

A.F.R

Neutral Citation No:-2025:AHC:156575

Court No. 37

Reserved on: 24.7.2025

Delivered on: 4.9.2025

Matters Under Article 227 No.7409 of 2025

Petitioner :-	J.B. Motors
Respondent :-	Smt. Hemlata Kapoor and 2 Others
Counsel for Petitioner:-	Mr. Shreyas Srivastava
Counsel for Respondent :-	Ms. Rama Goel Bansal &

Ms. Shalini Goel

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. Shreyas Srivastava, learned counsel for the petitioner-defendant and Mrs. Rama Goel Bansal along with Ms. Shailini Goel, learned counsel appearing for the respondents-plaintiffs.

2. Brief facts of the case are that respondents-plaintiffs have instituted a Small Cause Suit No.3 of 2016 before the Judge, Small Cause Court, claiming themselves to be the landlord of the property in question. The respondents-plaintiffs are claiming their title through Mr. Harish Chandra Kapoor, the late husband of respondent no.1 and late father of respondent no.2. The property in question is part and parcel of a huge portion of land situated at 189, Civil Lines, District Bareilly. One S.C.C. Suit No. 4 of 2020 was instituted by one Mr. Darab Shah in the court of Judge, Small Cause Court, District Bareilly, impleading Sri Anoop Chaddha as the opposite party which was decided on

the basis of compromise. In S.C.C. Suit No.3 of 2016, original petitioner-defendant (J.B. Motors) put in appearance and filed application under Order 11 Rule 16 of the Civil Procedure Code (for short "C.P.C."), seeking production of document / title by original plaintiffs-respondents before the Judge, Small Cause Court. The petitioner/defendant filed his written statement, denying the ownership of the plaintiffs-respondents in respect to the property in question. Replication was filed on 8.3.2022 by the plaintiffs-respondents. Plaintiffs-respondents filed an application dated 20.2.2023 (paper no.67C) under Order 15 Rule 5 of the C.P.C., praying for striking off the defendant's-petitioner's defence. The petitioner-defendant filed his objection dated 17.3.2023 to the application under Order 15 Rule 5 of the C.P.C. The petitioner-defendant also filed an application under Section 23 of the Provincial Small Cause Court Act, 1887 (for short the "Act"). The plaintiffs-respondents filed their objection to the application filed by the petitioner-defendant under Section 23 of the Act and the Judge, Small Cause Court Act vide order dated 19.4.2023 dismissed the application filed by the plaintiffs-respondents, recording finding of fact that defendants are the owner of the property in question, as such, they cannot be accepted to pay the rent of the accommodation/ property in question. The plaintiffs-respondents challenged the order of the Judge, Small Cause Court dated 19.4.2023 by way of revision under Section 25 of the Act. The aforementioned revision was numbered as S.C.C. Revision No.28 of 2023. The revisional court vide impugned order dated 1.5.2025, set aside the order of the Judge, Small Cause Court dated 19.4.2023 and remanded the matter back before the Judge, Small Cause

Court for fresh consideration of the application under Order 15 Rule 5 of the C.P.C. Hence, this petition under Article 227 of the Constitution of India for the following reliefs:-

“1. Issue appropriate orders, setting aside the order dated 1.5.2025 passed by the Addl. District Judge, Court No.8, District Bareilly in S.C.C. Revision No.28/2023 (Hemlata Kapoor and Others vs. J.B. Motors)

2. Issue appropriate orders, directing the Judge, Small Cause Court, District Bareilly, seized with S.C.C. Suit No.3/2016 (Hemlata Kapoor and Others vs. J.B. Motors) to decide the application (paper no.83 ga) under Section 23 of the Provincial Small Cause Court Act, 1887 (Annexure No.13 to the petition), before proceeding any further with the suit.”

