



2025:AHC:177898

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**MATTERS UNDER ARTICLE 227 No. - 7548 of 2021**

Mahipal Sharma

.....Petitioner(s)

Versus

Shri M.V. Narayanan (Deceased) And 3 Others

.....Respondent(s)

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|---------------------------|---|-------------------------------------|
| Counsel for Petitioner(s) | : | Pankaj Agarwal, Vidya Prakash Singh |
| Counsel for Respondent(s) | : | Ashish Kumar Singh                  |

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**Court No. - 18**

**Reserved On:8.9.2025**

**Delivered On:8.10.2025**

**HON'BLE CHANDRA KUMAR RAI, J.**

1. Heard Mr. Pankaj Agarwal, learned counsel for the petitioner and Mr. P.K. Jain, learned Senior Counsel assisted by Mr. Ashish Kumar Singh, learned counsel for the respondents.

2. Brief facts of the case are that the petitioner is a tenant of a property bearing Municipal No.230 situated at Lohiya Nagar, Ghaziabad and respondents are landlords of the aforementioned accommodation. Respondents/landlords instituted a SCC Suit No.5 of 2022 against the petitioner/ tenant for arrears of rent and ejectment. In the plaint, it has been alleged that tenancy of petitioner commences with effect from 1.5.1999 on monthly rent of Rs.2300/- besides taxes. Petitioner/defendant/ tenant filed a written statement in the aforementioned SCC Suit denying the plaint allegations. In the written statement, it has been alleged that tenancy of the accommodation was @ 1150/- per month and there was no liability for payment of taxes upon the tenant. Respondents/landlords filed their replication in the aforementioned SCC suit. The Judge Small Cause vide judgement and decree dated 11.8.2005 dismissed the aforementioned SCC Suit. Against the judgement and decree dated 11.8.2005 passed by the Judge Small Cause, a revision under Section 25 of Provincial Small Cause Courts Act,

1887 was filed by the respondents/ plaintiffs/ landlords which was registered as SCC Revision No.380 of 2005. The aforementioned revision was allowed vide judgement dated 17.9.2014 and matter was remanded back before the trial Court to decide the SCC Suit afresh. After the remand order passed by the revisoinal Court, petitioner/defendant/ tenant filed list of documents (Paper Nos.112 Ga to 134 Ga) as well as additional affidavit (Paper No.110 Ga). Judge Small Cause vide judgement and decree dated 5.11.2018 decreed the plaintiffs' suit for arrears of rent and ejection. Against the judgement and decree dated 5.11.2018 passed by Judge Small Cause, revision under Section 25 of Provincial Small Cause Courts Act, 1887 filed by petitioner/ defendant / tenant was registered as SCC Revision No.82 of 2018. During pendency of the aforementioned revision application (16 Ga) was filed by the petitioner/ defendant/ tenant, which was allowed by the revisional Court vide judgement dated 15.11.2019. During pendency of the revision, petitioner / defendant/ tenant was depositing monthly rent @ Rs.3500/- per month in compliance of the conditional interim order passed by the revisional Court. The aforementioned revision was head finally and dismissed by the judgement dated 27.10.2021. Hence this petition for the following relief:

*"It is therefore, most respectfully prayed that this Hon'ble Court may be pleased to stay the eviction of the petitioner from the property in question in pursuance of the impugned judgment and order dated 27.10.2021 passed by Additional District Judge Fast Track Court -II, Ghaziabad in SCC Revision No.82 of 2018 (Annexure-22 to the accompanying petition) and the judgment and order dated 5.11.2018 passed by Judge Small Causes Court, Ghaziabad in SCC suit no.5 of 2002 (Annexure-16 to the accompanying petition), during the pendency of the instant petition before this Hon'ble Court ; or such other and further order be passed as is expedient in the interest of justice."*

3. This Court entertained in the matter on 6.1.2022 and granted

conditional interim order, which is as under:

