

(1998) 08 AHC CK 0119
In the Allahabad High Court
Case No : C.M.W.P. No. 26533 of 1998

Manager Lease and Rent, Bata India Limited	APPELLANT
Vs	
District Judge, Allahabad and others	RESPONDENT

Date of Decision : 20-08-1998

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 22, 41
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 22(1)

Citation : (1998) 3 AWC 2377

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : Pankaj Bhatia, for the Appellant;

Final Decision : Disposed Of

Judgement

J.C. Gupta, J.—Heard petitioner's counsel.

2. In the peculiar circumstances of the case, this writ petition is disposed of finally.

3. The release application of the landlord moved u/s 21 (1) (a) of the U. P. Act No. 13 of 1972 was allowed ex parte by the Prescribed Authority and in execution thereof, the petitioners were dispossessed. They moved an application for setting aside the ex parte order under the provisions of Section 41 read with Rule 22 (1) (a) before the Prescribed Authority which is still pending decision. Simultaneously the petitioners also filed an appeal u/s 22 of the Act against the order of the Prescribed Authority, whereby the landlord's application for release had been allowed. The said appeal is also pending before the District Judge, Allahabad. Against the order of the District Judge recalling the appeal from the Court of Addl. District Judge, the petitioners filed writ petition before this Court which was disposed of by the order dated 17.7.1998. While disposing of the said petition, this Court also issued a direction to the Prescribed Authority to dispose

of application in Misc. Case No. 19 of 1997 moved by the petitioners for recalling the order passed ex parte, expeditiously within two months from the date of production of the certified copy of the order. The period of two months has not yet expired. In the meantime when the appeal came up for hearing before the District Judge, Allahabad, the petitioners moved an application that since their application for setting aside the ex parte order was already pending before the Prescribed Authority, the hearing of the appeal may be adjourned but the learned District Judge proceeded to reject the same by the impugned order.

4. Learned counsel for the petitioners contended that in case the appeal is decided first, the petitioners shall be highly prejudiced because in that event the Prescribed Authority will have no jurisdiction to examine merits of restoration application which is pending before him. This contention of the learned counsel for the petitioners carries weight. It is well settled that where an application for setting aside an ex parte order is moved before the trial court and an appeal is also filed against the same order interest of justice requires disposal of restoration application first, for the simple reason that if appeal is decided prior in time, the lower court will be left with no jurisdiction to proceed with the restoration application because in such a situation, the order of the lower court would merge in the order of the appellate court and if he decides the restoration application, the order will be ultra vires. Mere filing of appeal does not take away the jurisdiction of the trial court to proceed with the application moved before him for setting aside the ex parte order. In such cases, the proper course is to get the hearing of appeal adjourned to enable the trial court to pass final orders on the restoration application first, of course, keeping in view that the hearing of restoration application is not got adjourned by the appellant himself.

5. In the circumstances, the District Judge is directed to postpone the hearing of the appeal in question until the restoration application moved by the petitioner before the Prescribed Authority is finally decided. However, it is further made clear that the Prescribed Authority shall make every endeavour to decide the restoration application within the time specified in earlier order of this Court dated 17.7.98.

6. With the above observations, this writ petition is disposed of finally.