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**(2010) 09 AHC CK 0259**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No.56720 of 2010

Anil Kumar Gautam

APPELLANT

Vs

Subhash Chand Jain

RESPONDENT

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**Date of Decision:** Sept. 20, 2010

**Acts Referred:**

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21(1)(a)

**Hon'ble Judges:** Rakesh Tiwari, J

**Final Decision:** Dismissed

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**Judgement**

Rakesh Tiwari, J.

Heard learned counsel for the parties and perused the record.

2. Brief facts of the case are that respondent landlord initiated proceedings under Section 21(1)(a) of U.P. Act No. 13 of 1972 for ejectment of the petitioner tenant from the disputed accommodation situated in ground floor of House No. 297, Western Kutcheri Road, Meerut City, which was registered as P.A. Case No. 159 of 1987.

3. The contention of learned counsel for the respondent landlord is that during the hearing of final proceedings the respondent landlord mischievously moved an application supported with an affidavit on 19.8.2010 for filing additional evidence and that it was liable to be thrown out at the very threshold, the court below has entertained the same and the additional evidence has been taken on record by means of the order dated 25.8.2010.

4. Aggrieved by the aforesaid order dated 25.8.2010, the petitioner has come up in this writ petition.

5. It is vehemently argued by Sri Rahul Sahai, learned counsel for the petitioner that since the arguments have already been concluded in the case, therefore, filing of the additional evidence by the landlord is not mischievous and it is in violation of

Order 41 Rule 27 C.P.C.

6. Per contra, learned counsel for the respondent submits that the court below has accepted the documents as additional evidence on record as they touch the very root cause of the matter and for the reason that they would aid the court in deciding the case being important documents.

7. The relevant finding of the court below in this regard is as under:

8. After hearing learned counsel for the parties and on perusal of the record I find that the court below has considered the arguments of the counsel that even though these documents have been filed with some delay they are important and will aid the court in arriving at correct conclusion to do substantial justice between the parties. Accordingly, it has accepted the documents on record, hence it cannot be denied that the court below has not applied its mind while passing the orders impugned and it is the discretion of the court below to accept the additional evidence or not. In the instant case, the court below has recorded its satisfaction that the documents filed as additional evidence will be an aid to the court in deciding the case correctly, hence this Court is not inclined to interfere in an interlocutory order under Article 226 of the Constitution of India in which the court below has used its judicious discretion,.

9. For all the reasons stated above, the writ petition is dismissed. No order as to costs.

10. It is, however, open for the parties to lead fresh oral evidence for proving their case in rebuttal which has been brought on record by way of additional evidence. The court below is directed to decide Misc. Appeal No. 197 of 2010 within a period of one month from the date of production of a certified copy of this order.