

Nanhey Vs. Harish Chandra Gupta

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Court : Allahabad

Decided On : Nov-23-2004

Reported in : 2005(1)ARC105

Judge : Anjani Kumar, J.

Acts : Provincial Small Cause Courts Act - Sections 25; [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition No. 43707 of 2004

Appellant : Nanhey

Respondent : Harish Chandra Gupta

Advocate for Def. : K.M. Garg, Adv.

Advocate for Pet/Ap. : A.K. Gupta and ;Akhtar Husain, Adv.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. Heard Sri A.K. Gupta, learned Counsel appearing on behalf of the petitioner and Sri K.M. Garg, learned Counsel appearing on behalf of the respondent.

2. By means of present writ petition under Article 226 of the [Constitution of India](#), the petitioner-tenant has challenged the order dated 7th August, 2004, passed by the revisional Court, copy whereof is annexed as Annexure-'2' to the writ petition, whereby the revision under Section 25 of the Provincial Small Cause Courts Act filed by the landlord-respondent was allowed by the revisional Court and set aside the judgment and order of the lower Court.

3. Learned Counsel for the petitioner-tenant argued that the view taken by the revisional Court that the service of notice upon one of the joint tenant cannot be held to be sufficient for all the joint tenants. Admittedly, the notice has not been served on all the joint tenants. The revisional Court while allowing the revision has relied upon a decision of the Apex Court reported in 1989 (2) ARC, Page 26 (SC) H.C. Pandey v. G.C. Paul. I do not see, nor any such thing could be pointed out by learned Counsel appearing on behalf of the petitioner-tenant for a different view than what has been taken by the revisional Court. So far as the question of maintainability of the suit is concerned, the revisional Court's view cannot be said to be suffered from any error of law, wherein the revisional Court has held that the suit is maintainable before the Judge Small Causes Court. In this view of the matter, I find that no ground is made out for interference by this Court in exercise of power under Article 226 of the [Constitution of India](#). This writ petition therefore, has no force and is liable to be dismissed and is hereby dismissed.

4. Lastly, it is submitted by learned Counsel appearing on behalf of the petitioner-tenant that the petitioner is tenant for very long time and is carrying on his business, he may be granted some time to vacate the premises in question. Considering the facts and circumstances of the case and also in the interest of justice I direct that the decree passed against the petitioner shall not be executed till 30th June, 2005, provided:-

(i) the petitioner shall furnish an undertaking before the prescribed authority within a period of one month from today to the effect that he will handover the peaceful vacant possession of the premises in question to the landlord on or before 30th June, 2005; and

(ii) the petitioner-tenant pays, if not already paid, all the arrears of rent/damages at the rate of rent to the landlord and keeps on paying the same by the first week of each succeeding month so long he remains in possession, or, till 30th June, 2005, whichever is earlier;

(iii) in the event of default of any of the conditions, referred to above, it will be open to the landlord to get the decree executed.

5. With the aforesaid direction, this writ petition is dismissed. However, there will be no order as to costs.

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