3. Counsel for the petitioner-defendant submitted that the Judge, Small Cause Court has rightly exercised his jurisdiction in rejecting the application filed under Order 15 Rule 5 of the C.P.C. at the instance of plaintiffs-respondents but the revisional court has illegally set aside the order of the Judge, Small Cause Court and remanded the matter back to decide the application under Order 15 Rule 5 of the C.P.C. afresh. He submitted that the petitioner is the owner of the property in question which is the subject matter of S.C.C. Suit No.3/2016 on the basis of registered sale deed dated 2.9.2011 executed by Mr. Darab Shah and Others. He submitted that the plaintiffs-respondents are claiming title through Mr. Harsh Chandra Kapoor who was the power of attorney holder of Mr. Darab Shah and Others, as such, the plaintiffs-respondents cannot be

treated as the owner of the property in question. He submitted that the provision of striking of the defence under Order 15 Rule 5 of the C.P.C. is discretionary and directory in nature, as such, the jurisdiction exercised by Judge, Small Cause Court in rejecting the application under Order 15 Rule 5 of the C.P.C. cannot be interfered with by the revisional court in exercise of jurisdiction under Section 25 of the Act. He submitted that the plaintiffs-respondents in their plaint, have categorically stated that rent was being paid to Mr. Darab Shah till 31.3.2011, i.e., before execution of registered sale deed dated 2.9.2011, as such, the plaintiffs-respondents cannot become owner/landlord of the property in question in view of the registered sale deed executed in favour of the petitioner-defendant. He submitted that the impugned revisional order should be set aside and the order passed by the Judge, Small Cause Court, rejecting the application under Order 15 Rule 5 of the C.P.C. filed by plaintiffs-respondents should be maintained. He placed reliance on the following judgments of Hon'ble the Apex Court and that of this Court in support of his arguments:-

- "1. 2022 Live Law (SC) 607 Asha Rani Gupta vs. Sri Vineet Kumar;**
- 2. 2024 (1) ADJ 1440, Bhure Khan Warsi vs. Mohd. Israr;**
- 3. 2025:AHC-LKO: 28022, Jugeshwar Prasad vs. Hanuman Prasad."**

4. Counsel appearing for the plaintiffs-respondents submitted that the order passed by the Judge Small Cause Court is not a reasoned order, as such, the revisional court has rightly exercised his revisional jurisdiction in setting aside the

order of the Judge, Small Cause Court dated 19.4.2023 and directing the Judge, Small Cause Court to decide the application under Order 15 Rule 5 of the C.P.C. afresh. She submitted that the petitioner-defendant has full opportunity to contest the application filed under Order 15 Rule 5 of the C.P.C. before the Judge, Small Cause Court rather instant petition before this Court under Article 227 of the Constitution of India. She submitted that in view of the provisions contained under Order 15 Rule 5 of the C.P.C., the courts should exercise the jurisdiction in proper manner. She also submitted that the Judge, Small Cause Court has not assigned proper reason while passing the order dated 19.4.2023, rejecting the application filed under Order 15 Rule 5 of the C.P.C., as such, no interference is required against the remand order passed by the revisional court by which the matter has been sent back before the Judge, Small Cause Court to decide the application filed under Order 15 Rule 5 of the C.P.C. afresh. She submitted that the petition filed under Article 227 of the Constitution of India by the petitioner-defendant should be dismissed.

5. I have considered the arguments advanced by learned counsel for the parties and perused the records.

6. There is no dispute about the fact S.C.C. Suit No.3 of 2016 filed by plaintiffs-respondents is pending for adjudication before the Judge, Small Cause Court. There is also no dispute about the fact that application under Order 15 Rule 5 of the C.P.C. filed by the plaintiffs-respondents has been dismissed under the order dated 19.4.2023. There is also no dispute about

the fact that the revision filed by the plaintiffs-respondents has been allowed, setting aside the order of the Judge, Small Cause Court dated 19.4.2023 and the matter has been sent back before the Judge, Small Cause Court to decide the application under Order 15 Rule 15 C.P.C. afresh.

