
(2009) 04 AHC CK 0262

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2026 of 2009

Bashir Ahmad

APPELLANT

Vs

Iftekhar Ahamad

RESPONDENT

Date of Decision : 07-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0262

Hon'ble Judges : Prakash Krishna, J

Final Decision : Disposed Of

Judgement

Prakash Krishna, J.—Rejoinder affidavit filed today may be taken on record.

2. The learned Counsel for the parties jointly agreed that the present writ petition which is directed against an interlocutory proceeding may be heard and disposed off finally at the admission stage itself as the pleadings are complete.

3. The respondent filed an application for release of shop No. 5/931/4 situate in Mohalla Meer Kate Put Khumran Saharanpur on the ground that the said shop is bonafidely required by him. The petitioner is a tenant of said shop on the monthly rent of Rs. 30/. The said release application has been registered as P.A. Case No. 53 of 1998 and presently is pending before A.C.J.M. 1st., Saharanpur. During the pendency of the said proceeding, the respondent landlord instituted S.C.C. Suit No. 9 of 1999 against one Bundu in respect of shop No. 5/931/5 situate at Put Khumran, Saharanpur. The said suit has been decreed and the petitioner landlord has got possession of the said shop on 27.9.1998.

4. It appears that the said fact was brought to the notice of the Court by the landlord as is apparent from the order dated 15.10.2008 by filing an application paper No. 166. Thereafter, an application for amendment, giving rise to the present writ petition, was filed by the petitioner on the ground that the landlord has got possession of shop No. 5/931/5 and this fact may be brought on record. By the impugned order the Court below has rejected the said amendment application on the ground that the said fact is already on the record in the light

of the order dated 15.10.2008.

5. Heard learned Counsel for the parties and perused the record. It is not a dispute between the parties that the possession of the shop No. 5/931/5 has been delivered to the respondent landlord. The said fact has already been brought on record of the case by the landlord himself. If the petitioner also wants to incorporate the said fact in his objection, though it is not necessary that it should be incorporated but just to satisfy the petitioner the Court should have allowed the said amendment application. The learned Counsel for the respondent submits that the said amendment application is wholly malafide and has been moved with a view to delay the proceedings. The learned Counsel for the petitioner submits that the petitioner will not lead any evidence in support of the aforesaid plea as the said fact stands admitted. Even otherwise also, since the factum of delivery of possession to the landlord of shop No. 5/931/5 is not disputed by the landlord, no evidence is required to be led by the petitioner. The amendment sought for by the petitioner is formal in nature and in the interest of justice, the same is allowed.

6. The Court cannot lose the sight of fact that the release application was filed way back in the year 1998. This is high time that the Prescribed Authority shall hear and dispose off the release application expeditiously. The parties are directed to appear before the Court concerned along with certified copy of this order on 7.5.2009, the date already fixed in the case. The Prescribed Authority shall make an endeavour to dispose off the said case finally preferably within a period of one month and if necessary the hearing may take place day to day basis. The parties shall extend full cooperation and will not seek any adjournment except only in exceptional cases. If an adjournment is sought for, the same should not be granted lightly and if it is granted, for each adjournment heavy cost not less than Rs. 1, 000/ should be imposed.

7. With the aforesaid observations, the writ petition is allowed in part. The impugned order is set aside.

8. No order as to costs.