
(1994) 09 AHC CK 0044

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 4822 of 1991

Jai Chandra Gangwar

APPELLANT

Vs

IIIrd Addl. D.J., Farrukhabad & Ors.

RESPONDENT

Date of Decision : 29-09-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 15 Rule 5

Citation : (1994) 09 AHC CK 0044

Hon'ble Judges : A.B.Srivastava, J

Final Decision : Dismissed

Judgement

A.B.Srivastava, J.—In this petition counter affidavit has been filed quite some time ago, despite sufficient opportunity no rejoinder affidavit has been filed. In accordance with Rules of Court the petition is being disposed of finally after hearing the learned appearing on behalf of both the parties.

2. In an ejectment suit filed by the respondent landlord after terminating the tenancy of the petitioner tenant, an application was moved by the landlord under Order XV, Rule 5, C.P.C. with a prayer to strike off the defence of the petitioner on account of noncompliance of the said rules by depositing the amount of arrears of rent and damages, as well as the amount falling due month to month during the pendency of the suit. No written objection was filed against the said application by the petitioner. The application was opposed on the ground that the petitioner has not admitted the respondent as landlord hence there is no liability to make deposit. Rejecting the said contention, the trial court struck off the defence and the same was confirmed in revision.

3. The contention on behalf of the petitioner advanced by his learned counsel that on account of mere denial in written statement of the relation of landlord and the tenant, the petitioner was absolved of the liability to deposit the rent is not sustainable. Court is required to see whether denial is bona fide or a mere camouflage. In this case it was a camouflage undisputedly the petitioner had been paying rent in the past to the respondent No. 3. He also deposited the rent

in his favour under Section 30 of Act 13 of 1972 and admitted the petitioner to be landlord in his reply to notice, dated 1151985, Annexure CA1, and affidavit, dated 1151985, Annexure CA3. In this view of the matter, there is no escape from the conclusion that the courts below rightly held the petitioner to have committed breach of provisions of Order XV, Rule 5. C.P.C. rendering his defence liable to be struck off.

4. The writ petition being devoid of merit is hereby dismissed. There is no order as to costs.