

Subhas Chand Bharati Vs. Additional District Judge and ors.

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Court : Allahabad

Decided On : May-14-2002

Reported in : 2002(3)AWC2166

Judge : Anjani Kumar, J.

Acts : [Provincial Small Cause Courts Act, 1887](#) - Sections 25

Appeal No. : C.M.W.P. No. 8924 of 2001

Appellant : Subhas Chand Bharati

Respondent : Additional District Judge and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : L.N. Pandey, Adv.

Judgement :

Anjani Kumar, J.

1. This writ petition is directed against the order dated 25th January, 2001 passed by the trial court decreeing the suit of landlord against the petitioner for ejectment due to arrears of rent. Against the order, petitioner preferred a revision before the revisional court under Section 25 of the Provincial Small Cause Courts, Act, 1887, which resulted into rejection of the revision. These are the two orders which the

petitioner has challenged by means of this petition.

2. The trial court after considering the evidence on record came to the conclusion and recorded its findings that the provisions of U. P. Act No. 13 of 1972 are not applicable to the tenancy in question. The trial court recorded the findings that tenancy has been determined under Section 106 of the Transfer of Property Act, 1882. It has also recorded that petitioner-tenant has arrears of rent and has not deposited the rent. The revisional court repelled the arguments of the petitioner and affirmed the order of the trial court. In view of the concurrent findings recorded by the trial court and affirmed by the revisional court, this Court will not interfere with the orders impugned in the present writ petition under Article 226 of the Constitution of India. The above view has also been upheld in the case reported in *Syed Yakoob v. K.S. Radha Krishnan and Ors.*, AIR 1964 SC 477 (Volume 51).

3. Learned counsel for the petitioner Sri L. N. Pandey tries to assail the findings recorded by the trial court as affirmed by the revisional court on the ground that revisional court refused to assess the findings in the manner learned counsel wanted to reassess the same. This Court in its decision reported in *Om Prakash and Ors. v. Ind Additional District Judge, Saharanpur and Ors.*, 2000 (4) AWC 3173 : 2000 (2) ARC 739, has held that revisional court has no power to examine de novo findings of fact in exercise of power under Section 25 of [Provincial Small Cause Courts Act, 1887](#). In this view of the matter on the basis of law laid down by This Court as well as the Apex Court, the petition is dismissed.

4. Learned counsel for the petitioner Sri L. N. Pandey prayed that some reasonable time may be granted so that tenant may make alternative accommodation. The prayer made by learned counsel for the petitioner for six month's time to vacate and handover the peaceful possession of accommodation in dispute is accepted. The order of the prescribed authority as confirmed by the appellate authority shall not be given effect to till 13th November, 2002, if:

(1) Petitioner furnishes an undertaking before the prescribed authority within a month from today to the effect that petitioner will vacate the premises in question and handover the vacant peaceful possession to the landlord on or before the 13th November, 2002 ; and

(2) Petitioner shall deposit the entire arrears of rent and damages, if any, at the rate of rent within one month from today and keeps on depositing the damages calculated equivalent to the rent till the petitioner continue in the possession or till 13th November, 2002, whichever is earlier. The landlord shall be entitled to withdraw the aforesaid amount.

In the event of default the order of eviction will be open for execution.

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