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**(2004) 12 AHC CK 0204**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 48864 of 2004**

Surendra Malik

APPELLANT

Vs

District Judge and Others

RESPONDENT

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**Date of Decision :** 02-12-2004

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 13, Order 18 Rule 4, Order 18 Rule 4(2), Order 8 Rule 4  
Provincial Small Cause Courts Act, 1887 — Section 25

**Citation :** (2005) 1 ARC 359 : (2005) 1 AWC 961

**Hon'ble Judges :** Poonam Srivastava, J

**Bench :** Single Bench

**Advocate :** S.N. Verma and Sharad Malviya, for the Appellant; K.M. Asthana, S.C., for the Respondent

**Final Decision :** Dismissed

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## Judgement

Poonam Srivastava, J.—Heard Sri S.N. Verma, senior advocate, assisted by Sri Sharad Malviya, counsel for the petitioner and Sri K.M. Ashthana for the contesting respondent.

2. The facts of the case is that the respondent No. 3 landlord filed S.C.C. Suit No. 74 of 2000 for ejectment of the petitioner from the disputed shop. A written statement was filed by the petitioner denying plaint allegations and also that the building in question is 60 years old, as such it is governed by the provisions of U.P. Act No. XIII of 1972. The respondent No. 3 filed an affidavit as statement in chief with an application that the defendant-petitioner be directed to cross-examine the plaintiff. On 27.7.2000 an application was moved by the landlord-respondent praying that the application C-33 which was filed by way of examination-in-chief may be dismissed as not pressed. The Judge Small Cause Courts vide order dated 28.7.2004, dismissed the said application as not pressed. The petitioner-tenant moved an application praying that the suit may be dismissed for want of any evidence as the affidavit which was by way of evidence

(examination-in-chief) has been dismissed. The said application of the petitioner was rejected by the Judge Small Cause Courts on 25.8.2004. While rejecting the application 38-Ga the Judge Small Cause Courts made an observation that despite the affidavit being dismissed as not pressed, still the landlord will not be precluded from adducing oral evidence. The Court allowed the landlord to adduce oral evidence. The petitioner filed a revision u/s 25 of the Provincial Small Cause Courts Act against the order dated 25.8.2004. The revisional court allowed the revision vide judgment and order dated 5.10.2004 setting aside the order of the Judge Small Cause Court so far it rejected the application paper C-33 as well as the affidavit paper C-34 as well as part of the order whereby the plaintiff was permitted to prove his case by oral evidence. However, the revisional court directed that the affidavit paper No. C-34 shall remain on record as examination-in-chief of the plaintiff and the Judge Small Cause Court shall deal with it in accordance with requirement of Sub-rule (2) of the Rule 4 and Rule 13 of the Order XVIII, C.P.C.

3. The submission on behalf of the counsel for the petitioner is that the landlord-contesting respondent had not preferred any revision or had filed any objection with a prayer that the said paper No. C-34 be treated as examination-in-chief. In the circumstances, the revisional court committed an error of law. Reliance has been placed on a decision of the Apex Court in the case of Khushro S.Gandhi and Others Vs. N.A. Guzder and Others, .

4. The argument of the counsel for the petitioner is that since the respondent had not challenged the rejection of the affidavit which was examination-in-chief, the part of revisional order permitting paper No. C-34 to remain on record as examination-in-chief of the plaintiff is liable to be set aside. The petitioner is aggrieved only with this part of the order. The submission of the counsel for the contesting respondent-landlord is that since the order of the Judge Small Cause Courts dated 28.7.2004 rejecting the affidavit of examination-in-chief and further allowing the plaintiff to adduce oral evidence was in gross violation of specific provisions contained under the newly added Order XVIII, Rules 4 and 13, C.P.C., as such the revisional court was well within its right to direct the trial court to proceed in accordance with provisions of the Civil Procedure Code.

5. Reliance has been placed by counsel for the contesting respondent on a number of decisions, Jagdish Prasad Vs. Smt. Angoori Devi, ; Shambhu Sharan Mathur Vs. Dilip Kumar Tandon, and Kailash Chandra and another Vs. IIIrd Additional District Judge, Jalaun and others, .

6. Having heard learned counsel for the parties and on perusal of the written submissions, I have to see as to whether the revisional court had exceeded its jurisdiction while directing the Judge Small Cause Courts to treat the affidavit of the landlord as examination-in-chief despite it being dismissed as not pressed and permission for adducing oral evidence allowed. Section 25 substituted by U.P. Amendment of Provincial Small Cause Courts Act read as under :

Uttar Pradesh.--For Section 25 of the Provincial Small Cause Courts Act, 1887, as amended in its application to Uttar Pradesh the following section shall be substituted, namely;

"25. The District Judge, for the purpose of satisfying himself that a decree or order made in any case decided by a Court of Small Causes was according to law, may of his own motion, or on the application of an aggrieved party made within thirty days from the date of such decree or order, call for the case and pass such order with respect thereto as he thinks fit;"

7. The revisional court is empowered to rectify legal error either on an application of an aggrieved party or of his own motion. In the instant case, despite no objection filed by the contesting respondent yet, the revisional court directed the Judge Small Cause Courts to proceed in accordance with provisions of Order VIII. Rule 4 (2) and Rule 13, C.P.C. This could have been possible only after setting aside the order passed by the trial court as there existed inherent legal error which was rightly rectified by the revisional court. The revisional court can call upon record that the order passed by the Judge Small Cause Courts is in accordance with law and if not so, the revisional court can pass such order as it thinks just and proper for rectifying the defect. A perusal of the impugned order shows that the revisional court had advanced substantial justice to both the parties in the suit with an opportunity to lead evidence as provided in Amended Civil Procedure Code.

8. I have perused the judgment of the Apex Court in the case of Khushro S. Gandhi (supra) and come to a conclusion that the facts are not at all applicable to the present case and is distinguishable. I am of the considered view that there was no fault in the order of the District Judge while exercising powers u/s 25 of the Provincial Small Cause Courts Act. The legal position was totally misconceived by the trial court and the revisional authority was entitled to point out the legal error and rectify the defect, even on equitable consideration the decision, of the revisional court is perfectly justified as the parties to the suit has been afforded an opportunity to lead evidence and the case may be decided on merit. A just decision can only be arrived at by the court below on the basis of evidence by either parties.

9. For the reasons given above, I do not find any illegality in the impugned order and the writ petition is accordingly, dismissed. There shall be no order as to costs.