7. In order to appreciate the controversy involved in the matter, perusal of Order 15 Rule 5 of the C.P.C. will be relevant which is as under:-

“Uttar Pradesh.— In its application to the State of Uttar Pradesh, in Order XV, for the existing Rule 51, the following rule shall be substituted, namely:—

“5. Striking off defence on failure to deposit admitted rent, etc.—

(1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per centum per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making, the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of sub-rule (2), strike off his defence.

Explanation 1.— The expression 'first hearing' means the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2.— The expression 'entire amount admitted by him to be due' means the entire gross amount, whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account *[and the amount, if any, paid to the lessor acknowledged by the lessor in writing signed by him] and the amount, if any, deposited in any Court under Section 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

Explanation 3.— (1) The expression 'monthly amount due' means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account.

(2) Before making an order for striking off defence, the Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days, of the first

hearing or, of the expiry of the week referred to in sub-section (1), as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff:

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited:

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same." [Vide U.P. Act 57 of 1976, Section 7 (1-1-1977)]"

8. On the scope of Order 15 Rule 5 C.P.C., the judgment of the Apex Court in the case of Asha Rani Gupta (supra) will be relevant. Paragraph nos.11 to 16 of the judgment rendered in Asha Rani Gupta (supra) will be relevant for perusal which are as under:-

11. The present suit has been filed by the plaintiff-appellant claiming her capacity as the lessor after having purchased the suit property from its erstwhile owner. According to the plaintiff, the defendant has been the lessee in the suit shop and his lease was determined; and while alleging the rent to be due and having not been paid despite demand, the plaintiff has filed this suit for eviction and recovery of arrears of rent and damages for use and occupation. Having regard to the plaint averments, the suit in question is

clearly the one to which the provisions of [Order XV Rule 5 CPC](#) are applicable.

11.1. Though the aforesaid decisions in cases of Miss Santosh Mehta, Smt. Kamla Devi and Manik Lal Majumdar related to the respective rent control legislations applicable to the respective jurisdictions, which may not be of direct application to the present case but and yet, the relevant propositions to be culled out for the present purpose are that any such provision depriving the tenant of defence because of default in payment of the due amount of rent/arrears have been construed liberally; and the expression 'may' in regard to the power of the Court to strike out defence has been construed as directory and not mandatory. In other words, the Courts have leaned in favour of not assigning a mandatory character to such provisions of drastic consequence and have held that a discretion is indeed reserved with the Court concerned whether to penalise the tenant or not. However, and even while reserving such discretion, this Court has recognised the use of such discretion against the defendant-tenant in case of wilful failure or deliberate default or volitional non-performance. This Court has also explained the principles in different expressions by observing that if the mood of defiance or gross neglect is discerned, the tenant may forfeit his right to be heard in defence. The sum and substance of the matter is that the power to strike off defence is considered to be discretionary, which is to be exercised with circumspection but, relaxation is reserved for a bonafide tenant like those in the cases of Miss

[Santosh Mehta and Smt. Kamla Devi](#) (supra) and not as a matter of course. The case of [Bimal Chand Jain](#) (supra) directly related with [Order XV Rule 5 CPC](#) where the tenant had deposited the arrears admitted to be due but, failed to make regular deposits of monthly rent and failed to submit representation in terms of sub-rule (2) of Rule 5 of Order XV. The defence was struck off in that matter with the Trial Court and the High Court taking the said provisions of [Order XV Rule 5 CPC](#) as being mandatory in character. Such an approach was not approved by this Court while indicating the reserve of discretion in not striking off defence if, on the facts and circumstances existing on record, there be good reason for not doing so. The common thread running through the aforesaid decisions of this Court is that the power to strike off the defence is held to be a matter of discretion where, despite default, defence may not be struck off, for some good and adequate reason.

11.2. The question of good and adequate reason for not striking off the defence despite default would directly relate with such facts, factors and circumstances where full and punctual compliance had not been made for any bonafide cause, as contradistinguished from an approach of defiance or volitional/elective non-performance.

