary. In the context of each P.A. case, the purpose of enacting U.P. Act no. 13 of 1972 has to be taken into account, while permitting the party to cross-examine the deponent of an affidavit.”

Aforesaid decision was given by this Court on the basis of scores of other rulings on the subject matter in hand.

8) This Court does not find any reason to interfere with the well reasoned order passed by learned Prescribed Authority. This Court is also unable to take a view contrary to what was taken by learned Prescribed Authority.

9) At this stage of dictation, learned counsel for the petitioner submitted that, since tomorrow is the date fixed in P.A. case, therefore, if the petitioner is unable to file his affidavit by tomorrow, he will be seeking permission of such Authority for time to file his affidavit within a week.

10) Learned Senior Counsel appearing on behalf of the respondent-landlord undertakes that if the tenant-petitioner makes a request before the Prescribed Authority, the respondent will not oppose such a prayer.

11) It is, accordingly, directed that if the tenant-petitioner seeks further time to file his or his witnesses’

affidavits, the same shall be considered favourably by learned Prescribed Authority, for a week or so.

12) Writ petition fails and is dismissed at the admission stage.

13) Let copy of the order be supplied to learned counsel for the petitioner today itself on payment of usual charges.

(U.C. Dhyani, J.)

Dt. August 31, 2017.
Negi

