
(2006) 08 AHC CK 0192
In the Allahabad High Court

Nand Kishore Awasthi

APPELLANT

Vs

A.D.J., Court No. 16 and Others

RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 1 AWC 173

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anjani Kumar, J.—The short point that has been advanced by Sri Manoj Misra, learned Counsel for the petitioner is that the appellate authority as well as the prescribed authority while dealing with the application filed by the contesting respondent-landlord u/s 21 (1) of U.P. Act No. 13 of 1972 has not considered as to whether release of the part of the accommodation will suffice the requirement of tenant as well as landlord.

2. Learned Counsel for the respondent raised an objection that this plea which has not been raised either before the prescribed authority or appellate authority, cannot be permitted to be raised for the first time before this Court in the proceedings under Article 226 of the Constitution of India.

3. Learned Counsel for the petitioner relied upon a decision of the Apex Court in Smt. Raj Rani Mehrotra v. IInd Additional District Judge and Ors. 1980 ARC 311, wherein the Apex Court has held as under:

1. We have heard counsel for the parties. On going through the judgments of the lower authorities also of the High Court we are satisfied that the issue arising under Rule 16 (1)(d) of the Rules framed under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972, as to whether the landlord's need could have been satisfied by, releasing only a part of the premises have not been gone in to or considered by any of them. When the plea

under the said rule was pressed on behalf of the tenant in the High Court, the High Court rejected it on the sole ground that no such plea has been raised by the tenant in his written statement and as such it could not be considered. It is clear that under the relevant rule it is a duty of the Court to take in to account that aspect while considering the requirements of personal occupation of the landlord and therefore, this issue will have to be remanded to the High Court.

2. We accordingly set aside the order of the High Court dismissing the writ petition and remand the matter back to it for determination of the aforesaid issue. If necessary, the parties may have to be allowed to lead fresh evidence, if the High Court is unable to decide it on the materials on the record. If evidence becomes necessary, the High Court may in its turn remand the matter back to the trial court, which will give an opportunity to both the parties to lead fresh evidence.

4. In this view of the matter, the objection raised by counsel for the respondent cannot be sustained, therefore, this writ petition deserves to be allowed and is hereby allowed in part. The order of the appellate authority dated 29.4.2002, is quashed. The matter is remanded back to the appellate authority for decision on the question of part release of the accommodation in dispute. The findings regarding all other aspects are affirmed. Since the matter is old, the appellate authority is directed to decide the appeal within three months from the date of presentation of certified copy of this. order.