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Abdul Wadood Vs. Xivth Additional District Judge and ors.

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Court : Allahabad

Decided On : Jul-18-2002

Reported in : 2002(4)AWC2698

Judge : Anjani Kumar, J.

Acts : [Constitution of India](#) - Article 226; [Code of Civil Procedure \(CPC\), 1908](#) - Order 15, Rule 2

Appeal No. : C.M.W.P. No. 27964 of 1998

Appellant : Abdul Wadood

Respondent : Xivth Additional District Judge and ors.

Advocate for Def. : A. Vashishth and ;K.K. Arora, Advs. and ;S.C.

Advocate for Pet/Ap. : Madhav Jain, Adv.

Disposition : Petition allowed

Judgement :

Anjani Kumar, J.

1. This is tenant's writ petition challenging the order of the trial court and affirmed by the revisional court in a revision filed under Section 25 of the Provincial Small Cause Courts Act.

2. The admitted fact is that the landlord-respondent filed a suit for arrears of rent and ejectment against the petitioner-tenant. Learned counsel for the petitioner argued that a notice terminating the tenancy has not been duly served on the petitioner-tenant. This Court in exercise of powers conferred under Article 226 of the [Constitution of India](#) will not sit in appeal over the findings recorded by the trial court and affirmed by the revisional court to the effect that the notice determining the tenancy is duly served on the petitioner-tenant. There is yet another ground on which this writ petition can be disposed of.

3. Admittedly, since the petitioner has not complied with the provisions of Rule 5, Order XV of Code of Civil Procedure, their defence is struck off. The grievance of the petitioner as submitted by the petitioner is that even in the cases where defence has been struck off, the petitioner cannot be denied the opportunity to cross-examine the witnesses led by plaintiff-landlord and also cannot be denied the opportunity to argue the matter by striking off the witnesses. The defence under Rule 5, Order XV of Code of Civil Procedure only restricts the tenant by adducing any evidence. From the perusal of the order of the trial court as well as the revisional court, it is clear that the petitioner has not been afforded opportunity to cross-examine the evidence nor the petitioner has been heard in the matter of defence without adducing any evidence against the arguments advanced on behalf of the plaintiff-landlord.

4. In this view of the matter, the trial court as well as the revisional court has committed an error of law. The view finds support from the decisions cited by learned counsel for the petitioner in 1982 ARC 121 and the judgment in 1989 ARC (1) 172. The another decision which is relied upon by the learned counsel for the petitioner is in 1989 ARC (2) 9.

5. In view of the law laid down as stated above, the writ petition deserves to be allowed and is hereby allowed. The orders of the trial court as well as the revisional court is set aside. The matter is remanded back to the trial court. Since the matter is fairly very old, the trial court is directed to decide the matter expeditiously.