

Dilip Kumar Vs. Rakesh Kumar and ors.

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SooperKanoon Citation : sooperkanoon.com/492239

Court : Allahabad

Decided On : May-19-2005

Reported in : 2005(4)AWC3399

Judge : Anjani Kumar, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1) and 22; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 49768 of 2004

Appellant : Dilip Kumar

Respondent : Rakesh Kumar and ors.

Advocate for Def. : Pramod Kumar Sinha, Adv.

Advocate for Pet/Ap. : K.M. Tripathi, ;M.A. Qadeer and ;Mahtab Aalm, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Anjani Kumar, J.

1. This writ petition under Article 226 of the [Constitution of India](#) is directed against the order dated 2nd November, 2004, passed by the appellate authority under the

provisions of the U. P. Act No. XIII of 1972, copy whereof is annexed as Annexure-7 to the writ petition.

2. The brief facts of the present case are that the contesting respondents- landlord filed an application under Section 21(1) (a) of the U. P. Act No. XIII of 1972, (herein-in-after referred to as 'the Act') before the prescribed authority for the release of the accommodation in question in favour of the landlord on the ground that the same is bona fide required by the landlord for personal use. The said release application was contested by the petitioner-tenant before the prescribed authority. The prescribed authority after considering the pleadings of the parties and the evidence on record vide its order dated 30th April, 2004 have allowed the release application filed by the contesting respondents-landlord and directed the petitioner-tenant to vacate the accommodation in question.

3. Aggrieved by the order dated 30th April, 2004, passed by the prescribed authority, the petitioner-tenant preferred an appeal under Section 22 of the Act before the appellate authority. During the pendency of the aforesaid appeal before the appellate authority, the petitioner-tenant filed an application which has been numbered as 16-Ka seeking amendment in its written statement before the prescribed authority. This amendment application seeks to add several paragraphs in the written statement, like paragraphs 21A, 21B, 21C and 21D. The contesting respondent-landlord contested the aforesaid amendment application filed by the petitioner-tenant and has stated in its objection that this application has been filed only to delay the disposal of the appeal and further that these facts were very well in the knowledge of the petitioner-tenant and that tenant had already filed several applications for amendment during 8-9 years of the pendency of the matter before the prescribed authority, but has not brought these facts on record, nor any amendment to the aforesaid effect was prayed for. From the very opening sentence of the amendment application, it appears that the application was filed when the appeal was fixed for hearing, as it says that while learned Counsel for the appellant was preparing the case for hearing it found that certain facts which have come into existence during the pendency of the litigation, could not be brought on the record, it is therefore necessary to bring these facts on record by way of the amendment sought through the application 16Ka.

4. The appellate authority considered the case of the petitioner-tenant and the objection filed by the contesting respondents-landlord. The appellate authority has categorically held that though it has been stated that certain facts have come into existence during the pendency of the litigation, but has not been mentioned as to which fact has come into existence during the pendency of the litigation. In fact all the facts were in the knowledge of the petitioner-tenant during the pendency of the matter before the prescribed authority and the petitioner-tenant has filed many applications for amendment, but has deliberately not brought these facts on record and there is absolutely no explanation to the aforesaid fact. In this circumstance, the appellate authority came to the conclusion that the present application for amendment has been filed by the petitioner-tenant only to delay the disposal of the appeal. The appellate authority while disposing of the amendment application filed by the petitioner-tenant have relied upon decisions in *Devendra Mohan v. State of U.P. and Ors.*, 2004 (3) AWC 2162 : 2004 (55) ALR 623 and *Rats Ahmad v. Additional District Judge, Badaun*, 2004 (1) CLR 876 and considering the law laid down in the decisions, referred to above, rejected the aforesaid amendment application 16Ka filed by the petitioner-tenant vide its order impugned in the present writ petition.

5. In view of the discussion made above, I find no error in the order passed by the appellate authority in rejecting the application 16Ka, nor any such error has been brought to the notice of this Court, which may warrant any 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 accordingly dismissed.