

(2002) 05 AHC CK 0103
In the Allahabad High Court
Case No : C.M.W.P. No. 19240 of 2002

Radhey Shyam

APPELLANT

Vs

Special C.J.M./Prescribed Authority, Kanpur Nagar and Others

RESPONDENT

Date of Decision : 10-05-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 10, 21, 22, 24

Citation : (2002) 3 AWC 1962

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : R.K. Pandey and Shailendra Singh, for the Appellant; R.K. Awasthi, S.C., for the Respondent

Final Decision : Allowed

Judgement

Anjani Kumar, J.—Heard learned counsel for the petitioner and Shri R. K. Awasthi, learned standing counsel, representing the respondent.

2. Petitioner has filed supplementary-affidavit today. In paragraph 2 of the affidavit, it has been stated that against the order dated 10th April, 2002 petitioner preferred an appeal u/s 22 of the U. P. Act No. 13 of 1972 (hereinafter called the "Act"). The sadar munsrim of District Judge Kanpur Nagar, has given a report that since the appeal has been filed after the order rejecting the application filed under Order IX Rule 13 of Code of Civil Procedure, 1908, therefore, the appeal is not maintainable. On the basis of the report of the sadar munsrim, the appeal has been returned back by the District Judge, Kanpur Nagar observing that appeal is not maintainable u/s 22 of the Act. Petitioner has also annexed the original copy of the memorandum of the appeal and the same has been returned to the petitioner. The Section 22 of Act is reproduced below :

"22. Appeal.--Any person aggrieved by an order u/s 21 or Section 24 may within thirty days from the date of the order prefer an appeal against it to the District

Judge, and in other respects, the provisions of Section 10 shall mutatis mutandis apply in relation to such appeal."

3. A perusal of Section 22 of the Act provides that any person aggrieved by an order u/s 21 or Section 24 may within thirty days from the date of the order preferred an appeal against it to the District Judge, and in other respects the provisions of Section 10 shall mutatis mutandis apply in relation to such appeal.

4. Against the order dated 7th July, 1999, passed u/s 21 (1) (a) of the Act on the application of the landlord for release of the accommodation in dispute in his favour, the petitioner filed an application for recall of the ex parte order dated 7th July, 1999 passed by the -prescribed authority with the prayer to restore the application to its original number and tenant may be given opportunity of being heard and application may be decided on merits. It is this application which has been returned by the impugned order is the subject-matter of the appeal dated 10th April, 2002. In my opinion, District Judge solely relied upon the report of the sadar munsrim and returned the appeal to the petitioner observing that the appeal is not maintainable and has not considered the provisions of Section 22 of the Act. The order dated 10th April, 2002, rejecting the application to recall the ex parte order and to hear the matter afresh after affording an opportunity to the petitioner-tenant and also to consider the provision of Section 22 of the Act in accordance with law. The view taken by the learned District Judge deserves to be rejected. The learned District Judge is directed to hear the appeal, which the petitioner will now file within a week in accordance with law as contemplated u/s 22 of the Act.

5. In this view of the matter the petition succeeds and is allowed. Learned District Judge is directed to hear the appeal of the petitioner afresh and decide the same in accordance with law. Since the petitioner has already filed original memo of appeal along with the supplementary-affidavit, if petitioner filed fresh memo of appeal which may be the copy of the original appeal, the same shall not be dismissed only as barred by time.