

(2001) 04 AHC CK 0043

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 36480 of 2000 and 41729 of 2000

Shahjahan Begum

APPELLANT

Vs

XVIIIth ADJ, Meerut and Others

RESPONDENT

Date of Decision : 10-04-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20

Citation : (2001) 04 AHC CK 0043

Hon'ble Judges : Yatindra Singh, J

Final Decision : Dismissed

Judgement

Yatindra Singh, J.—Plaintiff respondents are landlord of the premises in dispute. They filed a suit for eviction of the petitioner on the ground that she is a tenant at the rate of Rs. 50 per month and the provisions of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 are not applicable. This suit was dismissed for default on 15121987. Plaintiff filed an application to recall this order. Thereafter the order dated 15121987 was set aside and the suit itself was decreed ex parte on 291994. The petitioner filed an application on 441998 to set aside the ex parte decree dated 291994. This application was dismissed by the Trial Court on 651998. Thereafter the petitioner filed two revisions. One revision was against the order dated 291994 decreeing the suit ex parte alongwith an application for condoning the delay in filing the revision. The second revision was against the order of the trial Court dated 651996 dismissing the application of the petitioner for setting aside the ex parte decree. The revision against the order dated 2994 was dismissed on the ground that it is barred by time and the Court refused to condoned the delay in filing the revision. The revision against the order dated 6598 was dismissed agreeing with the finding recorded by the trial Court dated 651998 that the petitioner has knowledge of the proceedings and there was no justification for recalling the ex parte order dated 2994. The petitioners have filed present writ petitions

against these two revisional orders. The writ petition No. 36480 of 2000 (earlier not writ petition) has been filed against the order of the Revisional Court dated 1182000 and the order of the trial Court dated 651998 in refusing to set aside the ex parte decree dated 2994. Subsequent writ petition has been filed against the order of the trial Court dated 2994 decreeing the suit ex parte and the order of the Revisional Court dated 1182000 refusing to condone the delay in filing the revision.

2.1 have heard Shri P.K. Jain, Counsel for the petitioner and Shri VM. Zaidi, Counsel for the plaintiff respondent, Shri P.K. Jain, learned Counsel for the petitioner submitted that the suit itself was dismissed on 15121987 and thereafter it was restored without knowledge to the petitioner and for these reasons she could not appear and defend the case. In view of this, the petitioner's application for setting aside ex parte decree dated 20994 ought to have allowed and the order dated 6598 and 1162000 dismissing her application to set aside the ex parte decree be quashed. He further submitted that the petitioners had no knowledge about the ex parte decree till 1498. Thereafter she filed an application to set aside the ex parte and she fell ill. Then as soon as the decree of the trial Court dated 2994 was made available she made a revision against the same and there was sufficient cause in landing the delay filing the revision against the ex parte decree 2994 and the Court ought to have condoned the delay in filing the revision against the same.

3. The Court below have recorded the finding of fact that after the suit of the plaintiff respondent was dismissed they filed an application for recalling the same. On this application a miscellaneous case No. 1 of 1988 was instituted. Notice of this case was sent to the petitioner. The petitioner refused to accept summons but a registered notice was personally served upon the petitioner. Thereafter the petitioner engaged two advocates Shri P.K. Tyagi and Shri Dinesh Rao who filed application for herself. Then the brother in law of the petitioner namely Shri Babu Khan also filed an application for impleadment. That was also dismissed on 29490. On the basis of this, the Court below have held that the petitioner have knowledge of the proceeding after the suit was restored, and the purposely did not appear in this. It is for this reason, the Court below have dismissed the application to recall the ex parte order dated 2994. This is a finding of fact. There is no illegality in the same. It is on the basis of this finding that the Revisional Court has also dismissed the application of the petitioner for condoning the delay in filing the revision against ex parte order dated 2995. There is no illegality in this finding.

4. I see no justification to interfere with the same. Both the writ petitions have no merit. They are accordingly dismissed. However, the decree of eviction of the petitioner may not be executed for a period of six months from today provided the petitioner deposits the entire decretal amount before the trial Court within one month from today and also files an undertaking before the trial Court within the same time that she will pay the damages for the period of her occupations

and handover peaceful possessions of the premises within six months. Let a copy of this order be placed in W.P. No. 41729 of 2000.

Petitions dismissed.