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**(2009) 09 AHC CK 0131**  
**In the Allahabad High Court**  
**Case No : Civil Revision No.222 of 2005**

Manas Goswami

APPELLANT

Vs

Sri Pyare Lal Jaiswal & others

RESPONDENT

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**Date of Decision :** 04-09-2009

**Acts Referred:**

Provincial Small Cause Courts Act, 1887 — Section 25

**Citation :** (2009) 09 AHC CK 0131

**Hon'ble Judges :** Prakash Krishna, J

**Final Decision :** Allowed

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## Judgement

Prakash Krishna,J.

The present revision has been filed under Section 25 of the Provincial Small Cause Courts Act against the judgment and decree dated 1942005 passed by the Judge, Small Causes Court in SCC suit no. 13 of 1991. The said suit was filed by the plaintiff opposite parties herein for recovery of arrears of rent, damages and ejectment of the present applicant from a shop no. B 7/223 situate in Mohalla Baghara Sonarpura, Varanasi as described at the foot of the plaint. It was claimed that the defendant, who is applicant, is the tenant on monthly rent of Rs. 1,000/ and has defaulted in making the payment since 161998. The tenancy was terminated by giving notice under Section 106 of Transfer of Property Act. It was further pleaded that the tenant is liable for eviction on the ground that he has substantially damaged the tenanted accommodation.

The suit was contested on number of pleas. The relationship of landlord and tenant in between the parties was not denied. The case of the tenant in brief was that the monthly rent was Rs. 100/ and he is not a defaulter. It was further pleaded that by fixation of shutter in the shop, the value of the tenanted shop has not been diminished. The validity of the notice was also questioned.

On the basis of the pleadings of the parties, four issues were framed by the trial court.

Under issue no. 1, it was found that the notice dated 27/4/1998 is a valid notice and the same has not been waived by the notice dated 22/6/1998. Under issue no. 2, the court below has found that the rate of rent was Rs. 1,000/ per month. Under issue no. 3, the court below has found that by fixation of shutter and channel, substantial damage has been caused to the building in question. Consequently, the suit was decreed.

Sri C.K. Parekh, learned counsel appearing on behalf of the applicant submits that the finding recorded by the trial court under issue no. 2 holding that the rate of rent is Rs. 1,000/ per month is vitiated. He submits that the said finding is perverse and against the material on record. The learned counsel for the opposite parties, on the other hand, supports the order under revision.

Considered the respective submissions of the learned counsel for the parties.

The court below, under issue no. 2, as stated above, has found that the rate of rent is Rs. 1,000/ per month. While doing so, the court below has taken into consideration the respective evidence of the parties. It is not in dispute that there is no written rent agreement in between the parties. The plaintiff examined himself and produced certain witnesses. The defendant also produced himself and produced other witnesses. The trial court, after appreciating the evidence led by the parties, reached to the conclusion that the rate of rent is Rs. 1,000/ per month. The said finding recorded by the trial court is based on appreciation of evidence done by that court. The court below has correctly appreciated the evidence of the parties. The learned counsel for the applicant could not point out any error in the appreciation of the evidence except that the statement of the defendant and his witnesses should have been believed. The trial court has also taken into consideration that the tenanted shop consists of two compartments and is situate in Varanasi wherein the business of electronic work is being carried on. It appears that the trial court meant that the business of electronic goods is being carried on. However, Sri C.K. Parekh, learned counsel for the applicant submits that only electronic typing work is being carried on from the disputed shop. Be that as it may, it does not matter much. It is not in dispute that the other facilities like Generator, Airconditioners etc. exist in the shop which have been provided, according to the learned counsel for the applicant, by the tenant applicant.

Taking into consideration the entire facts and circumstances of the case and in particular the limited scope of jurisdiction under Section 25 of the Provincial Small Cause Courts Act, I do not find any error either of law or fact in the order under revision holding that the rate of rent is Rs. 1,000/ per month.

No other point was pressed.

There is no merit in the revision. The revision is dismissed accordingly.

Time to vacate the premises in dispute is granted upto 31/12/2009, provided the applicant deposits the entire arrears of rent and damages after adjusting the

amount if any already deposited for the period upto 31122009 within a period of one month before the trial court. Within the same period, the applicant will also file an undertaking on affidavit before the trial court stating that he will vacate the disputed accommodation and will hand over its peaceful vacant possesison to the plaintiff landlord on or before 31122009. In case of default in compliance of either of the conditions stipulated above, the time granted by this Court shall stand vacated and it shall be open to the plaintiff opposite parties to put the decree in execution.