

(2000) 08 AHC CK 0053

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 38375 of 2000

Heera Lal

APPELLANT

Vs

XIVth Addl. District Judge, Kanpur Nagar and Others

RESPONDENT

Date of Decision : 30-08-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(2)(a)

Citation : (2000) 08 AHC CK 0053

Hon'ble Judges : R.H.Zaidi, J

Final Decision : Dismissed

Judgement

R.H Zaidi, J.—By means of this petition filed Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the judgment and decree dated 181996 passed by the Judge, Small Cause Court, Kanpur and judgment and order dated 27 52000 whereby the revision filed by the petitioner was dismissed by the Court below.

2. It appears that respondent No. 3 filed a suit for ejectment and recovery of rent and damages against the petitioner with respect to House No. 130/147, Baghahi Babu Purwa, District Kanpur Nagar, on the ground of default. It was pleaded that the plaintiffrespondent No. 3 purchased half portion of the building in question i.e. 130/147 (ground floor) from Smt, Kalawati through a registered saledeed dated 391981, which she got by partition decree in Original Suit No. 2038 of 1967 passed by Munsif, Kanpur on 2471970. Regarding the aforesaid saledeed, the petitioner had knowledge from beginning as he was intimated by the petitioner about the same. Respondent No. 3 before filing the suit also sent a notice of demand and termination of the tenancy upon the petitioner calling upon him to pay rent of the building from 391981 to 261984, which was served upon him but instead of making payment of rent, he replied the said notice with false allegations that Smt. Kalawati was not the owner of the said building and that he was not in arrears of rent. The petitioner was, therefore, liable to be ejected from

the building in question. The petitioner filed his written statement denying the facts stated in the plaint. It was pleaded that one Maikulal was the owner and the landlord of the house in question to whom he used to pay the rent and not Smt. Kalawati or the respondent No. 3. In support of his case respondent No. 3 filed evidence, oral and documentary, and proved his case. In spite of several opportunities afforded to the petitioner, neither the witnesses examined on behalf of the respondent No. 3 were crossexamined nor any evidence was produced by the petitioner. It has been held that several adjournments were taken in the case by the petitioner but no evidence was produced. The trial Court, therefore, has no option but to proceed under Order XVII, Rule 3 C.P.C and decreed the suit by its judgment and decree dated 18 1996. Challenging the validity of the said decree, petitioner filed revision before the Court below. The Court below affirmed the findings recorded by the trial Court and dismissed the revision filed by the petitioner by its judgment and order dated 27/5/2000, hence the present petition.

3. Learned Counsel for the petitioner vehemently urged that the trial Court acted illegally in decreeing the suit without affording opportunity of hearing and to produce evidence to the petitioner and that the Court below has also acted illegally in affirming the decree passed by the trial Court. The judgments and orders passed by the Courts below were, therefore, liable to be quashed.

4. I have considered the submissions made by the learned Counsel for the petitioner and also perused the record.

5. The Courts below have recorded concurrent findings of fact on the question of default. It has been held that the petitioner was in arrears of rent for more than four months and in spite of service of notice of demand, failed to pay the arrears of rent within the statutory time of 30 days to the respondent No. 3, the landlord. He therefore, committed default in payment of rent within the meaning of the term used under clause (a) of sub section (2) of Section 20 of the Act. It has also been held that the petitioner has illegally denied the relationship of landlord and tenant between the parties and falsely urged that Maikulal was the owner of the building in question. The Court below has, after going through the entire record, held that several opportunities were provided to the petitioner to produce evidence in support of his case but he deliberately did not produce any evidence with a view to linger on the proceedings of the suit. The trial Court, therefore, was right in proceeding under Order XVII, Rule 3 C.P.C. and that the judgment and decree passed by the trial Court were quite legal, in view of the decision of this Court in *Mohan Finance Company v. Punjab National Bank*. In view of the aforesaid facts, submission made by the learned Counsel for the petitioner that petitioner was not afforded opportunity of hearing by the trial Court, cannot be accepted. The findings recorded by the Courts below are concurrent findings of fact which are based on the relevant evidence on record. I do not find any illegality or infirmity in the same. No case for interference under Article 226 of the Constitution of India is made out.

6. The writ petition fails and is dismissed in limine. Petition dismissed.