12. Reverting to the provisions under consideration, it is noticed that while the first part of sub-rule (1) of Rule 5 of [Order XV CPC](#) requires deposit of the admitted due amount of rent together with interest, the second part thereof mandates that whether or not

the tenant admits the amount to be due, he has to, throughout the continuation of the suit, regularly deposit monthly amount due within a week from the date of its accrual. Read as a whole, it is but clear that [Order XV Rule 5 CPC](#) embodies the fundamental principle that there is no holidaying for a tenant in payment of rent or damages for use and occupation, whether the lease is subsisting or it has been determined. The only basic requirement in the suit of the nature envisaged by [Order XV Rule 5 CPC](#) is the character of defendant as being the lessee/tenant in the suit premises. Viewed from this angle, we are not inclined to accept the line of thought in some of the decisions of the High Court that in every case of denial of relationship of landlord and tenant, the defendant in suit for eviction and recovery of rent/damages could enjoy holidays as regards payment of rent.

12.1. For what has been discussed hereinabove, the decision of the High Court in [Ladly Prasad](#) (supra) does not require much dilation when it remains indisputable that it is not always obligatory on the Court to strike off the defence. However, [the said decision](#) cannot be read to mean that despite default of the tenant in payment of rent, the defence has to be permitted irrespective of its baselessness. The decision in [Kunwar Baldevji](#) (supra), again, would have no application to the facts of the present case. Herein, the defendant-respondent has not only omitted to deposit the rent on the first date of the hearing but, has also omitted to deposit the accrued rent during the pendency of the suit.

13. In a suit of the present nature, where the defendant otherwise has not denied his status as being the lessee, it was rather imperative for him to have scrupulously complied with the requirements of law and to have deposited the arrears of rent due together with interest on or before the first date of hearing and in any case, as per the second part of sub-rule (1) of Rule 5 of [Order XV CPC](#), he was under the specific obligation to make regular deposit of the monthly amount due, whether he was admitting any such dues or not.

14. In the context of the proposition of denial of title of the plaintiff and denial of relationship of landlord and tenant between the plaintiff and defendant, we may also observe that such a denial simpliciter does not and cannot absolve the lessee/tenant to deposit the due amount of rent/damages for use and occupation, unless he could show having made such payment in a lawful and bonafide manner. Of course, the question of bonafide is a question of fact, to be determined in every case with reference to its facts but, it cannot be laid down as a general proposition that by merely denying the title of plaintiff or relationship of landlord- tenant/lessor-lessee, a defendant of the suit of the present nature could enjoy the property during the pendency of the suit without depositing the amount of rent/damages.

15. Taking the facts of the present case, it is at once clear that the defendant-respondent, by his assertions and conduct, has left nothing to doubt that he has been steadfast in not making payment of rent/damages, despite being lessee of the suit shop. The

present one has clearly been the case of volitional non-performance with nothing left to guess about the defendant's mood of defiance. Nothing of any fact or any circumstance is existing on record to find even a remote reason for extending any latitude or relaxation in operation of [Order XV Rule 5 CPC](#) to the present case. It shall be apposite at this juncture to also observe that the contentions on behalf of the defendant-respondent to the effect that he had made payment of rent to the alleged erstwhile landlord Smt. Sudha Sharma and contra submissions on behalf of the appellant that even in the year 1990, the defendant-respondent admitted the said Shri Rajiv Kant Sharma as the owner of the property as also the factors co-related with these submissions, do not call for adjudication in this appeal. This is for two simple reasons: One, that so far as the fact of volitional non-performance by the defendant-respondent is concerned, with no cogent evidence of lawful payment of rent, the findings of fact by the Trial Court and the Revisional Court against the defendant-respondent stand final and have not been disturbed even by the High Court. There appears no reason for this Court to enter into any factual inquiry as regards payment of rent to Smt. Sudha Sharma or otherwise, now in this appeal. Secondly, so far as any affidavit filed by the defendant-respondent in the year 1990, allegedly admitting Shri Rajiv Kant Sharma as owner of property is concerned, it may be a matter of adjudication by the Trial Court but would not be a matter of consideration in this appeal. Suffice it to observe that the present one is a case very near and akin to that of Hisamul Islam Siddiqui (supra)

wherein, the learned Single Judge of the same High Court has approved the order striking off the defence after finding want of deposit of the amount of rent, despite the defendant having not denied his status as tenant.

