



2025:AHC:171735

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 11628 of 2025

Arun Kumar Singh

.....Petitioner(s)

Versus

Madhvesh Kumar Tiwari @ Banti And 6 Others

.....Respondent(s)

Counsel for Petitioner(s) : Jitendra Shanker Pandey, Virendra Singh

Counsel for Respondent(s) : Pradeep Singh Sengar

Court No. - 37

HON'BLE CHANDRA KUMAR RAI, J.

1. Heard Sri Virendra Singh, learned counsel for the petitioner and Sri Pradeep Singh Sengar, learned counsel for respondent no.1.

2. Brief facts of the case are that plaintiff Smt. Kamla Tiwari filed S.C.C. Suit No.7 of 1988 before the Judge, Small Causes Court for arrears of rent and ejectment on the ground that defendants Arun Kumar and Vinod Kumar (tenants of the shop) have defaulted in payment of rent to the landlord. The petitioner/defendant/tenant filed his written statement along with another defendant, denying the plaint allegation, stating that U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is applicable. It was also mentioned in the written statement that rent of the shop was Rs.150 and Rs.20,000/- was paid in advance. Smt. Kamla Tiwari expired during pendency of the suit, executing the registered will deed dated 21.6.2003, in favour respondent nos. 1 & 2, accordingly, respondent nos. 1 & 2 were substituted in the aforementioned S.C.C. Suit. Parties have adduced their evidence in the aforementioned S.C.C. Suit. Petitioner/defendant/tenant filed an application on 27.10.1994 along with the affidavit (paper no.130-Ga-2) under Section 114 of the Transfer of Property Act, stating he is filing application and challan for deposit of arrears of rent. The aforementioned application was allowed on 27.10.1994. Against the order dated 27.10.1994, landlord/Smt. Kamla Tiwari filed a revision under Section 25 of the Provincial Small Cause Courts Act, 1887 which was registered as Revision No.10 of 1994. The aforementioned revision was dismissed vide order dated 28.9.1998, accordingly, Smt. Kamla Tiwari/landlord filed Writ Petition No.5876 of 1999 before this Court which was dismissed. In pursuance of the judgment/order of this Court, petitioner/defendant/tenant filed an application (paper no.341-Ga), praying that he may be given benefit of Section 114 of Transfer of Property Act from eviction as his application has already been

allowed by the Judge, Small Causes Court. The Judge, Small Causes Court vide order dated 6.9.2018, rejected the application (paper no.341-Ga) filed by the petitioner/defendant/tenant. S.C.C. Revision No.2/2018 filed by the petitioner/defendant/tenant against the order dated 6.9.2018, has been dismissed by the revisional court vide order dated 10.10.2018. The petitioner/defendant/tenant challenged the orders dated 6.9.2018/11.10.2018 before this Court by way of petition under Article 227 No.9196 of 2018 which was decided vide order dated 7.12.2018 with observation that no interference is required to be made against the impugned order passed by the Judge, Small Causes Court and the revisional court but the finding recorded in those orders to the extent that petitioner shall not be entitled to benefit of Section 114 of the Transfer of Property Act, is set aside and benefit of Section 114 of the Transfer of Property Act shall be extended to the petitioner in terms of previous orders only, if the trial court holds that Act is not applicable to the building. In pursuance of the order of this Court dated 7.12.2018, the matter was proceeded before the Judge, Small Causes Court. The Judge, Small Causes ultimately allowed the S.C.C. Suit partly on 17.9.2022. Against the judgment/order of Judge, Small Causes dated 17.9.2022, petitioner filed S.C.C. Revision No.38/2022, under Section 25 of the Provincial Small Cause Courts Act which has been dismissed vide order dated 26.8.2025. Hence, this petition for the following relief:-

"It is therefore most respectfully prayed that this Hon'ble Court may be pleased to allow the petition and set aside the order dated 26.8.2025 passed by Addl. District and Sessions Judge, Court No. 4, Ballia in SCC Revision No. 38/2025 (Arun Kumar Singh Vs. Madhvendra Kumar Tiwari and others) and order dated 17.9.2022 passed by Civil Judge, Senior Division, Ballia in Small Cause Court Case No. 7/1988 (Smt. Kamla Tiwari Vs. Arun Kumar Singh and others) (Annexure No.1 and 2 to the Misc. Petition)."

