

(1997) 10 AHC CK 0108

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35702 of 1997

Gurdeep Singh

APPELLANT

Vs

Om Praksh Singh and Others

RESPONDENT

Date of Decision : 23-10-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 19, 151

Citation : (1997) 10 AHC CK 0108

Hon'ble Judges : S. Rafat Alam, J

Bench : Single Bench

Advocate : P.N. Saxena, for the Appellant;

Judgement

S. Rafat Alam, J.—Heard learned Counsel for the petitioner and the learned Standing Counsel for the respondent Nos.2 and 3.

2. In view of the order which is proposed to be possessed in this petition, no notice is required to be given to respondent Nos.4 to 7.

3. The short grievance of the petitioner in the instant writ petition is that during the pendency of his application under Order XLI, Rule 19 of the Code of Civil Procedure, the learned Civil Judge (Junior Division), respondent No.3 has proceeded with the execution proceedings and issued the panvana for delivery of possession in Execution Case No.3 of 1997 on the basis of the ex parte judgment.

4. Sri P.N. Saxena, learned Counsel for the petitioner submitted that the Revision Case No.9 of 1993 was dismissed by the judgment and order dated 18.9.1997 without hearing the Counsel for the petitioner. When the petitioner learnt about the ex parte judgment, he moved an application under Order XLI, Rule 19 read with Section 151 of the CPC for recalling of the ex parte order dated 18.9.1997. Learned Counsel for the petitioner also submitted that a Civil Misc. Writ Petition No.33408 of 1996 was filed before this Court for quashing of the ex parte judgment of the learned Additional District Judge, Etawah, dated 18.9.1997 which was not entertained by this Court on the ground that the petitioner has

already availed the alternative remedy by filing an application under Order XLI, Rule 19 of the Code of Civil Procedure. It is submitted that the petitioner will be evicted from the shop in question on the basis of the aforesaid judgment of the Revisional Court without there being any decision on merit.

5. Having considered the submissions and in the facts and circumstances of the case, I am of the view that the application of the petitioner under Order XLI, Rule 19 of the CPC read with Section 151 requires expeditious disposal and till its disposal the petitioner shall not be thrown out from the shop in question.

6. In this view of the matter, the present petition is being disposed of at this stage with the direction that the learned VIth Additional District Judge, Etawah shall dispose of the aforesaid application of the petitioner as expeditiously as possible preferably within a period of six weeks from the date of production of a certified copy of this order till then the petitioner shall not be ejected from the shop in question in pursuant to the judgment and order dated 18.9.1997 of the learned VIth Additional District Judge, Etawah.

7. The petitioner is accordingly disposed of finally.