

(2016) 04 AHC CK 0155

ALLAHABAD HIGH COURT

Case No: Matters Under Article 227 No. 2298 of 2016

Smt. Meena and Another

APPELLANT

Vs

Smt. Pramodani Awasthi

RESPONDENT

Date of Decision: April 8, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 15 Rule 5
- Constitution of India, 1950 - Article 227

Citation: (2016) 2 ARC 379

Hon'ble Judges: Mrs. Sunita Agarwal, J.

Bench: Single Bench

Advocate: Ram Sumer Chaudhary, Advocate, for the Appellant;

Final Decision: Dismissed

Judgement

Mrs. Sunita Agarwal, J.—The petitioner is aggrieved by the order dated 30.3.2016 passed by the Judge Small Causes Court on an application under Order 15, Rule 5 C.P.C.

2. Admitted facts of the matter are that the opposite party, claiming to be the landlord of the suit property served a notice dated 6.2.2014 upon the petitioner for determination of tenancy. The notice was duly served upon the defendant/petitioner. The defendant replied to the notice on 14.2.2014. After service of notice, eviction suit was filed with the assertion therein that the tenant is in default of rent from the month of October 2013 and a notice dated 6.2.2014 for determination of tenancy was served upon him.

3. Despite service of notice, the tenant neither paid the rent due nor handed over the vacant possession of the suit property and, therefore, the plaintiff was entitled to damages for use of occupation of the building and, further, the defendant is liable to be evicted. In the said suit, written statement was filed by the

defendant/petitioner on 30.7.2014.

4. It appears that an application under Order 15, Rule 5 C.P.C. was filed by the opposite party-landlord on 20.10.2015 with the categorical assertion that the defendant did not deposit the rent due till the first date of hearing which is 10.12.2014 in the present case. This application was objected on 26.11.2015 by the defendant with the assertion that he tendered the rent from October 2013 to March 2014 through money order to the plaintiff/landlord but the landlord had refused to accept the same.

5. So far as the deposits required under Order 15, Rule 5 are concerned, the assertion is that during the pendency of the suit, the defendant cannot be forced to deposit damages, cost of the suit etc. The service of notice, the date of filing of the suit and the date of first hearing are admitted to the petitioner. The Court below has recorded a categorical finding that the defendant did not deposit the dues as required under Order 15, Rule 5 on or before the first day of hearing and hence the defence was struck off.

6. Challenging this order, learned counsel for the petitioner submits that the petitioner is still ready to deposit the entire rent due, if liberty is granted by this Court.

7. It is well settled that under Article 227 of the Constitution of India the supervisory power is to be sparingly used by the High Court in an appropriate case in order to correct the jurisdictional error committed by the Subordinate Court so as to rectify any miscarriage of justice. No such situation arises in the present case.

8. No interference is required in the order passed by the Court below.

9. Dismissed.