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**(2011) 12 AHC CK 0272**

**Allahabad High Court**

**Case No:** Civil Revision No. 560 of 2011

Hari Krishana Gupta

APPELLANT

Vs

Chhedi Lal

RESPONDENT

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**Date of Decision:** Dec. 8, 2011

**Acts Referred:**

- Provincial Small Cause Courts Act, 1887 - Section 25

**Citation:** (2011) 12 AHC CK 0272

**Hon'ble Judges:** Prakash Krishna, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### Judgement

@JUDGMENTTAG-ORDER

Hon"ble Prakash Krishna, J.

Challenging the judgment and decree dated 7th of September, 2011 passed by the Judge, Small Cause Courts in SCC suit no.135 of 1989, the present revision has been filed u/s 25 of the Provincial Small Cause Courts Act at the instance of the defendant tenant.

2. Chhedi Lal instituted SCC suit No.135 of 1989 for ejectment of Sri Hari Krishana Gupta, the applicant herein for eviction from a shop described in the plaint and also for recovery of arrears of rent, damages and electricity charges etc..

3. The case of the plaintiff landlord was that the provisions of the U.P. Act No.13 of 1972 are not applicable to the property in question.

4. The suit was initially dismissed by the trial Court. The matter was carried in revision before this Court in Civil Revision No.879 of 1990. The said revision was allowed by the judgment and order dated 7th of December, 2010 and the matter was restored back to the trial Court. The High Court while allowing the revision also permitted the parties to

lead evidence.

5. After remand, the plaintiff landlord filed certain documents to show that the shop in question is a new construction within the meaning of section 2(2) of the U.P. Act No.13 of 1972 as it was assessed for the first time in the year 1983.

6. The trial Court examined the matter afresh and reached to the conclusion that the shop in question is a new construction in view of the first assessment which is of the year 1983 and the provisions of the U.P. Act No.13 of 1972 are not applicable. It consequently decreed the suit by the order under revision.

7. The learned counsel for the applicant submits that the finding of the trial Court on the question of date of construction is erroneous in law. He submits that the plaintiff in his deposition has admitted that the shop in question was constructed prior to the commencement of the U.P. Act No.13 of 1972. Elaborating the argument, he submits that since the shop in question was constructed earlier, the date of construction would be the date of actual construction notwithstanding the first assessment of the building in question.

8. On a careful consideration of the matter, it is not possible to accept the above submission of the learned counsel for the applicant. Explanation to Section 2(2) of the Act defines the date of construction. It provides that in case where first assessment is available, the date of first assessment shall be deemed to be the date of construction of the building. The said matter has been subject matter of interpretation by this Court as well as the Apex Court.

9. The Apex Court in [Bishan Chand Vs. Vth Additional District Judge, Bulandshahr \(Uttar Pradesh\) and Another](#), has held that where date of first assessment is available, the said date shall be deemed to be the date of construction.

10. In view of the above authoritative pronouncements of the Apex Court, I find no illegality in the judgment under revision. Any other point was not pressed. There is no merit in the revision.

11. The revision is dismissed.

12. At the end, the learned counsel for the applicant prayed that some reasonable time to vacate the disputed shop may be granted to which Sri Chandra Keshwar Singh, learned counsel appearing for the plaintiff landlord has no objection.

13. Time to vacate the disputed shop up to 30th of June, 2012 is granted subject to the fulfillment of the following conditions:

1. Applicant shall file an undertaking on affidavit within one month before the trial Court stating clearly that he will hand over peaceful vacant possession to the landlord without

creating any third party interest on or before 30th of June, 2012.

2. The applicant shall deposit the entire arrears of rent and the damages for the period up to 30th of June, 2012 after adjusting the amount, if any, already deposited within a period of one month, before the trial Court.

16. In case of default in compliance of any of the conditions stipulated above within the stipulated time, the time granted by this Court shall stand vacated.