
(2013) 03 AHC CK 0155
In the Allahabad High Court
Case No : Civil Revision No. 90 of 2013

Faisal Khwaja

APPELLANT

Vs

Sheikh Yunus Ali

RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 18, 25
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2(1)(bbb)

Citation : (2013) 03 AHC CK 0155

Hon'ble Judges : Sibghat Ullah Khan, J

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.

Heard learned counsel for the tenant petitioner and Shri Manish Tandon, learned counsel for landlordrespondent.

This revision is directed against judgment and decree dated 12.2.2013 passed by Judge Small Causes Court/Additional District Judge, Court No. 9, Kanpur Nagar in S.C.C. Suit No.5 of 2010 directing eviction of the tenant. Property in dispute is three rooms house situate at Parade, Kanpur rent of which is Rs.1000/ per month. Property belongs to wakf hence by virtue of Section 2 (1) (bbb) of U.P. Act No.13 of 1972 the Act does not apply. Accordingly question of default is not at all relevant. The first argument of learned counsel for the applicant is that Wakf Board should have filed the suit Mutwalli appointed by Wakf Board is quite competent to seek eviction of tenant of wakf property. In such suit wakf Board is not to be a party. In this regard learned counsel for respondent has cited S.M.H. Mutwalli Masjid vs. A.D.J. 2012 (1) A.R.C. 820.

The other argument is that tenant was entitled to protection of Section 114A of the Transfer of Property Act. In this regard an authority reported in 1993 A.C.J. 1045 has been cited. I have thoroughly considered the said authority alongwith other authorities in Vinod Kumar Rastogi vs. Additional District Judge 2003 (2)

A.R.C. 377. In the instant case neither there was an agreement between the parties that tenancy would be terminable on default nor tenancy was terminated on that ground. Accordingly there is no error in the impugned judgment and decree.

Writ petition is dismissed.

Tenantpetitioner is granted one year's time to vacate provided that:

1. Within six weeks from today tenant files an undertaking before the J.S.C.C. to the effect that on or before the expiry of aforesaid period of one year he will willingly vacate and handover possession of the property in dispute to the landlordrespondent.
2. For this period of one year which has been granted to the tenantpetitioner to vacate, he is required to pay Rs. 36,000/(at the rate of Rs.3,000/ per month) as rent/damages for use and occupation. This amount shall be deposited within six weeksin the bank account of the landlord which shall be intimated by his learned counsel to the learned counsel for tenant applicant in this revision in writing.
3. Within six weeks from today tenant shall deposit entire decreetal amount due till date (after adjusting any amount already deposited in the court below) in the aforesaid account of the landlord.

In case of default in compliance of any of these conditions tenantpetitioner shall be evicted through process of Court after six weeks and shall be liable to pay damages at the rate of Rs.5000/ per month since after six weeks till the date of actual vacation.

Similarly, if after filing the aforesaid undertaking and depositing decreetal amount and Rs.36,000/ the accommodation in dispute is not vacated on the expiry of one year then damages for use and occupation shall be payable at the rate of Rs.5,000/ per month since after one year till actual vacation. It is needless to add that this direction is in addition to the right of the landlord to file contempt petition for violation of undertaking and execution application.