*"Order on the Petition*

*The submission of Mr. Pankaj Agarwal, learned Counsel for the petitioner is that the notice to quit under Section 106 of the Transfer of Property Act was not served upon the tenants and the finding about service has been recorded ignoring from consideration material evidence and on a manifest illegal premise. It is submitted that the Courts below have committed a manifest error in ignoring from consideration Paper No.49-Ga and drawing perverse conclusions from it.*

*Admit.*

*Mr. P.K. Jain, learned Senior Advocate assisted by Mr. Ashish Kumar Singh, learned Counsel accepts notice on behalf of respondent nos.1/1, 1/2 and 2. He is granted four weeks' time to file a counter affidavit.*

*List for orders on 04.02.2022 along with a report regarding status of pleadings.*

*Order on the Stay Application*

*Issue notice.*

*Until further order, the petitioner shall not be evicted from the demised premises provided he deposits with the Trial Court the entire decretal amount, together with damages for use and occupation at the rate of Rs.10,000/- per month regularly. The first deposit of enhanced damages at the rate of Rs.10,000/- shall be made by the petitioner with the Trial Court on or before 25.01.2022 and all subsequent damages due shall be deposited at the same rate on the 25th day of each succeeding month, if it does not fall on a holiday. In the event, it falls on a holiday, the deposit shall be made on the next working day. All sums of money deposited, whether towards the decretal amount or damages, by the petitioners with the Trial Court shall be released in favour of the landlord-respondent without asking him to furnish any security. In the event of default, this interim order shall stand automatically vacated."*

4. In pursuance of the order dated 6.1.2022, parties have exchanged their

pleadings.

5. Learned counsel for the petitioner submitted that the impugned judgement / order have been passed in illegal and arbitrary manner, as such, the same are liable to be set aside. He further submitted that the Judge Small Cause has drawn the assumption of service of alleged notice dated 14.5.2001 upon the tenant on surmises and conjectures, as such, the judgement and decree passed by the Judge Small Cause cannot be sustained in the eye of law. He further submitted that in absence of any acknowledgement A.D. proving the due service of notice upon the tenant, the presumption of service cannot be drawn. He further submitted that there is no material on record which could demonstrate that service of notice was ever affected upon the petitioner / tenant or petitioner / tenant has ever refused to accept the notice. He further submitted that finding recorded on Issue Nos.1 & 8 regarding applicability of U.P. Act No.13 of 1972 and rate of rent is perverse. He further submitted that paper no.49 Ga (copy of nagar nigam extract), which is a public document, has been ignored while passing the impugned judgement / order. He further submitted that before the revisional Court application no.16 Ga was filed but revisional Court has failed to examine those documents in proper manner. He further submitted that issue regarding material alteration has not been decided in proper manner, as such, the impugned judgement cannot be sustained in the eye of law. He further placed reliance upon the following judgements in support of his argument:

***I. AIR 1989 SC 1433 Gujarat Electricity Board v. Atmaram Sungomal Poshani.***

***II. 2017(121) ALR 345 Lalla Mistri v. Ashok Kumar Agrawal.***

6. On the other hand, learned Senior Counsel appearing on behalf of respondents submitted that both the Courts have decided the dispute in proper manner considering the evidence on record, as such, no interference is required against the impugned judgements/ orders passed

by the Small Cause Court/ Revisional Court. He further submitted that there was proper service of notice under Section 106 of Transfer of Property Act upon the tenant. He further submitted that according to the provisions contained under Section 27 of General Clauses Act and Rule 195 of Indian Post Office Rules, there is no illegality in the impugned judgement passed by the Judge Small Cause as well as revisional Court. He finally submitted that no interference is required and petition filed by the petitioner / tenant should be dismissed. He further placed reliance upon the following judgements on the point of service of notice as well as on the rate of rent:

