

(2009) 04 AHC CK 0123

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9011 of 2009

Rehanul Haq and others

APPELLANT

Vs

Shamim Ahmad and others

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0123

Hon'ble Judges : Prakash Krishna, J

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—Challenging the legality and validity of the order dated 23.1.2009 passed by the Revisional Court in SCC Revision No. 57 of 2006 whereby and whereunder it has rejected the application filed by the petitioners to amend the written statement, the present writ petition has been filed.

2. SCC Suit No. 24 of 1990 was instituted against the petitioners by the landlords respondents on the ground that the provisions of U.P. Act No. 13 of 1972 are not applicable to the building in question as it is a "new construction" and holiday period of 10 years have not expired. It was claimed that the rate of rent is Rs. 150/ per month. The petitioners filed written statement and thereafter the suit was decreed by the judgment and decree dated 9.2.2000 and it was held that the provisions of U.P. Act No. 13 of 1972 are not applicable and rate of rent is Rs. 150/ per month. The said decree was challenged in revision. The Revisional Court allowed the revision and remanded the matter back to the Trial Court to record a fresh finding on the question of applicability of U.P. Act No. 13 of 1972 on the building in question. The suit was again decreed on 15.9.2006 holding that the provision of U.P. Act No. 13 of 1972 are not applicable. Challenging the aforesaid decree, SCC Revision No. 57 of 2006, wherein the impugned order has been passed, was preferred by the petitioners tenants. The revisions was heard on number of dates but the hearing could not be concluded on account of dilatory tactics adopted by the petitioners herein. Ultimately, by the order dated 12.1.2000, the hearing was concluded and 21, 1.2009 was the date fixed for

delivery of judgment. Before the judgment could be delivered, an application for amendment of written statement was filed on the ground that electricity connection and water connection having been disconnected from the premises in question, there should be a rebate in the monthly rent. The said amendment application has been rejected by the order under revision on the ground that the amendment sought for is belated one and has been sought just to delay the disposal of the revision.

3. Heard the learned Counsel for the parties and perused the record.

4. The learned Counsel for the petitioners has placed reliance upon a judgment of Apex Court in the case of *M/s. Estralla Rubber v. Dass Estate (Private) Ltd*, JT 2001 (7) SC 657=2002 SCFBRC 88. In this case the Apex Court has held that amendment application should not be refused merely on the ground of delay.

5. The learned Counsel for the contesting respondents, on the other hand, has placed reliance upon *South Konkan Distilleries and another v. Prabhakar Gajanan Naik and others*, 2008 (731 ALR 638 (SC) wherein it has been held that the delay in filing application for amendment of pleadings may be a good ground to reject the amendment application. The learned Counsel for the respondents has also placed reliance upon the following decisions :

1. *Mohd. Yusuf v. Faiz Mohd. and others*, 2009 (74) ALR 840 (SC).

2. *Nihal v. District Judge, Lucknow and others*, 2005 (61) ALR 709.

3. *Ashok Chanda Srivastava v. Master Ashish Kumar and others*, 2004 (2) ARC 245.

6. Considered the respective submissions of the learned Counsel for the parties and perused the record.

7. It may be noted that the suit giving rise to the present petition was filed in the year 1990 and was remanded once by the Revisional Court and it is pending in revision. It has been held by the Trial Court that the provisions of U.P. Act No. 13 of 1972 are not applicable. With regard to the rate of rent, a specific issue was framed and the same has been decided against the petitioners. The amendment application was filed only after hearing in the revision was concluded, but before delivery of the judgment. The matter is pending since the year 1990 and amendment sought for has been applied with delay of about 19 years. The finding recorded by the Revisional Court that the amendment application has been filed just to delay the hearing/disposal of the revision, on the facts of the present case, cannot be said to be unjustified in any manner.

8. I do not find any illegality or perversity in the impugned order. The writ petition lacks merit. It is dismissed accordingly.

Writ Petition Dismissed.