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Court : Allahabad

Decided On : Feb-22-2005

Reported in : 2005(1)ARC792; 2005(3)AWC2156

Judge : Anjani Kumar, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972; [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition No. 9362 of 2005

Appellant : Jagdish Kumar Monga

Respondent : Additional District Judge and ors.

Advocate for Def. : None

Advocate for Pet/Ap. : S.K. Dubey, Adv.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. Heard learned Counsel appearing on behalf of the petitioner.

2. The petitioner-tenant, by means of present writ petition under Article 226 of the [Constitution of India](#), has challenged the order dated 10th January, 2005, passed by the Appellate Authority in Rent Appeal No. 5 of 1994, before whom the appeal under the provisions of the U.P. Act No. XIII of 1972 is pending, whereby the appellate authority rejected the applications 40 Ka and 65 Ka filed by the petitioner-tenant.

3. The facts as narrated in the writ petition are that the petitioner-tenant filed an application 40 Ka by which he sought amendment in his written statement and by the application 65 Ka, the petitioner again sought amendment in his written statement by adding new ground. A perusal of these applications and the amendment proposed to be made clearly demonstrate that by way of amendment application, the petitioner-tenant wants to brought certain new facts as per the version of the petitioner which has come into the light only after the decision by the prescribed authority. These application seeking amendment in the written statement have been rejected by the Appellate Authority on the ground firstly that similar application for amendment 32 Ka has already been rejected in the year 1998. Thus, the appellate authority rejected the applications that this is nothing but dilatory tactics adopted on behalf of the petitioner-tenant just to delay in the disposal of the appeal. Learned Counsel appearing on behalf of the petitioner-tenant submitted that these facts, which he want to bring to the notice of the Court by means of amendment applicant, were subsequent facts which ought to have been considered by the Appellate Authority by permitting the tenant to amend its written statement. I am not in agreement with the aforesaid contention of learned Counsel for the petitioner-tenant. Learned Counsel for the petitioner-tenant if wanted to bring certain new facts itself during the pendency of the appeal, it could be brought on record by filing the affidavits and it is not necessary to amend the written statement, as has been prayed for by the petitioner-tenant, particularly when on similar facts on amendment application 32 Ka has already been rejected by the Appellate Authority. The Appellate Authority has further given reasons that the petitioner has already filed an application 56 Ga and he could have brought these material as evidence, but he has deliberately delaying the decision by filing applications, which are nothing but dilatory tractics adopted by the tenant.

4. In view of what has been stated above, I do not find any ground for interference with the order impugned in the present writ petition by this Court in exercise of power under Article 226 of the [Constitution of India](#). However, it is made clear that the facts, which are sought to be brought by way of amendment may be considered as a subsequent facts by the appellate authority in accordance with law.

5. With the aforesaid observation, this writ petition is dismissed. However, the parties shall bear their own costs.

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