***"i. (2017) 11 ADJ 592, Ashok Kumar Kaushik vs. O.P. Shah and Another.***

***ii. (2019) 3 ARC 599, Om Prakash vs. Amarjeet Singh and three others.***

***iii. (1989) 0 AIR SC 630, Ms. / Madan and Co., Vs. Wazir Javir Chand.***

***iv. (2017) 2 ARC 554, Sardar Pradyumn Singh vs. Anees Fatima and Others.***

***v. (2022) Supreme (ALL) 1171, Ram Babu vs. Raj Kumar Singh.***

***vi. (2012) 3 ARC 689, Prem Kumar Gupta vs. Kishor Kumar Gupta and Another.***

***vii. (2017) 1 ARC 48, Om Prakash Sahu vs. Gaurav Srivastava.***

***viii. (2012) ARC 354, Ashok Kumar Jain vs. Buddhi Prakash.***

7. I have considered the argument advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that SCC Suit filed by the respondent/ landlords was decreed by the Judge Small Cause and decree has been maintained in revision under Section 25 of Provincial Small Cause Courts Act, 1887.

9. In order to appreciate the controversy involved in the matter perusal of the 9 issues framed in the SCC Suit will be relevant, which are as under:

1- क्या वादग्रस्त सम्पत्ति पर यू.पी. एक्ट 13 सन 1972 के प्राविधान लागू होता है, अथवा नहीं ?

2- क्या वादीगण द्वारा प्रतिवादी को भेजी गयी नोटिस दिनांक 08.03.2001

तामील हुई, यदि नहीं तो प्रभाव ?

3- क्या प्रतिवादी द्वारा वादग्रस्त सम्पत्ति सं० बी-230, लोहियानगर, गाजियाबाद का कोई किराया देने में चूक की गयी है, यदि हाँ तो प्रभाव ?

4-क्या प्रतिवादी द्वारा वादीगण की अनुमति के बिना विवादित सम्पत्ति में सारवान परिवर्तन व अतिरिक्त निर्माण किया गया है, यदि हाँ तो प्रभाव ?

5-क्या प्रतिवादी किराये हक में वाटर टैक्स, सीवर टैक्स देने का जिम्मेदार है, यदि हाँ तो प्रभाव ?

6-क्या प्रतिवादी विशेष हर्जा मु० 10,000/-रु० पाने का अधिकारी है ?

7-वादीगण किस अनुतोष को पाने का अधिकारी है ?

8- वादग्रस्त भवन के किराये की दर क्या थी ?

9-क्या वादीगण प्रतिवादी से कोई हर्जा इस्तेमाल प्राप्त करने के अधिकारी है, यदि हाँ तो किस दर से ?

10. Perusal of the finding recorded by the Judge Small Cause on issue no.2 regarding service of notice dated 8.3.2001 will be also relevant, which are as under:

"वाद बिन्दु सख्या 2 इस आशय का अभिनिर्धारित किया गया है कि "क्या वादीगण द्वारा प्रतिवादी को भेजी गयी नोटिस दिनांक 08.03.01 तामील हुई, यदि नहीं तो प्रभाव ?"

वाद पत्र के अवलोकन से यह विदित होता है कि उसमें दिनांक 08.03.2001 के पश्चात 14.05.2001 को भी प्रतिवादी को वादी द्वारा विधिक नोटिस दिये जाने का कथन किया गया है। अतः उपरोक्त वाद बिन्दु सं० 2 में सुधार करते हुए वाद बिन्दु सं० 2 निम्नवत विरचित किया जाता है।

क्या वादीगण द्वारा प्रतिवादी को भेजी गयी नोटिस दिनांक 08.03.2001 एवं 14.05.2001 तामील हुई, यदि नहीं तो प्रभाव ?

