

(2005) 11 AHC CK 0117

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14991 of 1995

Shanti Devi and Ors.

APPELLANT

Vs

VIIIth Additional Chief Metropolitan Magistrate Kanpur & Anr.

RESPONDENT

Date of Decision : 17-11-2005

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 23

Citation : (2005) 11 AHC CK 0117

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.—Original landlord Harbans Singh since deceased and survived by petitioners filed release application against tenant Nanak Singh under Section 21 of U.P. Act No. 13 of 1972 in the form of release case No. 71 of 1985 in respect of shop in dispute which was in tenancy occupation of Nanak Singh. The release application was rejected by the Prescribed Authority. However, on appeal (Rent Appeal No. 135 of 1991) 1st ADJ, Kanpur Nagar allowed the release application by allowing the appeal on 2911994. Thereafter an application was filed by original landlord for possession under Section 23 of U.P. Act No. 13 of 1972 before Prescribed Authority/ACMM VIII on 141994. Original landlord Harbans Singh died on 2111994. Petitioners filed substitution application in the execution application under Section 23 of the Act.

2. The execution proceedings had been registered as rent execution case No. 12/23 of 1994. In the execution proceedings respondent No. 2 Sardar Preetam Singh filed an application stating therein that in the year 1992, the tenant Nanak Singh has vacated the shop in dispute and landlord had let out the same to respondent No. 2. Objections were filed on 2941994.

3. Thereafter original landlord died on 2111994. Petitioners filed substitution applications with delay condonation application on 2511995. Prescribed Authority through order dated 2521995 rejected the substitution application of the

petitioners on the ground that it was filed 35 days beyond time prescribed for the same by Rule 25 of the Rules framed under U.P. Act No. 13 of 1972 i.e. one month. Prayer for condonation of delay of 35 days was rejected on the ground that no sufficient explanation for the same had been given. It had been stated in delay condonation application and affidavit filed in support thereof that the delay had been caused due to inadvertence of the Counsel. The said order dated 25/2/1992 is challenged through this writ petition.

4. Firstly, in my opinion sufficient ground for condonation of delay of 35 days had been made out. Secondly, application for execution under Section 23 of the Act could be treated to have been filed on the date on which substitution application was filed. Substitution application was filed within a year of judgment of the Appellate Court hence there was no question of the said execution application being barred by time.

5. Accordingly, writ petition is allowed. Impugned judgment and order is set aside. Delay in filing execution application is condoned. Execution filed before Prescribed Authority by the petitioners is allowed.

6. Prescribed Authority is directed to decide the execution application as expeditiously as possible. However as no one has appeared on behalf of respondent No. 2 hence Prescribed Authority before proceeding further shall issue notice to respondent No. 2 Sardar Preetam Singh.