
(1999) 02 AHC CK 0078

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4189 of 1999

Savitri Gupta and Another

APPELLANT

Vs

Vth Addl. Distt.Judge,Kanpur Nagar and Others

RESPONDENT

Date of Decision : 03-02-1999

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 22

Citation : (1999) 02 AHC CK 0078

Hon'ble Judges : S.N.Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 811999 passed by respondent No. 1 rejecting the application of the petitioners to recall the order dated 3111998 whereby the appeal has been dismissed in default.

2. The facts of the case in brief are that landlordrespondents filed application in the year 1987 under Section 21(l)(a) of U.P. Act No. 13 of 1972 on the allegations that they are residing in one room accommodation and there are large number of members in their family. The Prescribed Authority found that the need of landlord is genuine and released the disputed accommodation in their favour on 1771990. The petitioners preferred appeal in the year 1990 which remained pending for 8 years. On 3011998, the date of hearing, the appeal was dismissed in default. The petitioners filed application to recall the said order on the ground that the appellant was not present in the Court and when the case was called out, the appellant had gone to toilet and in the meantime the appeal was dismissed in default. The Court took into consideration the past conduct of the appellant and the fact that the appeal was pending for 8 years, rejected the application for restoration.

3. I have heard Shri S.K. Gupta, learned Counsel for the petitioner and Shri B.M. Singh, learned Counsel for contesting respondents. The learned Counsel for respondents made statement that he does not propose to file counteraffidavit

and the case may be decided on merit on this stage.

4. The learned Counsel for the petitioners contended that the petitioners had filed application along with affidavit in which no counter has been filed even then it has been rejected. The appellate authority has rejected the application taking into consideration the past conduct.

5. Considering the facts and circumstances of the case and in the interest of justice, the petitioners are entitled to have opportunity of hearing in the appeal. Accordingly, the writ petition is allowed and the order dated 8/1/1999 is hereby quashed. The restoration application is allowed subject to the payment of Rs. 5,000 as costs payable by the petitioners to the landlord respondent Nos. 3 and 4 by 17th February, 1999. The amount shall be deposited before respondent No. 1.

6. The appeal shall be listed for hearing before respondent No. 1 on 22nd February, 1999. The learned Counsel for the petitioners undertakes that no adjournment will be sought. W.P. allowed.