वादी द्वारा वाद पत्र में कहा गया है कि प्रतिवादी दिनांक 01.5.99 से

बादग्रस्त मकान में 2300/रु० माहवार पर किराएदार है। किराए पर देते समय उसने 2 माह का किराया 4600/रु० सिक्कुरिटी के तौर पर दिया था। उक्त 4600/ रु० को माह मई व जून 1999 के किराए में एडजस्ट किया गया। दिनांक 01.7.99 से उसपर किराया आदि बकाया हो गया, जिसे कई बार मांगने के बावजूद प्रतिवादी ने नहीं दिया। तब उसके बाद दिनांक 08.3.01 को रजिस्टर्ड डाक व यूपीसी के जरिए धारा 106 टीपीएक्ट की नोटिस प्रतिवादी को भेजी गई, जिसे जानबुझकर डाकिए से मिलकर प्रतिवादी ने लौटा दिया। तब पुनः दिनांक 14.5.01 को जरिए अधिवक्ता उसे रजिस्टर्ड डाक व यू० पी० सी० से विधिक नोटिस अंतर्गत धारा 106 टी पी एक्ट भेजी गई, जो वापस नहीं आई। उक्त नोटिस की एक प्रति दिनांक 14.5.01 को वादग्रस्त मकान के दरवाजे पर भी चस्पा की गई। इस प्रकार उक्त नोटिस का तामिला दिनांक 16.5.01 को उपधारित माना जाएगा।

पत्रावली पर वादी द्वारा उक्त नोटिस दिनांकित 14.5.01 की प्रति 27 ग डाक रसीद 28 ग व यूपी सी सर्टिकफकेट 29 ग दाखिल किया गया है, जिसे वादी सं० 1 ने अपने सशपथ बयान में साबित करते हुए कहा है कि रजिस्ट्री व यूपीसी डाक से प्रेषित नोटिस बिना तामिल वादीगण को प्राप्त नहीं हुआ। वादी अधि० द्वारा धारा 114 भारतीय साक्ष्य अधि० व धारा 27 जनरल क्लाजेज एक्ट का आधार लेते हुए तर्क किया गया कि यदि कोई प्रपत्र प्राप्तकर्ता को पंजीकृत डाक के माध्यम से उसके सही पते पर भेजा जाता है, तो प्राप्तकर्ता पर उसके तामिल होने की उपधारणा की जाती है। वादी की ओर से प्रस्तुत विधि व्यवस्था 2015 (126) आर डी 98, 2017 (2) ए आर सी 153, 2013 (2) ए डब्लू सी 1143 में मा० उच्च न्यायालय इला० ने यह अवधारित किया है कि *the cumulative effect of provision of the Indian evidence act and sec 27 of the general clauses act is that a letter/notice sent by registered post to the person concerned at the proper address shall be deemed to be*

*served upon him in due course unless contrary is proved.*

प्रतिवादी महीपाल शर्मा ने अपनी प्रतिपरीक्षा के पृष्ठ 58 ग/3 पर कहा है कि 27 ग पर जो डाक पता लिखा है, वह सही पता है। इन परिस्थितियों में उपरोक्त विधि व्यवस्था के आधार पर नोटिस प्रतिवादी पर तामिल हुआ माना जाएगा। उल्लेखनीय है कि उपरोक्त व्यवस्था के अनुसार प्रतिवादी ने नोटिस तामिल होने के विपरीत कोई ऐसा साक्ष्य नहीं दिया है, जिससे विपरीत अवधारणा की जा सके। वाद विन्दु सं० 2 तदनुसार वादी के पक्ष में तथा प्रतिवादी के विरुद्ध निर्णीत किया जाता है।"

11. In view of the finding of fact recorded by the Judge Small Cause regarding service of notice dated 8.3.2001 upon the tenant in the light of the provision contained under Section 114 of Indian Evidence Act and Section 27 of General Clauses Act, there is no further scope of interference by this Court regarding service of notice upon tenant and the argument advanced by learned counsel for the petitioner cannot be accepted.

12. The Judge Small Cause has decided other issues in the light of the evidence adduced by the parties recording finding of fact that provision of U.P. Act No.13 of 1972 are no applicable and there was default in payment of rent by the tenant.

13. Considering the entire facts and circumstances of the case, no interference is required in the matter.

14. The petition is ***dismissed***.

15. No order as to costs.

**(Chandra Kumar Rai,J.)**

**October 8, 2025**

Rameez