

Smt. Munni Devi and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jul-27-2004

Reported in : 2005(1)AWC663

Judge : Anjani Kumar, J.

Acts : [Constitution of India](#) - Article 226; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 15, Rule 5

Appeal No. : C.M.W.P. No. 15844 of 1983

Appellant : Smt. Munni Devi and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : S.K. Gupta, S.C.

Advocate for Pet/Ap. : A.B.L. Gaur, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Anjani Kumar, J.

1. Heard learned counsel appearing on behalf of the parties.

2. This is the landlords' writ petition under Article 226 of the [Constitution of India](#) challenging the order dated 5th September, 1983, passed by the 1st Additional District and Sessions Judge, Bulandshahr in S.C.C. Revision No. 39 of 1981 under Section 25 of the Small Causes Courts Act, whereby the revisional court has allowed the revision filed by the contesting respondents-tenants and set aside the judgment and decree dated 30th May, 1981, passed by Munsif, Khurja in S.C.C. Suit No. 24 of 1973, whereby the suit filed by the landlord-petitioners was decreed.

3. The facts leading to the filing of the present writ petition are that the landlord filed a suit for eviction and arrears of rent before the trial court. Before the trial court, the landlord filed an application that since the tenants have not complied with Order XV Rule 5 of the Code of Civil Procedure, therefore, their defence is liable to be struck off. In rebuttal of the aforesaid application, the tenant-contesting respondents filed an objection. The trial court vide its order dated 30th May, 1981, decreed the suit filed by the petitioners-landlord and rejected the objection raised on behalf of the tenants while allowing the application under Order XV Rule 5 of the Code of Civil Procedure filed by the landlords.

4. Aggrieved thereby, as stated above, the tenants-contesting respondents filed a revision. This revision was allowed by the order impugned in this writ petition. Learned counsel appearing on behalf of the petitioners-landlord argued that since it is admitted that the tenants has not complied with the conditions of continuing deposit the rent/damages as and when the same fell due, nor their defence come under the provisions as contemplated under Order XV Rule 5 of the Code of Civil Procedure, the view taken to the contrary by the revisional court deserves to be quashed. By the impugned order, the revisional court has only restored the suit after setting aside the decree, which was passed after striking out the defence of the tenants on the ground that the tenants have not complied with the condition of continuing depositing the rent/ damages.

5. This is settled law that this Court normally do not interfere with the order of remand on exercise of power under Article 226 of the [Constitution of India](#). In this view of the matter, it is not a fit case in which this Court should exercise his discretion. This writ petition is, therefore, . dismissed. The interim order, if any,

stands vacated. However, the trial court is directed to decide the suit within a period of six months from the date of production of a certified copy of this order before him. It will be open to both the parties to raise such issues as are open to them.

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