
(2017) 02 AHC CK 0042
In the Allahabad High Court
Case No : Misc. Single No. 3777 of 2017

Smt. Nafeesun Nisha

APPELLANT

Vs

First Additional District Judge Kheri

RESPONDENT

Date of Decision : 22-02-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2017) 2 ARC 146

Hon'ble Judges : Rakesh Srivastava, J.

Bench : Single Bench

Advocate : Ram Lakhan Vishwakarma, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Rakesh Srivastava, J.—Supplementary affidavit filed today is taken on record.

2. Heard Shri Ram Lakhan Vishwakarma, learned counsel for the petitioner.

3. In view of the order proposed to be passed notices to the respondents No. 1 to 7 are dispensed with.

4. On 25.01.2005 SCC Suit No. 1 of 2004, (Smt. Saabira Begum & Anr. v. Nijamuddin) filed by the respondent nos. 2 to 7, for recovery of alleged arrears of rent and eviction of the defendants - petitioners was decreed ex-parte. The petitioners were directed to vacate the premises in dispute within 45 days and also pay to the private respondents a sum of Rs. 1200/- along with interest at the rate of 18% per annum till the date of actual payment. Private respondents thereafter initiated execution proceedings and then the judgment and decree dated 25.01.2005 came to the knowledge of the petitioners. Immediately thereafter, the petitioners moved an application under Order 9, Rule 13 CPC for recall of the judgment and order dated 25.01.2005. The application under Order 9, Rule 13 CPC moved by the petitioner was dismissed by the trial Court on 07.09.2016.

5. Aggrieved by the order dated 07.09.2016 the petitioners preferred a SCC Revision No. 18 of 2016 (Smt. Nafeesun Nisha & Ors v. Muneer & Ors.) along with an application for interim relief before the District Judge, Lakhimpur Kheri. On 26.11.2016, the Revision was admitted and notices were issued to the respondent nos.2 to 7 but till date the application for interim relief moved by the petitioners has not been disposed of and this has compelled the petitioners to approach this Court by means of the present petition.

6. Learned counsel for the petitioners has submitted that once the SCC Revision preferred by the petitioner has been admitted, the trial Court was obliged to stay the operation of the judgment and decree dated 25.01.2005.

7. In the case reported in (1982) 3 SCC 484, Mool Chand Yadav & Anr. v. Raza Buland Sugar Company Limited, Rampur & Ors., the Apex Court has held that where orders entailing serious civil consequences are challenged in appeal the judicial approach requires that during the pendency of the appeal the operation of the impugned order must be suspended. More so, when the appeal is admitted.

8. In the case in hand the SCC revision preferred by the petitioners has been entertained by the revisional Court but, the application for interim relief moved by the petitioners has not been disposed of till date. On the contrary on 25.01.2017, the trial Court has issued a warrant of dispossession.

9. The order, passed by the trial Court, no doubt, entails serious civil consequences and as such without entering into the merits of the case this petition is disposed of with a direction to the Ist Additional District Judge, Kheri to dispose of the application for interim relief moved by the petitioner in Civil Revision No. 18 of 2016 (Smt. Nafeesun Nisha & Ors v. Muneer & Ors.) on the next date fixed or within two months from the date a certified copy of this order is served upon him.

10. Till the disposal of the application for interim relief the operation of the judgment and decree dated 25.01.2005 passed by the Judge Small Causes Court, in SCC Suit No.1 of 2004, shall remain stayed.