3. Counsel for the petitioner submitted that in view of the judgment and order passed by this Court in the matter under Article 227 No.9196 of 2018 on 7.12.2018, the impugned judgment passed by the Judge, Small Causes as well as revisional court, cannot be sustained in the eyes of law. He further submitted that the impugned judgment passed by the Judge, Small Causes Court and the revisional court to the effect that the defendant will not be entitled of benefit of Section 114 of the Transfer of Property Act, is wholly illegal. He further submitted that defendant had filed an application dated 27.10.1994 along with an affidavit (paper no.130-Ga-2) before the Judge, Small Causes Court, under Section 114 of the Transfer of Property Act and the application was allowed on 27.10.1994, as such, the impugned order passed by the Judge, Small Causes Court, refusing the benefit of Section 114 of the Transfer of Property Act is

illegal. He submitted that even if material alteration is found and Act No.13 of 1972 found not applicable, even then defendant will be entitled for benefit of Section 114 of the Transfer of Property Act. He submitted that the impugned judgment/order should be set aside and the S.C.C. Suit filed by the plaintiff should be dismissed.

4. On the other hand, learned counsel for the respondent-landlord submitted that the S.C.C. Suit filed in the year 1988, has been decided under the impugned order in the year 2022. He submitted that the S.C.C. Revision filed by the petitioner has been dismissed recording finding of fact, as such, no interference is required in the matter. He submitted that more than 37 years has been passed from initiating the proceeding against the tenant and ultimately under the impugned order, the order of eviction against the tenant, has been passed considering the evidence adduced by the parties and the provisions contained under the Act which requires no further interference in exercise of jurisdiction under Article 227 of the Constitution of India.

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 that S.C.C. Suit filed by the respondent-landlord has been decreed in part by the Judge, Small Causes Court, directing for eviction of the petitioner/defendant/tenant from the shop in question. There is also no dispute about the fact revision filed by the petitioner/defendant/tenant has been dismissed.

7. In order to appreciate the controversy involved in the matter, perusal of the issues/point of determination framed in the aforementioned S.C.C. Suit will be relevant which are as under:-

"प्रस्तुत प्रकरण में पक्षगण के विद्वान अधिवक्ता द्वारा निम्नलिखित विनिश्चय बिन्दु पर बल दिया गया:-

1. क्या वादी एवं प्रतिवादीगण के मध्य भवनस्वामी व किरायेदार का सम्बन्ध है?
2. क्या विवादित सम्पत्ति पर उत्तर प्रदेश अधिनियम संख्या-13 सन् 1972 के प्राविधान लागू नहीं होते हैं? यदि हाँ तो प्रभाव।
3. क्या प्रतिवादी का उत्तर प्रदेश शहरी भवन किराया अधिनियम संख्या-13 सन् 1972 की धारा-20 (4) में किये गये प्रावधान का लाभ पाने का अधिकारी है?
4. क्या प्रतिवादीगण द्वारा दौरान किरायेदारी प्रश्नगत भवन / दुकान में कोई सारभूत परिवर्तन अथवा तोड़-फोड़ किया गया है ?

5. क्या वादिनी प्रतिवादीगण से मुआवजा इस्तेमाल प्राप्त करने की अधिकारी है?

6. क्या वादिनी किसी अनुतोष को प्राप्त करने का अधिकारी है?"

8. The Judge, Small Causes Court has considered all the six issues framed in the proceeding in the light of the evidence adduced by the parties as well as under the provisions contained under the Act No.13 of 1972 as well as Provincial Small Cause Courts Act and has decreed the plaintiff's suit in part for eviction of the petitioner/defendant/tenant from the shop in question.

9. The revisional court has also exercised the jurisdiction under Section 25 of the Provincial Small Cause Courts Act, considering the entire aspect of the matter again which is also proper exercise of the revisional jurisdiction in the matter.

10. Considering the entire facts and circumstances of the case, there is no further scope of interference against the concurrent judgment passed by the Judge, Small Causes Court as well as revisional court in respect to the S.C.C. Suit filed by the landlord in the year 1988.

11. **The instant petition is dismissed.** However, petitioner is granted 6 months time to vacate the shop in question, subject to the following conditions:-

(a). Petitioner/ tenant shall file an undertaking before the Judge, Small Causes within period of three weeks from today to the effect that he will handover peaceful possession of the shop in question to the respondent / landlord within period of six months from the date of this judgment.

(b). In the undertaking, petitioner / tenant shall also state that he will not create any third party interest in the shop in question.

(c). Petitioner shall pay the monthly rent of the shop in question regularly to the landlord/respondent till the date of delivery of possession to the landlord as directed above.

(d). In case of default of any of the condition mentioned above, protection granted by this Court shall automatically vacated.

(d). In case shop in question is not vacated as per the undertaking given by the petitioner/ tenant, he shall be liable for contempt.

(Chandra Kumar Rai,J.)

September 24, 2025

C.Prakash