

(2000) 03 AHC CK 0058

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13204 of 2000

Ajai Kumar Gupta

APPELLANT

Vs

IIIrd Addl. District Judge, Farukhabad and Others

RESPONDENT

Date of Decision : 16-03-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 15 Rule 5

Citation : (2000) 03 AHC CK 0058

Hon'ble Judges : S.N. Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order of the trial Court dated 7121998 striking off defence of the petitioner and the order of the revisional Court dated 1811 1999 dismissing revision against the aforesaid order. Respondent No. 3 filed a suit for recovery of arrears of rent, damages and ejectment against the petitioner in the Court of Judge, Small Causes. The petitioner filed a written statement denying the averments made in the plaint.

2. Respondent No. 3 filed an application under Order XV, Rule 5 of the Code of Civil Procedure for striking off the defence of the petitioner on the allegations that the petitioner had not deposited the entire amount of rent and further did not pay the amount every month regularly as provided under the said provision. The petitioner filed an objection to the said application. The Judge, Small Causes Court allowed the application of the plaintiffrespondent on 7121998. The petitioner preferred a revision and the revision has been dismissed on 18111999.

3. I have heard Sri Rajesh Tandon, learned Counsel for the petitioner and Sri A.K.. Gupta, learned Counsel Co; the contesting respondent.

4. The trial Court held that the petitioner had deposited the amount but has not specifically stated as to the period for which the amount was deposited and, secondly, he has not deposited the rent every month regularly. The revisional Court has affirmed the said order. The Court was to consider whether on the

facts of the case it was necessary to exercise the discretion to strike off the defence taking the entire facts and circumstances of the case into consideration. The Courts below have not given any detailed reasoning for striking off the defence.

5. In view of the consideration of the entire material on record, the writ petition is allowed. The impugned order dated 7121998 and the order of the revisional Court dated 18111999 are hereby quashed. The suit was filed in the year 1991. The trial Court is directed to decide the suit within 3 months from the date of production of certified copy of this order. The case shall not be normally adjourned and if for any compelling reason, it is to be done, the same shall not be done for more than a week at a time. It is made clear that the amount deposited by the petitioner in Court can be withdrawn by the plaintiff of the suit without any security.