

Siya Ram Sharma Vs. Smt. Kumari Devi

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Court : Allahabad

Decided On : Sep-19-2006

Reported in : 2007(2)AWC1249

Judge : Rakesh Tiwari, J.

Appellant : Siya Ram Sharma

Respondent : Smt. Kumari Devi

Disposition : Appeal dismissed

Judgement :

ORDER

Rakesh Tiwari, J.

1. Heard counsel for the parties and perused the record.
2. Brief facts of the case are that the respondent is the landlord of premises No. 340 situate near Kanhaiya Talkies Mohalla Bachoorpur, Town Mughalsarai, tehsil and district Chandauli. She has also six shops out of which two shops were given on rent to the petitioner in 1982 and 1991 on monthly rent of Rs. 500.
3. The respondent-landlady filed J.S.C.C. Suit No. 4 of 2003 for decree of eviction and arrears of _rent- in respect of the aforesaid two shops against the petitioner before the Court below.

4. The trial court by order dated 19.11.2005 directed the case to proceed ex parte. The petitioner moved an application with copy of the written statement on 28.3.2006 and requested to allow him to submit written statement. He further made an application for allowing him to deposit the entire arrears of rent in the Court. The landlord filed- objection thereto. The court below by order dated 28.8.2006 did not allow the petitioner to submit written statement as well as deposit entire rent amount before it, hence this writ petition.

5. The counsel for the petitioner submits that the petitioner is ready and willing to deposit the entire arrears of rent. It is further submitted that the petitioner is an old tenant since 1982 and as the landlord has not shown her bona fide need in the plaint he may be permitted to file his written statement which he could not submit as he was not aware of the proceedings in J.S.C.C. suit in the Court below. It is stated that when it came to his knowledge on 5.11.2005 that suit proceedings in respect of rent and eviction are pending in the Court below he appeared in November, 2005 and after receiving copy of the plaint consulted his counsel for filing written statement which was prepared on 20.3.2006. It is also submitted that his counsel in the Court below on 23.3.2006 did not file the same on the date fixed in the case but moved an application on 28.3.2006 for filing the written statement alongwith an application for depositing entire arrears of rent which have been rejected vide order dated 28.8.2006.

6. The counsel for the petitioner contends that the landlord has no bona fide need and in case the order of eviction in pursuance of illegal impugned order dated 28.8.2006 is passed, the petitioner will suffer irreparable loss and injury.

7. The counsel for the respondent submits that there is no illegality or infirmity in the impugned order dated 28.8.2006. He urged that the petitioner has defaulted in payment of rent and has neither deposited the arrears of rent given in the notice on the first date of hearing nor immediately on the first date after he came to know about the case.

8. Admittedly, the suit for ejectment and arrears of rent against the petitioner has been filed in November, 2003. The order to proceed the case ex parte was passed on 28.8.2006. The petitioner has not denied service of summons fixing first date of

hearing in the suit. He neither deposited the arrears of rent on the first date of hearing or any application for recall of order dated 28.8.2006 after he came to know about the pendency of the suit admittedly before 5.11.2005 and received the copy of the plaint on the aforesaid date, i.e., 5.11.2005. but did not file written statement within 90 days thereof. The petitioner is himself to blame for his callous attitude. There is no illegality or infirmity in the impugned order. The court below has rightly passed the orders rejecting his application.

9. For the reasons stated above, it is not a fit case for interference by this Court under Article 226 of the Constitution of India. The writ petition is accordingly dismissed.

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