

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			WPMS No.2573 of 2023 With IA/1/2023 (Stay Application) <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Bhupesh Kandpal, learned counsel for the petitioner. Mr. Sagar Kothari, learned counsel for the respondent. The proceeding of Rent Control Case No.1 of 2022, stood instituted, at the behest of respondent no.2-the landlord, in relation to the tenement in question, which was in occupation of the petitioner in the capacity of being a tenant of the respondent/landlord. The Release Application, preferred by the respondent, was rejected by an order of 23.07.2022. The respondent – Landlord preferred an appeal under Section 22 of the Uttar Pradesh Urban Buildings (Regulation of letting, Rent and Eviction) Act No.13 of 1972, as applicable in the State of Uttarakhand (For short, "Rent Control Act"). The said appeal, despite service of notice on the petitioner, was not contested. Consequently, the appeal was directed to be proceeded <i>exparte</i> by an order of 18.01.2023

		and, later on, it was allowed <i>exparte</i> by the judgment of 22.06.2023, whereby the Release Application, preferred by respondent-Landlord, was allowed. In all these proceedings, ever since institution of the appeal, till the passing of the judgment and filing of the Execution Petition by way of Execution Petition No.2 of 2023, the petitioner has admittedly not participated. Though, he had filed a Recall Application, which was numbered as Misc. Application in Case No.28 of 2023, seeking recall of the order passed by the Appellate Court on 22.06.2023 in the Rent Control Appeal No.11 of 2022 and the same was objected to by the Landlord. But, however, during the pendency of the Recall Application, the petitioner-tenant has given an undertaking in writing, that he would be vacating the premises within 15 days. But, he did not comply with the same, and rather to the contrary, he had chosen to file this writ-petition against the Appellate Court's order of allowing the Release Application under Section 21(1)(f) of the Rent Control Act, despite the fact, that he had given an assurance to vacate the same within 15 days. After having heard the learned counsel for the parties, this Court is of the view, that
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		since there was a satisfactory service of notice effected upon the petitioner and he has opted out to not contest the appellate proceedings on merits, the judgment of 22.06.2023 could not have been recalled by an order of Misc. Case No.28 of 2023, and even otherwise also, when the petitioner himself had filed an application before the Court giving an undertaking to vacate the premises within 15 days, the Recall Application itself was not required to be considered on its own merits.
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The petitioner, despite the written undertaking given to vacate the premises within 15 days, has not vacated the same.

Today, when the matter was taken up, the learned counsel for the petitioner had sought time to vacate the premises, but he was not very sure as to what period he would pray for, to vacate the premises in the absence of his instruction. He has received the instructions from the petitioner, who had prayed for that he may be granted one year's time to vacate the premises.

The said request made by the petitioner to vacate the premises is being vehemently opposed by the counsel for the Landlord-respondent, on the ground, that since initially he has sought time to vacate the premises

		within 15 days, it would be too long a period to be granted, which would be beyond the undertaking given by him before the Appellate Court. But, still, taking a pragmatic view and, in order to resolve the controversy finally for all time to come, the petitioner is granted one year's time from today to vacate the premises and hand over its peaceful possession to the respondent-Landlord, without creating any encumbrances of any nature whatsoever and he would adhere to the following conditions:- 1) That he would submit a written undertaking within a period of three weeks from today before the learned Prescribed Authority, by way of an affidavit to vacate the premises within a period of one year from today. 2) The undertaking, thus to be given by the petitioner, would contain a condition that he would be remitting the entire arrears of rent, as it has been determined by the Appellate Court and would continue to remit the amount of monthly rent for this extended period of one year of occupancy by tenth day of each month, as it has been granted by this
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			Court by today's order. 3) During this period, he would not create any sub-tenancy or would not change the nature of property, in any manner, whatsoever. 4) In case, if any of the undertakings, as it has been given above, is not complied with, the Execution Petition, as preferred by the respondent-Landlord, would be given effect to forthwith for seeking possession of the tenement in question, which had been a subject matter of the appeal preferred by the respondent, being Rent Control Appeal No.11 of 2022. Subject to the above exceptions, the writ-petition stands dismissed. (Sharad Kumar Sharma, J.) 13.09.2023 Sukhbant
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