

(1996) 07 AHC CK 0100

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19266 of 1987

Trilok Chandra

APPELLANT

Vs

Rent Control & Eviction Officer/S.D.M.Nakur Saharanpur &
Anr.

RESPONDENT

Date of Decision : 25-07-1996

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 29A(5)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 22, 32

Citation : (1996) 07 AHC CK 0100

Hon'ble Judges : R.H.Zaidi, J

Final Decision : Disposed Of

Judgement

R.H. Zaldi, J.—Present writ petition arises out of proceedings under Section 29A(5) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, for short the Act.

2. For disposal of the present petition it is not necessary to state the facts of the case in detail. It would be suffice to state that earlier the matter came up to this Court and was ultimately sent back to the Rent Control and Eviction Officer for his decision afresh on merits. The Rent Control and Eviction Officer, permitted the parties to file written arguments fixing 25.7.1987 for orders.

3. On 25/7/1987 when the petitioner went to the Rent Control and Eviction Officer, Nakur, Saharanpur to submit the written arguments he found that the case was already decided against him. He, therefore, made the application for setting aside ex parte order dated 25/7/1987 on the same date, but no orders were passed on the said application, he therefore, filed another application on 14.8.1987 with the same prayer.

4. The Rent Control and Eviction Officer by his order dated 16/10/1987 dismissed the aforesaid applications as not maintainable, holding that the ex parte order

dated 2571987 was passed on merits.

5. The petitioner has challenged the said order and his learned counsel submitted that the order although was passed on merits but the same was exparte order and was liable to be set aside and the case should have been restored to its original number. The view taken by respondent No. 1 to the contrary is erroneous and illegal.

6. Sri L.P. Naithani, Senior Advocate, appearing for the respondent No.2 submitted that the petitioner had full knowledge about the date fixed in the case for orders. He was supposed to file written argument and in compliance of the order on 2571987, which were not submitted. The Rent Control and Eviction Officer, therefore, had no option except to decide the application on merits. The said order according to him was not liable to set aside on the application filed by the petitioner.

7. The question, therefore, for determination of this Court is as to whether the order though exparte if passed on merits, can be set aside.

8. Rules 22 and 32 of the Rules framed under the Act provide as under:

"22. Powers under the Code of Civil Procedure, 1908 (Section 34(1) (g). The District Magistrate, the Prescribed Authority or the appellate or revising authority shall for the purposes of holding any inquiry or hearing any appeal or revision under the Act, shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely

(a) the power to dismiss an application, appeal or revision for default and restore it for sufficient cause,

(b) the power to proceed ex parte and to set aside, for sufficient cause, an order passed exparte,

(c).....

"32. Application for setting aside an ex parte order or for restoration (Sections 34 (8) and 41). The District Magistrate, the prescribed authority or the appellate or revising authority, as the case may be, may for sufficient cause

(a) Set aside an ex parte order deciding an application for the determination of a dispute under section 8 or for the determination of standard rent under section 9 or for the release of any building or specified part thereof or any land appurtenant to such building under section 21 or for allotment of a new building under subsection (2) of Section 24 or for restoration of any amenity under subsection (1) of Section 27 or for major repairs under subsection (4) of Section 22 or an appeal under Section 10, or Section 28 or a revision under Section 18;

(b) restore an application or an appeal or revision referred to in clause (a) as well as an application for release of any building or part thereof or any land

appurtenant to such building where such application or appeal or revision has been dismissed for default of appearance of the applicant or the appellant or revisionist, as the case may be, or his counsel.)

9. From the aforesaid Rules, it is apparent that the Rent Control and Eviction Officer had the jurisdiction to proceed *ex parte* and to set aside the *ex parte* order for sufficient cause and to restore the case to its original number. The order dismissing application under Section 29A of the Act was passed behind the back of the petitioner. It was, therefore, an *ex parte* order. In my opinion, order passed *ex parte* although on merits still remains an *ex parte* order and is liable to be set aside on the applications by aggrieved party subject to the conditions that he shows sufficient cause for his absence on the relevant date. The view taken to the contrary by respondent No. 1 is manifestly erroneous and illegal. He has actually failed to exercise the jurisdiction vested in him by holding that the order dated 25/7/1987 was passed on merit, therefore, could not be set aside by him.

10. In view of what has stated above, this writ petition deserves to be allowed.

11. Petition succeeds, orders dated 25/7/1987 and 16/10/1987 passed by respondent No. 1 are hereby quashed. Respondent No. 1 is directed to decide the application filed by the petitioner on 25/7/1987 and 14/8/1987 on merits. It will be open to the contesting respondent no.2 to show to the respondent no. 1 that there was no sufficient cause to set aside the order dated 25/7/1987.