

Anil Kumar Mayor Vs Illrd Additional District Judge, Saharanpur and others

Court: Allahabad High Court

Date of Decision: Sept. 1, 2008

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 15 Rule 5

Hon'ble Judges: S.U.Khan, J

Final Decision: Dismissed

Judgement

S.U. Khan, J.

Heard learned Counsel for the parties.

2. This is tenant's writ petition directed against orders passed by Judge Small Causes Court and Additional District Judge, Saharanpur striking off

the defence of the tenantpetitioner. Landlordsrespondent Nos. 3 to 5 Suresh Chandra and another filed S.C.C. Suit No. 31 of 1983 against

tenantpetitioner. In the said suit an application was given by the plaintiff for striking off the defence of the tenantpetitioner under Order XV, Rule 5,

C.P.C. The default was that after depositing the rent within time until 31.12.1984, the rent for the whole year of 1985 was deposited on

16.8.1985. Tenant pleaded that suit was dismissed in default on 19.7.1984 and thereafter it was restored without intimation to the tenant on

28.9.1984 and thereafter the suit was transferred to Civil Judge, Saharanpur and petitioner came to know about the transfer on 3.1.1985. The

Trial Court held that on 3.1.1985 and 9.5.1985 presence of both the parties was noted on the order sheet.

3. It was further contended by the tenant that even though he deposited the rent late but it had been withdrawn by the landlord.

4. Ultimately defence was struck off by the J,S.C.C./Ilnd Additional Civil Judge, Saharanpur through order dated 3.3.1986. Against the said order

petitioner filed S.C.C. Revision No. 92 of 1986 which was dismissed by Illrd Additional District Judge, Saharanpur on 14.10.1985 hence this writ

petition.

5. Learned Counsel for the respondent has vehemently supported the impugned orders. Learned Counsel has further argued that release

application under section 21 of the Act was also filed against the tenant which was allowed, appeal was dismissed thereafter writ petition was

dismissed. However, afterwards review application was filed in the writ petition and thereupon matter was remanded to the prescribed authority to

consider some other aspects also. Learned Counsel has further stated that after remand in review by this Court tenant is delaying the proceedings.

6. However, proceedings under section 21 of the Act are quite distinct and they cannot have any bearing upon the instant writ petition which is

directed against orders striking off the defence.

7. In my opinion as landlord withdrew the amount hence delay in making the deposit stood condoned or deserved to be condoned.

8. Moreover, the language of Order XV, Rule 5, C.P.C. is as peremptory as language of Order VIII, Rule 1, C.P.C. However, interpreting the

latter provision Supreme Court in Kailash v. Nanku, 2005 (4) SCC 480=2005 (29) AIC 95 (SC)=2005 SCFBRC 248 and in several other

subsequent authorities has held that the Court has got jurisdiction to take written statement on record for sufficient reason but on heavy cost even

after 90 days of service of summons upon the defendants. Same principle may be applied to Order XV, Rule 5, C.P.C.

9. Accordingly, writ petition is allowed. Delay in making the deposit is condoned on payment of Rs. 5,000/ as cost which shall be paid to the

landlord or to his learned Counsel on the next date before the Trial Court.

10. It is further directed that entire arrears of rent at the admitted rate due till 31.8.2008 after adjusting any amount already deposited shall be

deposited before the J.S.C.C. by the next date for immediate payment to the landlordrespondent.

11. In case of default in compliance with any of these conditions, this order shall stand automatically set aside and writ petition shall stand

dismissed. .

12. Writ petition is accordingly allowed. Both the impugned orders are set aside. Both the parties are directed to appear before the Trial Court on

29.9.2008. The Trial Court shall decide the suit very expeditiously. Absolutely no unnecessary adjournment shall be granted to any of the parties.

If the Court below is inclined to grant any adjournment in any form to any of the parties, then it shall be on very heavy cost, which shall not be less

than Rs. 750/ per adjournment.

13. Learned Counsel for the respondent requested that three or four other writ petitions pending in between the parties might also be consolidated

with this writ petition. The other writ petitions are not directly related with the dispute involved in the instant writ petition hence the said prayer is

rejected.