

**(1995) 02 AHC CK 0132**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 2112 of 1992**

Kripal Singh

APPELLANT

Vs

Ist Addl. Civil Judge (Prescribed Authority) and Others

RESPONDENT

**Date of Decision :** 21-02-1995

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 1  
Evidence Act, 1872 — Section 3  
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —  
Section 21, 21(1), 3, 34  
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972  
— Rule 15

**Citation :** (1995) 02 AHC CK 0132

**Hon'ble Judges :** G.P. Mathur, J

**Bench :** Single Bench

**Advocate :** Pankaj Mittal and Prabhat Tripathi, for the Appellant;

**Final Decision :** Dismissed

## Judgement

G.P. Mathur, J.—Parties have exchanged affidavits therefore, this writ petition is being disposed of finally at the admission stage.

2. Smt. Anand Kumari (Respondent No. 2) filed a release application on 10.3.1988 against Kripal Singh (Petitioner) and Vakil Singh (Respondent No. 3) u/s 21(1)(a) of U.P. Urban Buildings (Reg. of Let., Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act") praying that the first floor which is over house No. 421 be released in her favour and possession thereof may be delivered to her. Kripal Singh (Petitioner) moved an application before the prescribed authority on 2.1.1992 praying that either the application of the landlady filed u/s 21(1)(a) of the Act be rejected in absence of any specific order having been passed under Order XIX, Rule 1 CPC or she may be directed to produce herself and her witnesses in court for the purpose of cross-examination. This application was opposed on behalf of landlady Smt. Anand Kumari. The prescribed authority by his order dated. 14.1.1992 rejected the application.

Aggrieved Kripal Singh has filed the present writ petition.

3. Shri Pankaj Mittal, learned Counsel for the Petitioner has submitted that affidavits are not evidence as defined u/s 3 of the Evidence Act and in absence of an order by the Court as provided by Order XIX, Rule 1, Code of Civil Procedure, they are not admissible and cannot be read in evidence. In support of his submission, learned counsel has placed reliance upon *Usha International Ltd., Agra v. its Addl. District Judge* 1991(18) ALR 389(2) wherein a learned single Judge has held that the proceedings u/s 21 of the Act are judicial proceedings and in absence of a specific order passed by the prescribed authority permitting evidence to be adduced by means of affidavits, such affidavits are not admissible in evidence and cannot be looked into. It has been further submitted that as the affidavit was not admissible, it was necessary for the landlady and her witnesses to appear in Court for the purpose of recording their statements and giving opportunity to the Petitioner-tenant to cross-examine them. Shri Mittal has also urged that even if affidavits were admissible, on the facts and circumstances of the Im case and in order to elicit truth, it was necessary that the landlady and her witnesses appeared In Court for the purpose of their cross-examinations.

4. Rule 1 of Order XIX no doubt provides that evidence may be given by affidavit if the Court makes an order to that effect. In absence of a specific order by the Court, evidence cannot be given by means of an affidavit. However. Rule 2 of Order XIX provides that upon any application evidence may be given by affidavit. Section 21 of the Act, which is a proceeding for release, lays down that prescribed authority may, on application" of the landlord, order eviction of a tenant. The Legislature has used the word "application" while drafting Section 21 of the Act. Section 34 lays down that prescribed authority shall for the purpose of holding any enquiry have the same powers as are vested in the Civil Court under Code of Civil Procedure, when trying a suit in respect of the matter enumerated in Sub-clause (a) to Sub-clause (g). Prescribed authority does not have all the powers of the Civil Court. It shows that prescribed authority while deciding an application for release u/s 21 of the Act is not deciding a suit. Rule 15 of U.P. Urban Buildings (Reg. of Let., Rent and Eviction) Rules provide that every application u/s 21(1) shall, as far as possible, be decided within two months. The Intention of Legislature is that proceedings for release should be decided in a summary manner and expeditiously. Therefore, it cannot be held that the proceedings for release u/s 21 of the Act are in the nature of a suit to which Rule 1 of Order XIX may be strictly applicable. In *Mahendra Swaroop Verma v. Addl. District Judge* 1994(1) ARC 138 a learned single Judge, after noticing the decision in *Usha International* (supra), has held that prescribed authority does not act as a Civil Court and taking of evidence through affidavit Is a settled practice which is being consistently followed in the State for a long time. However, I am not expressing any concluded opinion on this point as the question raised will have serious consequences affecting large number of such cases throughout the State. This question may be decided as an appropriate case where it is absolutely necessary to do so.

5. The impugned order shows that an order was passed by the prescribed authority on 14.9.1988 directing the parties to file their evidence within fifteen days. The practice which is being consistently followed throughout the State is that the parties file their evidence by means of affidavits in proceedings for release u/s 21 of the Act. In such a situation, the order dated 14.9.1988 by which the parties were directed to file evidence within fifteen days would mean that the prescribed authority had passed a specific order permitting the parties to file their evidence through affidavits. Therefore, on the facts and circumstances of the present case, it has to be deemed that an order has been passed by the Court under Order XIX Rule 1 CPC permitting the parties to file their evidence through affidavits. The contention of the Petitioner that there is no such order and the affidavits have to be rejected is thus without substance.

6. So far as other contention regarding summoning of the witness for the purpose of cross-examination is concerned, I had an occasion to consider this question in considerable detail in *Subhash Chandra Sachdeva v. District Judge* 1992 (20) ALR 1005 and after considering the earlier decisions of our court, it was held as follows:

The correct view of law, therefore, is that if the prescribed authority is satisfied that it is necessary in the interest of justice to elicit truth, he may summon the deponent of the affidavit for the purpose of cross-examination and that such direction should be made in exceptional cases and not as a matter of course.

7. I have carefully considered the application moved by the Petitioner whereby a prayer was made that a direction be issued to the landlady to produce herself and her witnesses for the purpose of cross-examination. In my opinion, the application does not disclose any such ground which may warrant passing of an order for production of witnesses of landlady for the purpose of cross-examination. As has been held in the case of *Sub hash Chandra (Supra)*, such a power has to be very sparingly exercised and in very exceptional circumstances. I do not find any such ground in the present case which may require cross-examination of the witnesses of the landlady the order passed by the prescribed authority rejecting the prayer of the applicant is perfectly correct and call for no interference.

8. It may be noticed that in the present case, release application was filed in March, 1988. The impugned order of the prescribed authority was also passed in January, 1992 and the proceedings have to remain stayed for three years on account of the pendency of the writ petition in this Court. In these circumstances, the prescribed authority is directed to decide the case as expeditiously as possible, preferably within a period of four months of the production of the certified copy of this order before him.

9. For the reasons given above, the writ petition is dismissed.