

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 9089 of 2023

Petitioner :- Pramod Kumar And 4 Others

Respondent :- Sri Mahendra Kumar

Counsel for Petitioner :- Ashutosh Kumar Mishra

Counsel for Respondent :- Brahm Prakash Mishra,Km. Reena,Saurabh Varshney

Hon'ble Prakash Padia,J.

1. The present petition has been filed inter-alia with the prayer to set aside the judgment & order dated 20.05.2023 passed by District Judge, Aligarh in U.P.U.B. Appeal No. 09 of 2023 (Pramod Kumar (Deceases) Vs. Sri Mahendra Kumar) as well as order dated 29.11.2022 passed by Small Cause Court in U.P.U.B. Case No. 21 of 2021 (Sri Mahendra Kumar vs. Sri Pramod Kumar (Deceased) whereby appellate court has rejected the appeal of petitioner and learned Small Cause Court has allows the release application of respondent and directed to the petitioner to handed over the possession of the shop in question to the owner i.e. respondent within 2 month and for paying a sum of Rs. equivalent the rent of 2 year which is mention in the application.

2. Facts of the case in short as contained in the petition are that the application under Section 21 has been filed by the plaintiff-respondent (landlord) against the petitioners which was registered as Case No. 21 of 2011 (Sri Mahendra Kumar vs. Sri Pramod Kumar). The aforesaid application was filed to release the accommodation of the disputed shop details of which has been given towards the bottom of the application. It further reveals from perusal of the application that shop situated at Mohalla- Kanwariganj bearing the House No.9/96. The aforesaid case was duly registered by the petitioner and ultimately the order was passed by the Judge Small Cause, Aligarh on 29.11.2022 and allow the release application of respondent and directing the present petitioner who are contesting-opposite party in the said application to vacate the premises within two months. Further directions were given to deposit the rent of two years. Operative portion reads as follows:-

"प्रार्थी का निर्मुक्ति प्रार्थनापत्र विरुद्ध विपक्षीण स्वीकार किया जाता है ।

विपक्षीण को आदेशित किया जाता है कि वे निर्णय के दिनांक से दो माह के अन्दर प्रार्थी द्वारा उन्हें प्रार्थनापत्र में वर्णित किरायागत दुकान के दो वर्ष के किराये की समतुल्य धनराशि अदा करने पर प्रश्नगत दुकान से अपना कब्जा, दखल हटाकर प्रार्थी को प्रदान कर दे । ऐसा ना करने पर प्रार्थी जरिए न्यायलय उक्त आदेश का अनुपालन कराने का अधिकारी होगा ।"

3. Aggrieved against the aforesaid, Appeal No.09 of 2023 (Pramod Kumar (Deceases) Vs. Sri Mahendra Kumar) was filed by the petitioners which was rejected by the District Judge, Aligarh vide judgment and order dated 20.05.2023.

4. Aggrieved against the aforesaid, petitioners have preferred the present petition.
5. After some arguments, a prayer has been made by the counsel for the petitioners that some breathing time be granted to the petitioners to vacate the premises.
6. This prayer has not been opposed by the counsel appearing on behalf of contesting-respondent.
7. In the facts and circumstances of the case, without interfering with the orders passed by the courts below which are under challenged in the present petition, the present petition is **disposed of**, directing the petitioners to vacate the premises within a period of six months i.e., on or before 31.05.2023 with the following conditions:-
- (i) Defendant-petitioners are directed to file an affidavit within three weeks from today before **Judge Small Cause, Aligarh** that he will vacate the shop in question within the time given by the Court;
 - (ii) Defendant-petitioners are directed to deposit all decretal amount within a period of four weeks from today before **Judge Small Cause, Aligarh** as per the judgment and decree dated 29.11.2022. In case, any amount is already deposited, same shall be adjusted against the decretal amount;
 - (iii) Defendant-petitioners are also directed to pay regular rent of shop in question on month to month basis on or before 20th day of each month till the vacation of house in terms of first two conditions;
 - (iv) It is made clear that the amount so deposited will be released in favour of the plaintiff-respondent (landlord) without furnishing any security.
 - (v) In case of failure of fulfillment of any conditions so imposed by the Court, this order would lost the effect and plaintiff- respondent is at liberty to proceed against the defendant- petitioners in accordance with law.
8. With the aforesaid observations, petition is **disposed of**.
9. It is made clear that no liberty is given to the petitioners to file fresh petition for the very same cause of action.

Order Date :- 21.11.2023

Swati