

(2010) 05 AHC CK 0222
In the Allahabad High Court
Case No : Writ A. No. 8719 of 2010

Zohra Begum

APPELLANT

Vs

Judge, Small Causes Court, Meerut and others

RESPONDENT

Date of Decision : 13-05-2010

Acts Referred:

Citation : (2010) 05 AHC CK 0222

Hon'ble Judges : Devendra Pratap Singh, J

Final Decision : Disposed Of

Judgement

Devendra Pratap Singh,J.

1. Heard learned counsel for the petitioner and perused the record.
2. The petitioner landlady, even after obtaining an order of release which has been upheld till the Apex Court is unable to obtain possession despite various orders of this Court and rejection of the objections filed by the tenant and his brother.
3. The facts would be evident from an order dated 21.7.2008 passed by this Court in Writ Petition No.34760 of 2008 :

"Petitioner landlady filed release application under Section 21 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 against tenant Harish Bhatia respondent No.2. Release petition No.6491 of 2008 was filed. Writ Petition was dismissed by this court on 4.2.2008, however landlady was directed to deposit two years" rent before prescribed authority as per second proviso to Section 21 of U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972. As the rate of rent was Rs.900/ per month, hence Rs.21,600/ were deposited by the landlord on 3.3.2008. Against the judgment of this court dated 4.2.2008, SL.P. Was filed before Supreme Court, which was also dismissed. Thereafter, review petition was filed in this court, which was dismissed on 13.3.2008. Thereafter petitioner started proceedings for eviction under Section 23

of the Act. Parwana dakhla was issued to the Amin, who reported that it was necessary to get help of police for delivery of possession respondent No.2 Harish Bhatia filed application that the cotenant. Application was filed under Order XXI Rules 99 to 106 CPC and was registered as Misc. Case No.22 of 2008 on the file of Prescribed Authority/JSCC Meerut. In the said case, stay order has been granted on 22.5.2008 and it has been directed that Parwana dakhla already issued and which was to be executed by 24.5.2008 should not be executed. The court wonders that how Prescribed Authority can pass an order against the release order confirmed by the High Court as well as Supreme Court.

In order to frustrate the eviction order obtained by the landlord confirmed by the High Court as well as as Supreme Court, often tenant puts forward his relations. The same thing appears to have been done in the instant case.

Writ petition is disposed of with the direction to the Prescribed Authority to decide Misc. Case no.22 of 2008 very expeditiously. If it is found that Sri Rajan Bhatia has abused the process of court, then very heavy cost amounting to Rs.1 lacs shall be imposed upon him. Until decision of Misc. Case No.22 of 2008, eviction of any person, who is in possession of shop in dispute, shall remained stayed provided that damages for use and occupation @ Rs.10000/ (ten thousand) per month starting from May, 2008 are deposited before the Prescribed Authority. Damages at the said rate for the month of May, June and July, 2008 shall be deposited within a week from the date of production of a certified copy of this order before the Prescribed Authority after serving a copy upon the learned counsel, who is appearing for the applicant in Misc. Case no.22 of 2008. Damages at the said rate w.e.f. August, 2008 shall be deposited by 7th of each succeeding month.

In case of single default, possession shall at once be delivered by the Prescribed Authority to the petitioner. No further latitude or laxity on the part of the Prescribed Authority will at all be appreciated by this court.

Absolutely, no unnecessary adjournment shall be granted to any of the parties. If court below is inclined to grant any adjournment on any ground to any of the parties, then it shall be on very heavy cost, which shall not be less than Rs.1000/ per adjournment.

Writ petition is accordingly disposed of."

However, neither the tenant nor his brother vacated the premises nor deposited or tendered the amount as fixed by this Court in the aforesaid order. The trial court dismissed his objection vide order dated 7th of August 2008 and a consequential appeal was also dismissed by the District Judge vide order dated 22.8.2008. Nevertheless, the brother of the tenant preferred a defective Second Appeal No.235 of 2008 before this Court and after hearing the parties at length, the appeal was dismissed vide order dated 10th of April 2009 with the finding that there was no illegality in either of the two orders.

4. Now another objection has been filed before the Prescribed Authority which has been registered as Misc. Case No.22 of 2009. However, it is stated at the Bar that no interim order is operating and yet the Prescribed Authority has not been able to hand over possession of the disputed building to the petitioner.

5. From the order dated 21.7.2008, which has become final, it is apparent that in case of non deposit of the damages at Rs.10,000/ per month starting from May 2008, the Judge Small Causes Court was directed to forthwith deliver the possession to the petitioner.

6. It is evident from the order of this Court dated 10th of April 2009 that the order passed by this Court earlier in Writ Petition No.34760 of 2008 has become final, there does not appear any reason why the possession has yet not been given.

7. Accordingly, the executing court is directed to forthwith execute the writ of possession of the disputed property and hand over vacant possession to the petitioner and the warrant of possession may be executed, if necessary by force. The District Magistrate and the Dy. Inspector General of Police/Senior Superintendent of Police, Meerut are directed to extend full help for execution of the orders of the executing court. If for any reason possession cannot be delivered to the petitioner by the next date fixed in this Court, the Presiding Officer of the executing court shall submit a report explaining the reasons thereof by the next date.

8. The Registrar General of this Court is directed to send a copy of this order through a special massager to the Judge, Small Causes Court, Meerut and another copy to the District Magistrate and the D.I.G. Meerut to ensure compliance of this order.