

Dinesh Chandra Jain Vs. Civil Judge, Junior Division and ors.

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Court : Allahabad

Decided On : Feb-16-2005

Reported in : 2005(3)AWC2577

Judge : Anjani Kumar, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1); [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 47984 of 2004

Appellant : Dinesh Chandra Jain

Respondent : Civil Judge, Junior Division and ors.

Advocate for Def. : R.R. Singh, S.C.

Advocate for Pet/Ap. : P.K. Jain, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Anjani Kumar, J.

1. Heard Sri P. K. Jain, learned counsel appearing on behalf of the petitioner and Sri Rajiv Ratan Singh, who has accepted notice on behalf of respondent No. 2. Sri

Singh has made a statement that since he does not want to file any counter-affidavit, therefore the matter may be heard on merits. In this view of the matter, the writ petition is finally heard on merits.

2. The petitioner, by means of present writ petition under Article 226 of the [Constitution of India](#) has challenged the order dated 16th October, 2004, copy whereof is annexed as Annexure-5 to the writ petition, whereby the prescribed authority before whom the application under Section 21(1) (a) of the U.P. Act No. XIII of 1972, (in short 'the Act') filed by the respondent-landlord is pending, has decided application 112-Ka, which is an amendment application and the objection 113. The application 112-Ka was filed by the petitioner-tenant to the effect that one of the tenants of the landlord Ram Gopal son of Jyoti Prasad, who was a tenant of a shop owned by the landlord situated at Mohalla Bisatkhana, Jalesar has vacated the said shop and delivered the possession of the same to the landlord, therefore the written amendment be permitted to be amended. The aforesaid application has been contested by the respondent-landlord firstly on the ground that the allegations are wholly vague, apart from the same are incorrect. It is further stated that the dispute regarding the said shop is pending decision before the competent court and the similar applications were filed by the petitioner-tenant in past also just to delay the disposal of the application under Section 21 (1) (a) of the Act filed by the respondent-landlord. It is further asserted that the whole purpose of filing this application is only to delay decision of the application under Section 21(1) (a) of the Act. The prescribed authority while deciding the application, referred to above, have relied upon decisions in Sampat Kumar v. Ayyakannu and others, : 2003 CriLJ411 ; S. K. Patnaik v. State of Orissa and others, : [2002]SUPP2SCR397 . The landlord-respondent has further relied upon decision of this Court in Dr. Anand Mohan Chopra v. IInd Additional District Judge, Basti and others, 1998 (1) ARC 413. So far as the question of proposition of law relied upon by learned counsel appearing on behalf of the petitioner- tenant is concerned, it is not disputed that power to allow amendment is there, but this power is subject to the discretion of the Court to allow the amendment at any stage provided the amendment is not mala fide and the amendment is not with the intention to delay the disposal of the application and further that the facts, which are sought to be brought by way of amendment, were not in the knowledge of the

applicant at the time when the original written statement was filed. The facts of the present case clearly demonstrate that the law laid down by this Court, referred to above, are not applicable to the case of petitioner-tenant in the present case, particularly when the prescribed authority has recorded a finding that the similar amendments have been filed, but were, rejected earlier and this amendment application has been filed only to delay the disposal of the application. In this circumstance, in my opinion, the view taken up by the prescribed authority in rejecting the application 112-Ka does not warrant any interference by this Court in exercise of powers under Article 226 of the [Constitution of India](#).

3. In view of what has been stated above, this writ petition has no force and is accordingly dismissed. However, the parties shall bear their own costs.

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