16. In the totality of facts and circumstances, we are clearly of the view that there was absolutely no reason for the High Court to have interfered in the present case, where the Trial Court had struck off the defence after finding that there was no evidence on record to show the payment or deposit of rent in favour of the plaintiff by the defendant- respondent. The Revisional Court had also approved the order of the Trial Court on relevant considerations. Even the High Court did not find the pleas taken by the defendant-respondent to be of bonafide character, particularly when survey number of the shop let out to him was clearly stated in the sale deed executed in favour of the plaintiff. We find it rather intriguing that, despite having not found any cogent reason for which discretion under Rule 5 of [Order XV CPC](#) could have been exercised in favour of the defendant-respondent, the High Court, in the last line of paragraph 45 of the order impugned, abruptly stated its conclusion that” ‘yet the defendant/tenant deserves some indulgence’.

9. In the Division Bench matter of this Court reported in **2024 (1) ADJ 1440, Bhure Khan Warsi vs. Mohd. Israr**, the reference made by the Single Judge in case of disputing the landlord-tenant relationship by defendant upon the application under Order 15 Rule 5 C.P.C., the reference has been answered by

Division Bench in paragraph no.31 of the judgment which is as under:-

31. Ultimately, this Court answers the reference in the following manner :

(I) In a suit for eviction, on the determination of lease if the lessee admits that there was rent due then at or before the first hearing of the suit he shall pay the entire admitted amount along with interest thereon at the rate of 9% per annum.

(ii) If he does not admit any amount to be due then he would throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual.

(iii) Default of the above two would give the Court a right to strike off the defence, subject to the provisions of sub-rule (2) of [Order XV Rule 5 of the C.P.C.](#) which gives the defendant an opportunity to represent within ten days from the first hearing.

(iv) As per the explanation-II of [Order XV Rule 2 C.P.C.](#), the entire amount admitted by the defendant-lessee has to be construed as the entire gross amount whether as rent or compensation for use and occupation, calculated at the "admitted rate of rent" for the admitted period.

(v) The monthly amount due which had to be paid within one week after the monthly amount payable became due was also to be paid at the "admitted rate of rent".

(vi) The law, as had been [laid down in](#) paragraph no.11 of Pradyuman Jee vs. Special/Additional District Judge, Ballia reported in 2008 (71) ALR 892

which had stated that if the defendant denies the existence of the landlord-tenant relationship then he may not be required to deposit the amount admitted to be due at or before the first hearing of the suit but he would still be required to deposit the monthly amount due, is not a correct law. [Order XV Rule 5 of C.P.C.](#) does not talk about the denial of the landlord-tenant relationship. It only talks about "admitted rent".

(vii) As per the judgment of Kunwar Baldevji and etc. vs. The XI Additional District Judge, Bulandshahr & Ors. reported in (2003) 51 ALR 758 if the amount of rent is not admitted then it is required to be adjudicated by the Court. In case, the tenant/defendant denies any rent to be due, the Court would be required to decide the same. Obviously then the Court will have to adjudicate and arrive at a finding at the first date of hearing contemplated under [Order XV Rule 5 CPC](#) as to what is the rent and what is payable. This issue has to be framed and thereafter adjudicated upon on the leading of evidence of the parties.

