

Surendra Kumar Vs. Munna Lal

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Court : Allahabad

Decided On : Jul-03-2007

Reported in : 2007(4)AWC3969

Judge : Rakesh Tiwari, J.

Appellant : Surendra Kumar

Respondent : Munna Lal

Judgement :

Rakesh Tiwari, J.

1. Heard learned Counsel for the parties and perused the record.
2. The petitioner has come up in this writ petition challenging the order dated 5.8.2002 passed by the Additional District Judge, Court No. 1, Rampur in S.C.C. Revision No. 96 of 1997, Munna Lal v. Surendra Kumar. The order is as under:

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3. The facts of the case, in brief, are that the petitioner had given his newly constructed shop on rent for four years to respondent No. 1 @ Rs. 250 per month in 1989. The tenancy was got extended by the respondent-tenant on one pretext or the other. When the respondent did not vacate the shop in dispute despite granting sufficient time for the same, the petitioner served him a notice dated 31.7.1995 through his counsel asking him to hand over the vacant possession of the shop in dispute to the landlord in two months.

4. The respondent-tenant instead of vacating the shop in dispute, taking undue advantage of the leniency of the petitioner-landlord in extending the period of tenancy of the respondent-tenant filed Original Suit No. 109 of 1995 before the Civil Judge (Senior Division), Rampur for grant of permanent prohibitory injunction.

5. However, the aforesaid suit No. 109 of 1995 filed by the respondent-tenant was dismissed vide judgment and decree dated 6.8.1996.

6. Aggrieved, the respondent-tenant preferred Civil Appeal No. 83 of 1996, Munna Lal v. Surendra Kumar, before the District Judge, Rampur.. However, the respondent-tenant withdrew the appeal by filing application dated 3.5.2000.

7. It appears that when the respondent-tenant did not vacate the shop in dispute the petitioner-landlord filed S.C.C. Suit No. 19 of 1995, before the Judge Small Cause Court/Civil Judge (Junior Division), Rampur.

8. After considering the evidence on record and hearing the parties at length the Judge Small Cause Court came to the conclusion that the shop in dispute is a new construction, as such U.P. Act No. XIII of 1972 is not applicable to the shop in dispute and decreed the suit of the petitioner for arrears of rent, damages and eviction of the respondent-tenant vide judgment and decree dated 29.8.1997.

9. The respondent-tenant preferred S.C.C. Revision No. 96 of 1997, under Section 25 of the Provincial Small Cause Courts Act, which was remanded back to the

Judge Small Causes Court, Rampur vide impugned order dated 19.9.1997 with the direction to decide the two issues framed by the revisional court in accordance with the directions given by him in the revisional judgment and order dated 19.9.1997. The Judge Small Cause Court decided the two issues in negative vide order dated 24.11.2001, hence this petition.

10. The only contention of the learned Counsel for the petitioner is that while remanding the case back to the court below the revisional court has directed that the court below will decide the case according to the directions given in his aforesaid order dated 5.8.2002. On remand the revisional court should have permitted the trial court to apply its mind independently and judiciously in deciding the case and not on the dictates of the revisional court. He further submits that the court below may take light from the revisional court judgment and order dated 5.8.2002 while deciding the case but the conclusion to be arrived at by the trial court should be independent after hearing both the contesting parties.

The contention of the learned Counsel for the petitioner is that the revisional court after considering the case ought to have left the trial court to take its independent decision in accordance with law. The trial court may after due appraisal of the evidence on record decide the case and arrive at his independent conclusion. By the revisional order the revisional court has not given full liberty to the trial court to arrive at an independent decision, hence this part of the order by which the trial court has been directed to decide the case according to the directions given by the revisional court in the impugned order dated 5.8.2002 is bad and only this part of the revisional court's order is set aside.

11. The petition is accordingly allowed and the trial court is directed to decide the case independently on remand by a reasoned and speaking order within a period of two months from the date of production of a certified copy of this order without being influenced by the revisional court order dated 5.8.2002 for deciding the case according to the directions given in the revisional court's order. The petitioner shall continue to pay the rent which he is already paying.

12. With the above directions the writ petition is disposed of. No order as to costs.

