

(2000) 07 AHC CK 0083

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32947 of 2000

Ram Shanker

APPELLANT

Vs

IIIrd Addl. District Judge, Farrukhabad and Others

RESPONDENT

Date of Decision : 31-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20

Citation : (2000) 07 AHC CK 0083

Hon'ble Judges : R.H.Zaidi, J

Final Decision : Disposed Of

Judgement

R.H. Zaidi, J.—By means of this petition filed under Article 226 of the Constitution of India, petitioner challenges the validity of judgment and order dated 16121998 whereby the suit filed by the contesting respondent No. 3 for his ejectment from the building in question and for recovery of arrears of rent and damages.

2. It appears that the contesting respondent No. 2 filed a suit for ejectment and recovery of rent. On receipt of the notices from the Court, the suit was contested by the petitioner who happened to be the defendant in the suit. He pleaded that there existed no relationship of landlord and tenant between the parties and that he himself was the owner of the building in question. On the basis of the pleadings of the parties, the trial Court, Civil Judge (Junior Division), District Farrukhabad framed necessary issues. Parties thereafter produced evidence, oral and documentary in support of their cases. The trial Court, ultimately decreed the suit by its order dated 16121999. Challenging the validity of the said decree a revision was filed by the petitioner which was also dismissed by the Revisional Court by judgment and order dated 1052000, hence the present petition.

3. Learned counsel for the petitioner vehemently urged that the Courts below did not record any finding on the question of default and have arbitrarily decreed the

suit and dismissed the revision. It was urged that the judgments and orders passed by the Courts below were, therefore, liable to be set aside.

4. I have considered the submissions made by learned counsel for the petitioner.

5. From the material on record, it is not clear as to whether the plea of default was taken by the plaintiff respondent. On the said aspect of the matter, no issue was framed by the trial Court, the said question was also not raised and pressed before the Revisional Court, therefore, at this stage, the petitioner cannot take up the controversy regarding default in payment of rent.

6. It was also urged by learned counsel for the petitioner that the Court below has decided the revision *ex parte* and without affording opportunity of hearing to the petitioner, the revision was dismissed. In case, the said facts stated by the petitioner are correct, the petitioner could file an application for setting aside the *ex parte* order. No such application appears to have been filed. The petitioner has straightaway approached this Court and filed the present petition.

7, It is, however, observed that the petitioner will be at liberty to make an application for setting aside the *ex parte* order passed against him by the Revisional Court. If such an application is filed by the petitioner within a period of two weeks from today, the same shall be decided by the Court below expeditiously, preferably within a period of two months after affording opportunity of hearing to the parties concerned.

8. With these observations and directions, this petition stands finally disposed of. Petition disposed of.