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**(2003) 03 AHC CK 0068**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 10566 of 2003**

Smt. Saroj Dwivedi

APPELLANT

Vs

Additional District Judge/Special Judge (S.C. and S.T. Act)  
and Others

RESPONDENT

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**Date of Decision :** 31-03-2003

**Acts Referred:**

Transfer of Property Act, 1882 — Section 108  
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —  
Section 26, 28

**Citation :** AIR 2003 All 315 : (2003) 3 AWC 1910

**Hon'ble Judges :** Janardan Sahai, J

**Bench :** Single Bench

**Advocate :** Sanjay Srivastava, for the Appellant; A.G.A., for the Respondent

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## Judgement

Janardan Sahai, J.—The petitioner is a landlord of premises No. 124/326B, Govind Nagar, Kanpur. The third respondent is the tenant of the building. The petitioner filed a suit for injunction in the Court of the Civil Judge (J.D.), Kanpur Nagar for restraining the defendant from constructing a roof in the room in the tenancy of the respondent. The application for temporary injunction was also filed by the petitioner. The trial court allowed the application and restrained the tenant from reconstructing the roof making it clear, however, that the injunction would not come in the way of orders being passed u/s 28 of U. P. Act No. 13 of 1972. The appellate court has allowed the appeal of the tenant third respondent and has dismissed the application for temporary injunction. The appellate court has relied upon the provisions of Section 108(m) of the Transfer of Property Act for holding that the lessee is bound to keep the tenanted property in good condition as it was at the time when he was put into possession. Reliance has been placed by the appellate court upon the decision in Oriental Insurance Co. Ltd. Vs. Srinivasa Setty, and upon certain other cases.

2. Counsel for the petitioner submitted that the case of Sri Ntwas (supra), was not correctly decided as the provisions of U. P. Act No. 13 of 1972 have in view of

Section 38 of that Act overriding effect upon the provisions of Transfer of Property Act. Section 108(m) of the Transfer of Property Act is quoted below :

"(m) The lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition ; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left."

3. The tenant is bound to keep the property in as good a condition as it was at the time when he was put into possession. The right of the tenant to maintain the premises cannot be denied in view of the provisions of Section 108(m) of the Transfer of Property Act. Section 38 of U. P. Act No. 13 of 1972, however, gives overriding effect to the provisions of U. P. Act No. 13 of 1972. The contention of the counsel for the petitioner is that the remedy of the tenant is to file an application u/s 28 of the U. P. Act No. 13 of 1972. The scheme of the provisions of Sections 26, 28 and 38 of U. P. Act No. 13 of 1972, may, therefore, be examined. Section 26 (2) of U. P. Act No. 13 of 1972, imposes an obligation upon the landlord to keep the building under tenancy windproof and waterproof and to carry out periodical whitewashing and repairs. Subsection (3) of Section 26 provides subject to contract to the contrary in writing that no tenant shall demolish any improvement effected by him in the building. Section 28 provides the procedure to be followed by the tenant for effecting repairs. In case of minor repairs, the tenant may give notice to the landlord to carry out the repairs and if the landlord fails to comply with the notice, the tenant may under Sub-section (3) of Section 28 himself carry out repairs at a cost not exceeding 2 months' rent in a year and deduct the amount from the rent and to furnish the account of the expenditure to the landlord. In case of major repairs, the cost of which is likely to exceed the amount of two months rent, the tenant may if the landlord fails to comply with the notice apply to the prescribed authority u/s 28 (4) and the prescribed authority may u/s 28 Sub-section (5) require the landlord to carry out the requisite major repairs and on his failure to do so, permit the petitioner to carry out those repairs at a cost which shall not be more than 2 years' rent. Where the tenant carries out major repairs, he is required to furnish an account of expenses to the prescribed authority which shall certify the amount recoverable by the tenant and such amount can be adjusted against the rent in monthly instalment not exceeding 25% of one month's rent.

4. The provisions of U. P. Act No. 13 of 1972, referred to above are not inconsistent in the sense that they can co-exist with the provisions of Section 108(m) of the Transfer of Property Act. Under the provisions of Section 108(m), it is the duty of the tenant to keep the premises in as good a condition, as they

were when they were let out. The provisions of the Act No. 13 of 1972, make it obligatory upon the landlord to keep the premises windproof and waterproof and to enforce this obligation, the tenant has been given a right to apply u/s 28 to the prescribed authority and to claim adjustment of the expenses against the rent in the manner and to the extent provided for under that section. The provisions of Sections 26 and 28 of U. P. Act No. 13 of 1972, are for the benefit of the tenant and they create an obligation upon the landlord to keep the premises windproof and waterproof and to effect periodical repairs. These provisions do not take away the right of the tenant himself to effect the repairs if he does not want to claim adjustment of the expenses against the rent. The question about adjustment of the expenses against the rent is not involved in this case. This writ petition arises out of a suit filed by the landlord restraining the tenant from reconstructing the roof. In the case of *Sudhakar Shukla and Ors. v. Rajesh Kumar Agarwal*, it has been held that a suit for injunction filed by the tenant restraining the landlord defendant from interfering with the tenants right of repairing the tiles and repairing the rooms in his tenancy and to keep it windproof and waterproof has been held to be maintainable and not prohibited by the provisions of Section 38 of U. P. Act No. 13 of 1972. It has been held in that case that a tenant can make use of Section 28 of U. P. Act No. 13 of 1972, in case where he wishes to have some repairs done at the landlord's expense and the Sections 26 or 28 do not prohibit the institution of a suit in the regular civil court if the relief claimed is for some repairs done by the tenant himself without imposing any financial liability on the landlord. In the present case, it is the landlord who has filed the suit for injunction restraining the tenant from reconstructing the roof of the tenanted premises. Such an injunction sought by the landlord would interfere with the tenants right to effect the repairs recognised by Section 108(m) of the Transfer of Property Act and, therefore, cannot be granted. It has been held in *Oriental Insurance Company Limited Vs. Lakshmykutty Amma and Others*, *Sreedevi and Others* and *Sudhakumary and Others*, that repairs will include laying down of the roof or constructing the wall. The scheme of Section 108(m) of the Transfer of Property Act and Sections 26 and 28 of U. P. Act No. 13 of 1972, is that if the tenant wants to effect the repairs, he is at liberty to do so in view of the provisions of Section 108(m) of the Transfer of Property Act, but if he wants the landlord to bear the expenses, he has to apply u/s 28 of U. P. Act No. 13 of 1972. There is as such no conflict between the two provisions and Section 28 of U. P. Act No. 13 of 1972 does not come in the way of the tenant effecting repairs himself without resorting to the provisions of Section 28 of U. P. Act No. 13 of 1972. The decision in the case of *The State of West Bengal Vs. The Indian Iron and Steel Co. Ltd.*, does not help the petitioner. The proposition therein laid down that where finality has been given to orders of special Tribunals, the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit cannot be doubted. That was a case under the Bengal Cess Act and the question about determination of annual net profits was involved there. As already discussed above, the provisions of Section 28 of U. P. Act No.

13 of 1972, apply in a different situation where the tenant wants the landlord to bear the expenses of the repairs. It does not take away the right of the tenant to effect the repairs himself. The order of the appellate court, therefore, does not suffer from any error, which may call for any interference under Article 226 of the Constitution.

5. Dismissed.