
(2009) 07 AHC CK 0139

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44261 of 2008

Gulabi Devi

APPELLANT

Vs

Kamlesh Kumar Pal

RESPONDENT

Date of Decision : 07-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1(d)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 22

Citation : (2009) 07 AHC CK 0139

Hon'ble Judges : Poonam Srivastava, J

Final Decision : Dismissed

Judgement

Poonam Srivastav, J.—Heard learned Counsels for the parties.

2. Counter and rejoinder affidavits have been exchanged which are on record.

3. A release application was filed under section 21(1) (a) of U.P. Act No. 13 of 1972 by the landlord for the portion in occupation of the petitioner as tenant which is part of house No. B27/5, Durgakund, Varanasi. The allegation in the release application was that the petitioner has acquired certain accommodation in vacant condition and, therefore, he is liable to be evicted. The release application was decided by the Prescribed Authority vide order dated 31.5.2004.

4. The contention of the Counsel for the petitioner is that the release application was decided within a period of two months from the date of filing of release application without giving any opportunity to the petitioner to contest the case or file any evidence disputing the allegations of plaintiff. The respondent moved execution in Execution Case No. 26 of 2004. Meanwhile, a recall application was moved at the instance of tenant for recalling the ex parte order dated 31.5.2004. This recall application was moved on 1.10.2004 which was also dismissed by the Prescribed Authority/Civil Judge (Junior Division), Varanasi vide order dated

16.1.2008. The petitioner-tenant preferred an appeal under Order XXXIV read with Rule 22 of U.P. Act No. 13 of 1972 (wrongly mentioned as Order XLIII, Rule 1 (d) C.P.C.). The said application was dismissed vide order dated 13.8.2008. Both the orders have been challenged in the instant writ petition.

5. At the time when this writ petition was heard as a fresh case, an interim order was passed and the tenant was directed to deposit rent/damages at the rate of Rs. 2,500/ per month which he is doing till date and there has not been any default.

6. Taking into consideration all the facts and circumstances of the case and also going through the counter and rejoinder affidavits, I am of the considered view that the petitioner should be afforded an opportunity of hearing and should be allowed to defend his case. The writ petition is allowed and the impugned orders dated 16.1.2008 passed by the Prescribed Authority/Civil Judge (Junior Division), Varanasi and 13.8.2008 passed by the Special Judge (E.C. Act), Varanasi are quashed. The matter is remanded to the Prescribed Authority to decide the case afresh after affording an opportunity of hearing to the petitioner and file objection, within a period of four months from the date a certified copy of this order is produced before him. It is also directed that the petitioner shall produce the certified copy of this order along with an application within a period of two weeks from today before the Prescribed Authority. The release application shall finally be decided within the prescribed time limit as provided above. No adjournments shall be granted to either parties unless compelling circumstances are brought to the notice of the presiding officer and that too after recording reasons in writing. These directions should be followed in letter and spirit.