
(2017) 01 AHC CK 0256

In the Allahabad High Court

Case No : Matters Under Article 227 No. 223 of 2017

Kailash Chand

APPELLANT

Vs

Prescribed Authority/Civil Judge

RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, Section 34(1)(g)

Citation : (2017) 1 ARC 670

Hon'ble Judges : Manoj Misra, J.

Bench : Single Bench

Advocate : Nipun Singh, Advocate, for the Petitioner; S.K. Verma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Manoj Misra, J.— Heard learned counsel for the petitioner; and Sri Bipin Lal Srivastava for the respondents 2, 3 and 4.

2. The present petition has been filed by the petitioner challenging an order dated 27.10.2016 passed by the Prescribed Authority/Civil Judge (Senior Division), Muzaffarnagar in P.A. Case No.25 of 2015 by which the application of the petitioner to reject the release application under Order 7, Rule 11 CPC read with Section 34(1)(g) of the U.P. Act No.13 of 1972, has been rejected.

3. A perusal of the record would go to show that application under Order 7, Rule 11 CPC was filed on the ground that according to the case of the landlord the defendant-petitioner was initially inducted in the year 1970 on the basis of the lease deed and, thereafter, the lease was extended for a further period of 16 years upto 16.01.2000 and, thereafter, there was no further extension of the lease and, therefore, the defendant in view of the own case of the landlord-respondent was an unauthorized occupant of the premises and, as such, the release application was not maintainable.

4. The court below has rejected the aforesaid application on the ground that an application under Section 21 of the U.P. Act No.13 of 1972 cannot be taken as a plaint in a suit and, therefore, the provisions of Order 7 of Rule 11 CPC would not be applicable and even otherwise after expiry of lease period, the defendant would continue as a statutory tenant and, accordingly, the plea that there was no relationship of landlord and tenant could not be accepted for rejecting the release application at the threshold.

5. The learned counsel for the petitioner has submitted that though on expiry of the term of the lease the tenant would be entitled to the protection of Section 20 of the U.P. Act No.13 of 1972 but in view of the own case of the landlord respondent that by a notice, tenancy was terminated, therefore the tenant would not continue as a tenant by sufferance and, as such, the relationship of landlord and tenant did not exist to maintain the proceeding.

6. I have considered the submission of the learned counsel for the petitioner. For rejecting a plaint in a suit under Order 7, Rule 11 CPC the averments made in the plaint alone are to be considered whether a cause of action is made out for instituting suit or not. In the instant case the release application has been filed on the basis of need of the landlord for the accommodation in question and admittedly the defendant-petitioner had earlier been inducted in the premises as a tenant thereof. As to what would be the status of the petitioner currently is a matter of evidence which has to be adjudicated at the time of trial and that cannot be taken as a ground to reject the release application at the threshold. I, therefore, do not find any good reason to interfere with the order passed by the court below. The petition is dismissed.