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**Subhash Chand Sharma Vs. Ixth Additional District Judge, Agra and ors.**

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**SooperKanoon Citation : [sooperkanoon.com/478065](http://sooperkanoon.com/478065)**

**Court : Allahabad**

**Decided On : Apr-18-2002**

**Reported in : 2002(3)AWC1902**

**Judge : Anjani Kumar, J.**

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

**Appeal No. : C.M.W.P. No. 15515 of 2002**

**Appellant : Subhash Chand Sharma**

**Respondent : ixth Additional District Judge, Agra and ors.**

**Advocate for Def. : Santosh Kumar, S.C.**

**Advocate for Pet/Ap. : R.N. Sharma, Adv.**

**Disposition : Writ petition dismissed**

**Judgement :**

**Anjani Kumar, J.**

1. This writ petition under Article 226 of the [Constitution of India](#) filed by the petitioner-tenant was dismissed by me on 18th April, 2002, for the reasons to be recorded later. Here are the reasons for dismissing the aforesaid writ petition.

2. The petitioner-tenant filed the present writ petition against the order of the revisional court dated 11.3.2002, whereby the revisional court refused to interfere with the order passed by the trial court dated 12.12.2000 in S.C.C. Suit No. 34 of 1997. The aforesaid Suit No. 34 of 1997 was filed by the plaintiff, respondent No. 3 in the present petition, on the ground that he is the owner of property No. 11/42, Rambagh, Agra, There was a shop being numbered as Shop No. 3 at the ground floor of the said premises and the same was let out to tenant, defendant No. 1 in the said suit on the monthly rent of Rs. 500. The suit was filed on the ground that the petitioner-tenant has sub-let the aforesaid shop to defendant No. 2 without his consent and also he has not paid the rent, therefore, he is defaulter. According to the agreement entered into between the landlord and the tenant, the deposit of Rs. 75,000 has not been deposited, it is only Rs. 20,000 has been deposited and the balance of Rs. 55,000 plus interest at the rate of 2 per cent and also the rent of 11 months are due. Apart from this, according to new agreement there was an enhancement of five per cent in the monthly rent and the house tax as well as water tax was also payable. The tenant was liable to pay the rent, etc., but he has not paid the same. Since the accommodation in question is a shop, therefore, the provision of U. P. Act No. 13 of 1972 is not applicable. A notice determining the tenancy was served. The contention of the petitioner tenant is that a similar civil suit has already been filed in the Court of Civil Judge, (Sr. Div.), Agra, which has now been transferred to IVth Additional District Judge, Agra, in which an injunction has been claimed for, but has not yet been granted. On the pleadings of the parties, it was pleaded that in view of the pendency of the suit, referred to in the preceding paragraphs of the writ petition, the present Suit No. 33 of 1997 deserves to be stayed as the same is barred by the provision of Section 11 of the Code of Civil Procedure. On the pleadings of the parties, the following issues were framed :

- '(i) Whether there is any relationship between the parties as landlord and tenant?
- (ii) Whether the tenant No. 1 has sub-let the shop to tenant No. 2, if so what is its effect?
- (iii) Whether tenant No. 1 has defaulted in the payment of rent?
- (iv) If so what relief is offered?'

3. After hearing the parties and after going through the evidence on record, the trial court passed an order dated 12.12.2000, whereby the suit has been decreed. Aggrieved thereby a revision has been filed on the ground that on record, there was no evidence to the effect that the shop in, question was sub-let to defendant No. 2 and the trial court has taken an incorrect view with regard to the suit being barred by principles of res judicata. Similarly, the view taken by the appellate court that the provision of Act No. 13 of 1972 does not apply is also not correct. It is admitted between the parties that against the decision of Civil Suit No. 33 of 1997, an appeal is pending ; therefore, the decree passed by IVth Additional District Judge in Suit No. 33 of 1997 has not yet become final. So far as the question of jurisdiction is concerned, suffice it to say that since the U. P. Act No. 13 of 1972 is not applicable, therefore, the Court of Small Causes has no jurisdiction to try and decide the suit in question. The revisional court has ultimately rejected the revision and affirmed the order dated 12.12.2000, passed by trial court on the ground that provision of U. P. Act No. 13 of 1972 does not apply. The notice to this effect has already been duly served on the tenant. Even these two grounds are sufficient to decree the suit and thus, there is no error committed by the trial court in decreeing the said suit. The same arguments have been advanced by the learned counsel for the petitioner before me and I am in full agreement that the order of the revisional court, whereby the order passed by the trial court has been affirmed. Nothing further has been said by learned counsel for the petitioner as to why this Court should interfere with the findings of fact relied upon by the trial court and affirmed by the appellate court.

4. Learned counsel for the petitioner-tenant tries to make an effort to demonstrate that on the basis of the evidence on record, the view taken by the courts below may not be correct. It is settled view that this Court in exercise of its powers under Article 226 of the [Constitution of India](#) will not act as an appellate court, if on the basis of the evidence on record two views are there and the authority has taken one view, this itself is no ground for interference by this Court under Article 226 of the Constitution.

5. In this view of the matter and for the reasons stated above, this writ petition deserves to be dismissed and is hereby dismissed. The interim order, if any,

stands vacated. However, there will be no order as to costs.

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