

(2016) 09 AHC CK 0014

In the Allahabad High Court

Case No : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 34(c)

Sushil Chandra Gupta

APPELLANT

Vs

Prescribed Authority/Civil Judge

RESPONDENT

Date of Decision : 28-09-2016

Acts Referred:

Rent Control No. 23527 of 2016

Citation : (2017) 2 ARC 147

Hon'ble Judges : Aditya Nath Mittal, J.

Bench : Single Bench

Advocate : Anurag Narian Srivastava, Advocate, for the Petitioner; Ravi Nath Tilhari, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Aditya Nath Mittal, J.— Heard learned counsel for the petitioner, learned counsel for the opposite parties and perused the record.

2. This petition has been filed with the prayer to set aside the order dated 17.08.2016 passed by the opposite party no.1 in PA Case No.05 of 2015 (Sushil Chandra Gupta v. Sushil Kumar Gupta).

3. By the order dated 17.08.2016, the application for issuance of Commission has been rejected.

4. Learned counsel for the petitioner has submitted that the court below has not considered the provisions of Section 34 (c) read with rule 27 of the U.P. Act No.13 of 1972. It has also been submitted that for effective adjudication of the matter, issue of local commission is necessary.

5. Learned counsel for the opposite parties no. 2 and 3 has submitted that the power under section 34(1)(c) of the Act No.13 of 1972 is discretionary and is not mandatory. It has also been submitted that there is no illegality or perversity in

the impugned order. It has also been submitted that the commission cannot be issued for collecting the evidence.

6. From the perusal of the order dated 17.08.2016, it reveals that the application for issuance of commission was moved with multiple prayers. Regarding other properties, which were not in dispute, the application was moved with the prayer that the shops no.33/8, 33/9 and 33/10 were got by paying the premium and now all those three shops have been amalgamated into a new shop. It was also stated that the opposite parties of this petition had a house at Pragati Nagar as well as Plot at near road and adjacent to that, there are various shops. It was also stated that the son of the opposite parties is doing business at Allahabad Bank Road.

7. The present suit was for release of a property. Learned court below has come to the conclusion that the shops no.33/8, 33/9 and 33/10 were not the disputed property. Learned court below has also come to the conclusion that these proceedings are summary proceedings, which is to be decided in accordance with law and the evidence has adduced by both the parties. Learned court below has also come to the conclusion that the commission cannot be issued for the purposes of collecting evidence.

8. As far as the provision of Section 34 (1) (c) read with rule 27 of the Act No.13 of 1972 are concerned, I agree with the submissions of the learned counsel for the opposite parties that the discretion has been given to the court to issue commission or not to issue commission.

9. I also find substance in the submissions of the learned counsel for the opposite parties that the evidence cannot be collected by way of issuance of commission. I also find substance in the submissions of the learned counsel for the opposite parties that the shops, houses and other things, which were required to be inspected, were not the subject matter of the suit.

10. The application for release of the property has to be decided on the basis of averments in the application. If the opposite parties have certain other properties or shops, the petitioner can file the evidence regarding those properties. Regarding the fact that the son of the opposite parties are doing business at Allahabad Bank Road can also be proved by the evidence.

11. Learned court below has considered all the aspects of the matter in detail and I do not find any jurisdictional error or perversity in the said order.

12. For the facts and circumstances stated above, I do not find any substance in the grounds of petition.

13. The petition is dismissed.