

(2003) 12 AHC CK 0101

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 53697 of 2003

Hazi Saleem Ahamad

APPELLANT

Vs

Jai Prakash Goel

RESPONDENT

Date of Decision : 15-12-2003

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21

Citation : (2003) 12 AHC CK 0101

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.—Landlord/respondent has filed the release application against tenant/petitioner under Section 21 of U.P. Act, No. 13 of 1972 which has been registered as P.A. Case No. 4 of 2001 and is pending before Prescribed Authority/Civil JudgeIII (Sr. Div.), Muzaffar Nagar. In the said application on 952002 an order was passed that the case must proceed exparte as tenant/petitioner had not appeared on that day. Such an order was unwarranted as the said procedure is followed only in suits governed by C.P.C. In any case lateron tenant/petitioner filed an application for recall of the said order which has been rejected by impugned order dated 1382003.

2. Tenant/petitioner has also filed an application praying for dismissal of the release application on the ground that no relationship of landlord/tenant exists. Even if it is assumed that the order dated 952002 directing the case to proceed exparte is rightly passed, still tenant/petitioner could not be prevented from participating in the proceedings from the stage when he appeared. The Court below rejected the application of tenant for recall of order dated 952002 on the ground of delay. In my opinion, rejection order is not tenable in law. If no such period is prescribed for such application then there can be no limitation for applying to get the said order set aside.

3. Accordingly the impugned order is set aside. It is further directed that tenant/

petitioner must file a written statement within three weeks from today alongwith his evidence in the form of affidavit or other documentary evidence. As landlord has already filed exparte evidence hence tenant can file any evidence which he likes in rebuttal of the same along with the written statement. Thereafter landlord/respondent may file rebuttal evidence within three weeks and the Prescribed Authority shall decide the release application within ten weeks from the date of production of certified copy of this order. It is made clear that no objection of tenant/petitioner must be taken up and decided as preliminary objection. All the objection of the tenant/petitioner including the objection of nonexistence of relationship of landlord and tenant must be decide along with final judgment.

4. With the above observation writ petition is allowed.

Writ petition allowed.