
(1981) 01 AHC CK 0091

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6665 of 1979

Shyam Singh Bagi

APPELLANT

Vs

IInd Addl. Distt. and Sessions Judge and Others

RESPONDENT

Date of Decision : 22-01-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Provincial Small Cause Courts Act, 1887 — Section 25
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(4)

Citation : (1981) AWC 155

Hon'ble Judges : S.D. Agarwala, J

Bench : Single Bench

Advocate : N.B. Nigam, for the Appellant;

Final Decision : Allowed

Judgement

S.D. Agarwala, J.—This is a petition under Article 226 of the Constitution of India arising out of proceedings in small causes Court suit No. 95 of 1972 filed by opposite party No. 3 Smt. Hasan Ara Begum against the Petitioner for ejectment and for arrears of rent. The case of opposite party No. 3 was that the Petitioner was a defaulter and as such was liable to ejectment. The suit was decreed by the Judge Small Causes on 26th August, 1975. Aggrieved by the said judgment the Petitioner filed a revision u/s 25 of the Provincial Small Causes Courts Act before the District Judge, Shahjahanpur. The revision came up for hearing before the IInd Additional District Judge, Shahjahanpur. The revision was dismissed by judgment dated 12th July, 1976. The Petitioner has now challenged the judgment dated 12th July 1976 by means of the present petition.

2. learned Counsel for the Petitioner has urged that the Petitioner was entitled to the benefit of section 20, sub-clause (4) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, U.P. Act No. XIII of 1972, hereinafter referred to as the Act, and the revisional Court has acted illegally and with

material irregularity in the exercise of its jurisdiction in refusing to consider this question on an erroneous view of law that the provisions of section 20, sub-clause (4) of the Act are directory and not mandatory.

3. I have heard learned Counsel for the parties. In *Sumer Chand v. Atma Ram*, 1979 UP RCC 340, V. K. Mehrotra, J. has taken the view that the provisions of Sub-section (4) of Section 20 of the Act are mandatory. The view to the contrary taken by the revisional Court is, therefore, manifestly erroneous.

4. An application was made by the Petitioner for permitting him to deposit the amount. This amount was short by Rs. 100/- and as such the application of the Petitioner was rejected by the Court on 18th January 1973. The case was not considered on merits by the Judge Small Causes as to why the Petitioner would not be entitled to the benefit of section 20, sub-clause (4), of the Act. The observations made in the revisional courts judgment that the trial Court has refused to grant the benefit of section 20, sub-clause (4), of the Act, therefore, appear to be incorrect. In any case the decree for ejectment can only be passed, if the Petitioner is not entitled to the benefit of section 20, sub-clause (4) of the Act. This is a jurisdictional fact. The revisional Court should have gone into this question and should have found whether the Petitioner was entitled to the benefit of section 20, sub-clause (4) of the Act, or not. Since the revisional Court has not gone into the merits on this question it is necessary that the matter should be considered by the revisional Court.

5. In the result the petition is allowed, the order of the District Judge dated 12th July 1976 is quashed and the District Judge is directed to decide the matter afresh in accordance with law and in the light of the observations made by me above. In the circumstances, however, parties shall bear their own costs.