
Dr. Nardev Sharma Vs Ravindra Kumar Jain

Writ Petition No. 2094 (MS) Of 2020

Court: Uttarakhand High Court

Date of Decision: Oct. 11, 2022

Acts Referred:

Code Of Civil Procedure, 1908 " Order 2 Rule 2

Hon'ble Judges: Sanjaya Kumar Mishra, J

Bench: Single Bench

Advocate: Bhupesh Kandpal, Abhijay Negi

Final Decision: Allowed

Judgement

Sanjaya Kumar Mishra, J

1. In this writ petition, the petitioner has prayed for issuance of writ of Certiorari for setting aside the order dated 05.09.2020 passed by Addl. District

Judge, Vikas Nagar, Dehradun in Rent Control Appeal No. 3 of 2019 whereby he has set aside order dated 22.07.2019 passed by Civil Judge (Senior

Division), Vikas Nagar, Dehradun in P.A. No. 3 of 2017 dismissing the application for release filed under 21 (1) (a) of the U.P. Urban Buildings

(Regulation of Letting, Rent and Eviction Act), 1972.

2. The facts, that are not disputed in this case, are that petitioner happens to be a tenant of respondent. Respondent filed a SCC Suit before the Judge,

Small Cause Court bearing no. 01 of 2015 while that application was pending before the competent Court he filed another application for release of

property bearing P.A. No. 3 of 2017 before the learned Civil Judge (Senior Division), Vikas Nagar, praying for release of the rented premises on the

ground that he requires the said property for his own personal use and that property is in dilapidated, requires its demolition, and then reconstruction.

Learned Civil Judge (Senior Division) being the Prescribed Authority under the aforesaid Act, dismissed the application. The respondent preferred an

appeal bearing Rent Control Appeal No. 3 of 2019 before the Additional District Judge, Vikas Nagar, Dehradun. As per the impugned judgment, the

Appellate Authority allowed the said appeal and set aside the order passed by the Prescribed Authority and directed eviction of the petitioner by

allowing the application for release filed by the respondent.

3. The only question that arises for consideration, at present, is that whether during the pendency of the SCC Suit for eviction of the petitioner from

the self same property, the application for release under special Statue is maintainable. On this count, though several contentions have been raised but

this Court is of the opinion that though the learned Additional District Judge, in impugned judgment at paragraph 36 has noted that one SCC suit is

pending, but has not given any finding whether second application for the release for the self same acquired property is maintainable or not.

4. Learned Addl. District Judge, did not direct himself to consider whether at all second proceedings is maintainable; then whether respondent is

raising any additional plea, which has not been considered in the earlier civil proceeding and the effect of principles enunciated under Order 2 Rule 2

of the Code of Civil Procedure, 1908.

5. In that view of the matter, this Court is of the opinion while exercising Certiorari jurisdiction, writ petition should be allowed and matter should be

remanded back to the Additional District Judge, Vikas Nagar, to reconsider the case and give specific findings regarding maintainability of the

application for release in view of the pendency of earlier SCC Suit and impact of the pleadings raised thereon. He should specifically take into

consideration the plea raised by the respondent in earlier application. He should also consider whether such facts mentioned in the earlier proceedings

shall have any effect on the plea taken by the respondent especially in the application for release under the aforesaid Act.

6. In that view of the matter, the writ petition is allowed. Impugned order dated 05.09.2020 passed by Additional District Judge, Vikas Nagar,

Dehradun, is hereby quashed. The matter is remanded back to the Additional District Judge, Vikas Nagar, Dehradun for reconsideration of the appeal.

Parties are directed to appear before Additional District Judge, Vikas Nagar on 15.11.2022 and produce a certified copy of this judgment. It is further

directed that learned Additional District Judge, Vikas Nagar, Dehradun shall reconsider the matter, after affording reasonable opportunity of hearing to

both the parties and shall dispose of the case as per law, within three months from the date of production of certified copy of this judgment by either of

the parties. There shall be no order as to costs.