(viii) If the tenant-defendant denies the relationship of landlord-tenant then as per the judgment of the Supreme Court in [Asha Rani Gupta vs. Vineet Kumar](#) reported in (2022) 8 ADJ 572 (SC) and as per the provisions of [section 23](#) of the Provincial Small Cause Courts Act, 1887, the Court will have to determine whether the question raised by the defendant with regard to title of the plaintiff was a serious one or whether the denial of the title was a question which was to be determined with the help of evidence which would be led by the parties. If the denial was a definite denial with substantial evidence

then the Court of Small Causes, which did not have the jurisdiction/authority to determine the title of the plaintiff, would have the discretion to return the plaint at any stage of the proceedings to be presented before the Court having jurisdiction to determine the title.

10. It is material to mention that in the instant matter the Small Cause Suit No.3 of 2016 has been filed in the year 2016 by the plaintiff-respondents. Petitioner-defendant has denied from very beginning that plaintiffs-respondents are not the landlord-owner of the property in question rather the petitioner-defendant is the owner of the property in question on the basis of registered sale deed. The application 67 Ga filed under Order 15 Rule 5 of the C.P.C. dated 20.1.2023 for striking off the defence of the defendant has been rejected by the Judge, Small Causes, recording finding that the application filed under Order 15 Rule 5 of the C.P.C. cannot be allowed in view of the fact that petitioner-defendant is claiming himself to be the owner on the basis of the registered sale deed.

11. The revisional court in exercise of his revisional jurisdiction has set aside the order of the Judge, Small Cause Court and again sent the matter back before the Judge, Small Causes to decide the application filed under Order 15 Rule 5 of the C.P.C. afresh which is not sustainable in the eye of law, as such, the order dated 1.5.2025 passed by the revisional court is liable to be set aside.

12. So far as the scope of Section 25 of Provincial Small Cause Court Act is concerned, the perusal of paragraph no.12 of the judgment of Hon'ble Apex Court, reported in **1963 AIR SC 698**, Hari Shankar vs. Rao Girdhari Lal Chowdhary will be relevant which is as under:-

"The section we are dealing with, is almost the same as [S. 25](#) of the Provincial Small Cause Courts Act. That section has been considered by the High Courts in numerous cases and diverse interpretations have been given. The powers that it is said to confer would make a broad spectrum commencing, at one end, with the view that only substantial errors of law can be corrected under it, and ending, at the other with a power of interference a little better than what an appeal gives. It is useless to discuss those cases in some of which the observations were probably made under compulsion of certain unusual facts. It is sufficient to say that we consider that the most accurate exposition of the meaning of such sections is that of Beaumont, C.J. (as he then was) in [Bell & Co. Ltd. v. Waman Hemraj](#) (1) where the learned Chief Justice, dealing with [s. 25](#) of the Provincial Small Cause Courts Act, observed:

"The object of [s. 25](#) is to enable the High Court to see that there has been no miscarriage of justice, that the decision was given according to law. The section does not enumerate the cases in which the Court may interfere in revision, as does [s.115](#) of the Code of Civil Procedure, and I certainly do not propose to attempt an exhaustive definition of the circumstances which may justify such interference; but instances which readily occur to the mind are cases in

which the Court which made the order had no jurisdiction or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere. But, in my opinion, the Court ought not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at."

13. Considering the facts and circumstances of the case, the impugned revisional order dated 1.5.2025, passed by the Additional District Judge, Court No.8, District Bareilly in S.C.C. Revision No.28/2023 (Hemlata Kapoor and Others vs. J.B. Motors) is liable to be set aside and the same is hereby set aside.

14. **The petition is allowed.** The Judge, Small Causes is directed to decide the S.C.C. Suit No.3 of 2016, considering the pending application under Section 23 of the Act in the light of the ratio of law laid down by the Division Bench of this Court in **Bhure Khan Warsi** (supra) expeditiously, preferably within a period of 6 months from the date of production of the certified copy of the order, in accordance with law.

Order Date :- 4.9.2025

C.Prakash

(Chandra Kumar Rai, J.)