
(2010) 02 AHC CK 0264
In the Allahabad High Court
Case No : Writ-A No. 21302 of 2000

Krishna Hari Tiwari

APPELLANT

Vs

XIIth A.D.J. and another

RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 22

Citation : (2010) 02 AHC CK 0264

Hon'ble Judges : Devendra Pratap Singh, J

Final Decision : Dismissed

Judgement

Devendra Pratap Singh, J.—Heard counsel for the parties.

2. The respondentlandlord filed an application under section 21 (1) (a) of U.P. Act no. XIII of 1972 which was numbered as R.C. No. 140 of 1986 for eviction of the petitionertenant from the disputed premises on the ground of personal need.

After exchange of pleadings, the said application was allowed vide judgment and order dated 26.5.1992. During the pendency of the appeal, an amendment was sought to be made and certain further document was sought to be filed which has been refused by the impugned order on the ground that he is only trying to delay the disposal of the appeal. The said order is impugned in the present petition.

3. Apparently, an interim order was operating in the appeal which is pending for the last about 11 years. This court being conscious of the entire matter, passed the following order on 21.8.2008.

"This is tenant"s writ petition, Eviction has been stayed through interim order. Supreme Court in Carona Ltd. Vs. M/s. Parvathy Swaminathan and sons, AIR 2008 SC 187 (Para 45) and R.K. Shukla Vs. Sudhrist Narain Anand, 2008 (2) A.R.C. 613 (Para 17) has held that equitable relief under Article 136 of gthe Constitution of India cannot be granted to a tenant appellant, who has not paid

rent/mesne profit particularly during the pendency of appeal. Same principle will apply to writ jurisdiction, which is also equitable relief. If the petitioner behaves in an unjust manner (by not paying the rent), then he is not entitled to equitable relief under Article 226/227 of the Constitution of India even though impugned judgments may be erroneous in law.

Accordingly, list peremptorily on 11.9.2008.

On the next date, an affidavit must be filed by or on behalf of petitioner to show the position of payment/deposit of rent upto date along with documentary evidence, i.e. rent receipt, money order coupon or tender failing which writ petition would be dismissed on the ground of nonpayment of rent alone."

4. However, no evidence has been brought on record to show that the entire rent has been paid. Apparently, the tenant/petitioner is enjoying possession of the premises without payment of rent.

5. On these facts, the court is not inclined to exercise its extraordinary power under Article 226 of the Constitution of India.

6. Considering the entire facts, the writ petition is dismissed with cost of Rs.25,000/- to be deposited in the appellate court within a month from today, failing which, the petitioner may not be entitled to any interim order in the appeal. In any case, the appeal itself may be finally disposed off within two months from the date of submission of a certified copy of this order.