

Court No. - 4

Case :- WRIT - A No. - 20420 of 2023

Petitioner :- Smt. Kesar Jahan And Another

Respondent :- Additional District Judge And 2 Others

Counsel for Petitioner :- Satyendra Pratap Singh, Mangal Rai

Counsel for Respondent :- Madhav Jain

Hon'ble Prakash Padia, J.

1. The petitioner has preferred present writ petition inter-alia with the following prayers :-

"a) Issue an order or direction in the nature of certiorari to quash the judgment and orders dated 31.8.2022 and 30.9.2023 passed by the respondent no. 2 and 1. (Annexure No. 2 and 1)

b) Issue a writ, order or direction in the nature of mandamus to stay the effect and operation of the judgment and orders dated 31.8.2022 and 30.9.2023 till the pendency of this case."

2. After some arguments a prayer has been made on behalf of petitioners that they will vacate the shop in question within a period of one year and also make the payment of arrears of rent, if any.

3. By order dated 31.08.2022 passed by Civil Judge (S.D.), Agra in P. A. Case No.1097 of 2020 direction was issued to vacate the shop in question within one month and if the shop in question is not vacated the opposite party is at liberty to take possession through court. The operative portion of the order reads as follows :-

"प्रार्थी का निर्मुक्त प्रार्थना पत्र 4 ग अंतर्गत धारा 21(1) (ए) उ०प्र० अधिनियम संख्या- 13 सन 1972 स्वीकार किया जाता है। सम्पत्ति एक किता दुकान संख्या -61/53 सी/1 बी, रसूलपुर सराय ख्वाजा लोहामण्डी वार्ड, आगरा जिसका विस्तृत वर्णन निर्मुक्त प्रार्थना पत्र के अंत में दिया गया है को प्रार्थी के पक्ष में निर्मुक्त किया जाता है। विपक्षीगण को आदेशित किया जाता है कि वह निर्णय की तिथि से एक माह के अंदर प्रश्नगत सम्पत्ति को खाली करके, उसका कब्जा व दखल प्रार्थी को सौंप दे। यदि विपक्षीगण द्वारा नियत अवधि में प्रार्थी को प्रश्नगत सम्पत्ति का कब्जा प्रदान नहीं किया जाता है तो प्रार्थी को अधिकार होगा कि वह बजरिये अदालत प्रश्नगत सम्पत्ति का कब्जा प्राप्त कर ले।"

4. Against the aforesaid order an appeal being Rent Control Misc. Appeal No.233 of 2022 was filed, which was dismissed vide order dated 30.09.2023 directing the respondent-landlord to make the payment of rent by way of compensation within one week. The operative portion of the order reads as follows :-

"अपीलार्थीगण की अपील इस निर्देश के साथ खारिज की जाती है कि प्रत्यर्थी (मकानदार) अपीलार्थीगण (किरायेदार) को एक वर्ष के किराये की धनराशि अंतर्गत धारा 21 (1) (ए) अधिनियम संख्या-13 सन 72, प्रतिकर के रूप में इस निर्णय की तिथि से एक माह के अन्दर देना सुनिश्चित करें अथवा विचारण न्यायालय में जमा करें।

निर्णय की प्रति के साथ आहूत पत्रावली विचारण न्यायालय को अविलम्ब प्रेषित की जाय।"

5. By the aforesaid order direction was issued to make the payment of decretal amount, if any, within one month.

6. In response to the same it is argued by Shri Madhav Jain, learned counsel for the respondents that time of one year be granted for complying the order passed by the appellate court dated 30.09.2023.

7. This fact is not disputed by the counsel for the petitioner.

8. In this view of the matter and without interfering with the orders passed by the courts below, which are under challenged in the present petition, the present writ petition is disposed of with the following conditions :-

(i) The petitioners will file an affidavit within three weeks from today before the court below that they will vacate the premises in question on or before 30.09.2024;

(ii) The petitioners are directed to deposit all decretal amount @ Rs.150/- per month before the court below within three weeks from today. In case any amount is already deposited, the same shall be adjusted against the decretal amount;

(iii) The petitioners are directed to make the payment of regular rent @ Rs.2,500/- per month by 7th of each month w.e.f. 01.01.2024 till the vacation of the shop in terms of first condition.

(iv) It is made clear that the amount so deposited will be released in favour of the respondent-landlord without furnishing any security.

(v) The respondent-landlord Deen Dayal is further directed to make payment of amount as per decree by way of compensation within three weeks.

(vi) In case of failure of fulfillment of any conditions so imposed by the Court, this order would lost the effect and respondent-landlord is at liberty to proceed against the petitioners in accordance with law.

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 :- 8.12.2023

Pramod Tripathi