
(2001) 05 AHC CK 0058
In the Allahabad High Court
Case No : C.M.W.P. No.. 55830 of 2000

Suresh Chandra Goel

APPELLANT

Vs

Judge, SCC., Allahabad and others

RESPONDENT

Date of Decision : 15-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 2 AWC 1573 : (2001) AWC 1573

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : S.C. Kushwaha, for the Appellant; Vinod Sinha and S, C., for the Respondent

Judgement

B. K. Rathi, J.—The respondent No. 3 filed SCC. Suit No. 100 of 1994 against the petitioner for eviction and for recovery of arrears of rent. In the suit, the respondent No. 3 moved an application under Order XV, Rule 5, C.P.C. for striking off the defence. The said application was allowed on 8.4.1999 by Judge. Small Cause Courts, Allahabad by order, Annexure-1 to the writ petition. Against that order, the petitioner preferred SCC, revision No. 506 of 1999. That has also been dismissed by order dated 9.8.2000 by Additional District Judge, Allahabad, by order Annexure-2 to the writ petition. Therefore, the petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

2. I have heard Sri S. C. Kushwaha, learned counsel for the petitioner, Sri Vinod Sinha, learned counsel for the respondent No. 3 and the learned standing counsel.

3. In this case, it is admitted to the petitioner that he is the tenant in the premises in the suit, of which the respondent No. 3 is the landlord. It is also admitted that the rate of rent is Rs. 500 per month. It has also been admitted that the petitioner has not deposited any amount towards rent as required under Order XV, Rule 5, C.P.C.

4. However, it has been argued by the learned counsel for the petitioner that on 6.8.1998 an application for amendment in the written statement was moved by the petitioner. Annexure-6 to the writ petition, which was allowed on payment of costs on 5.11.1998, Annexure-1 to the writ petition. That the cost has also been paid. On that date it was also ordered that the application under Order XV. Rule 5, C.P.C. shall be decided with the suit. That thereafter, the second application was moved under Order XV. Rule 5, C.P.C. which could not have been heard by the trial court.

5. This argument cannot be accepted. It is true that on 5.11.1998 by order Annexure-7 to the writ petition, it was ordered that application under Order XV, Rule 5. C.P.C. shall be decided with the suit. Thereafter the respondent No. 3 moved an application on 20.8.1999, Annexure-8 to the writ petition, praying that application under Order XV. Rule 5, C.P.C.. be disposed of first. This application was allowed and. in my opinion, it was rightly allowed. The decision of the application under Order XV, Rule 5, C.P.C. could not have been postponed till the decision of the suit. If it is permitted the provisions of Order XV, Rule 5. C.P.C. will frustrate. Therefore, the order dated 5.11.1998 was not a bar in deciding the application under Order XV. Rule 5, C.P.C. and it was rightly decided before the disposal, of the suit. It is not correct that second application under Order XV. Rule 5, C.P.C., was moved.

6. Next it is contended that by amendment, the petitioner pleaded that the rent be adjusted from the security of Rs. 30,000 deposited by the petitioner. It is admitted that a sum of Rs. 30,000 as security has been deposited by the petitioner. In this connection, reference has been made to letter written by the petitioner. Annexure-C.A. 1. Para 7 of this letter is material, which is as follows :

"That I will deposit a security of Rs. 30,000 which will be returned to me after vacation of shop by me and handover its vacant possession to you peacefully. In case possession is delivered to any other person, in that case security will be forfeited."

7. Therefore, according to the terms of the security, it cannot be adjusted towards the rent. It appears that the security has so furnished for the purposes of the maintenance of the property and that it be not damaged and In case it is damaged, the cost for repairs can be recovered from the security.

8. Therefore, the courts below have rightly held that the security furnished by the petitioner cannot be adjusted towards the rent. As such, there was no compliance of the provisions of Order XV, Rule 5, C.P.C. Therefore, the defence was rightly struck off.

9. The writ petition is without merit and is hereby dismissed.