

(1999) 05 AHC CK 0112

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33782 of 1991

Parvati Devi

APPELLANT

Vs

IVth Addl. District Judge, Mirzapur

RESPONDENT

Date of Decision : 06-05-1999

Acts Referred:

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

Citation : (1999) 05 AHC CK 0112

Hon'ble Judges : Yatindra Singh, J

Final Decision : Allowed

Judgement

Yatindra Singh, J.—The petitioner is landlady of the shop in question. Respondent No. 2 is the tenant of the same. The size of shop is 7"x8". The application filed by landlord under Section 21(1) (a) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 was allowed by the Prescribed Authority by his order dated 3.11.1987 on the ground that the need of landlady is bona fide and greater hardship would occasion to her in case her application is rejected. This was done after considering the fact that other/ shops are also available to the tenant which the tenant is not taking due to higher rent. Aggrieved by this order, tenant filed an appeal. The appellate Court held the need of the landlady is bona fide and after comparing the hardship has partitioned the shop. The shop 2 x 6 ft. towards passage has been given to the landlady. The remaining portion 5 x 2 ft. have left to the tenant. Aggrieved by this order the petitioner has filed the present writ petition.

2. It is admitted case of the parties that the shop in dispute is in from portion of the residential accommodation, which consists of two rooms. There is a passage also adjacent to the shop dimension of 3 x 18 ft. in which landlady's husband is doing business. The tenant is doing his business adjacent to this place. The Courts below have found that the landlady has got two sons who are unemployed and a daughter. Her daughter was married during the pendency of the proceeding but has now been divorced and started living with her parent here

and started sewing business in the same premises.; Counsel for the petitioner submitted (sic) that once finding was given in favours of the landlady by the appellate Court, the shop could not be partitioned as done. The submission is correct. No such plea was taken under order of the Court below. It was new case which was made out by the appellate Court. The shops could not be partitioned in this case when it is admitted case of the tenant that the shop are available but he is unable to take due to higher rent. In view of the same the judgment of appellate Court dated 6.10.1991 is hereby quashed and that of the Prescribed Authority is restored. However, Respondent is granted six months time to vacate the premises in dispute provided he files an undertaking in the form of an affidavit within the month before the Prescribed Authority concerned that he will handover full possession of the premises in dispute to the landlady within six months.