

Court No. - 6

Case :- WRIT - A No. - 1000025 of 2013

Petitioner :- Rajesh Kumar Jaswani

Respondent :- Gulshan Lal Bhaseen And Others

Counsel for Petitioner :- Dharmendra Gupta, Jaspreet Singh, Keshav Ram Chaurasia, Prateek Dwivedi, Ravi Shanker Tewari, Sheo Pal Singh

Counsel for Respondent :- Manish Kumar, Anurag Tripathi, Gaurav Mehrotra, Krishna Kumar Pandey, Syed Aftab Ahmad

Hon'ble Pankaj Bhatia, J.

(I.A. No. 23 of 2025)

1. This is an application seeking condonation of delay in filing the recall application.
2. Cause shown is sufficient.
3. The application is allowed and the delay is condoned.

(I.A. No. 24 of 2025)

4. This is an application seeking recall of the order dated 19.12.2024.
5. Cause shown is sufficient.
6. Accordingly, the application is allowed and the order dated 19.12.2024 is recalled.

(Order on Petition)

7. Supplementary rejoinder affidavit filed today is taken on record.

8. Heard learned counsel for the parties.

9. The present petition was filed by the petitioner alleging that he entered into tenancy in the shop in question by virtue of the registered deed dated 21.1.1985 for a period of ten years which was further renewable for a period of ten years on enhancement of rent by 15%.

10. It is further stated that the respondent moved an application under Section 21(1)(a) and 21(1)(b) of the U.P. Act 13 of 1972 which was registered as P.A Case No. 15 of 2004, which was rejected on the ground of subsistence of the registered deed. Subsequently, another application was filed under the same provisions bearing P.A. Case No. 59 of 2007 against the petitioner on the same ground on 24.12.2007, the same was opposed. Ultimately, the Prescribed Authority allowed the release application considering the bona fide need of the landlord and thereafter, an appeal was preferred, which too had been dismissed before the said order was under challenge.

11. Shri Ravi Shankar Tiwari, Advocate appearing on behalf of the petitioner has filed a supplementary rejoinder affidavit after the dismissal of the writ petition on 19.12.2024, to argue that the landlord, after getting the premises which are adjacent to the premises of the petitioner from the respective tenants, vacated and rented it out to various tenants, which according to him clearly demonstrates that the plea set up by the petitioner seeking release of accommodation was not bona fide. He argues that this fact was also pleaded before the appellate court but not considered.

12. In response with the affidavit filed by the petitioner, an affidavit has been filed by the respondent also stating that after the passing of the release order and affirmation thereof in appeal, the petitioner-tenant had got a huge house constructed,

which has two shops which are being occupied by the sons of the petitioner. The said fact has been brought on record by means of a supplementary affidavit.

13. In the light of the said, it is proposed to be argued that in terms of the provisions contained in Section 21(1)(a) of the U.P. Act 13 of 1972, it is incumbent that the landlord should set up a plea which is bona fide and the proceedings cannot be initiated for eviction merely based upon the whims and fancies of the landlord.

14. From the pleadings and the arguments raised above, what is evident is that the petitioner entered into the premises by virtue of the registered agreement executed under the provisions of U.P. Act 13 of 1972 and any possession of a tenant even if with the consent of the landlord, without there being an allotment letter issued under Section 16, is clearly illegal occupation not sanctioned by law being U.P. Act 13 of 1972.

15. With regard to the petitioner arguing that the other premises were got vacated from the other tenants and was subsequently re-let out, no such pleading is available in the writ petition to the effect that during the pendency of the appeal, the fact that respondent-landlord had got the other premises vacated and let out to the other tenants was argued but not considered. In the absence of the pleading, the same cannot be considered. Even otherwise, after the dismissal of the appeal admittedly, the landlord constructed the premises which had two shops and instead of using the said shops for his need, through family partition gave them to the sons. This clearly demonstrates that the tenant despite having his own premises did not shift his premises there. The case of the petitioner also deserves to be rejected in view of the prescription contained in Rule 16(2)(b) of the Rules.

16. Considering all the reasons, no good ground for interference is made out and the writ petition is, accordingly, **dismissed**.

17. However, at this stage, the counsel for the petitioner seeks some time to vacate the premises, to which the counsel for the respondent has no objection, if reasonable time is granted.

18. In view thereof, it is provided that the petitioner shall not be evicted up to 31.12.2025, subject to the petitioner executing an undertaking before the Prescribed Authority within a period of two weeks from today that he shall vacate the premises and shall hand over the physical possession of the shop in question to the landlord and no one else. In the event of the petitioner failing to execute an undertaking in the form of an affidavit, the execution proceedings shall be concluded within a period of three months and the benefit of time granted will not be available to the petitioner.

Order Date :- 19.5.2025

Shravan