

Court No. - 07

Case :- MATTERS UNDER ARTICLE 227 No. - 370 of 2018

Petitioner :- Neeraj Yadav

Respondent :- A.K. Ray And 2 Others

Counsel for Petitioner :- Mr Rajendra Prasad Tiwari,Mr Vinay Kumar Tiwari,Ms Smt Alpana Tiwari

Counsel for Respondent :- Mr Murli Dhar Mishra

Hon'ble Surya Prakash Kesarwani,J.

Heard Sri Rajendra Prasad Tiwari, learned counsel for the defendant-petitioner and Sri Murli Dhar Mishra, learned counsel for plaintiffs-respondents.

This petition under Article 227 of the Constitution of India has been filed praying to set aside the judgment and order dated 12.12.2017 in S.C.C. Revision No.18 of 2017 (Neeraj Yadav Vs. A.K. Ray and others), and, judgment and order dated 02.02.2017 in S.C.C. Suit No.46 of 2010 (A.K. Ray and others vs. Neeraj Yadav) passed by the Judge Small Cause Court, Jhansi whereby the defendant-petitioner/ tenant has been directed to be evicted from Shop No.406/3, Nanakganj, Sipari Bazar, Jhansi.

Learned counsel for the petitioner submits that landlord-tenant relationship between the plaintiffs-respondents and the defendant-petitioner is not disputed. The only question involved in this petition is as to **whether the defendant-petitioner is entitled to the benefit of Section 20(4) of U.P. Act 13 of 1972 or not?**

Learned counsel for the defendant-petitioner submits that the date for filing written submission was fixed for 05.04.2011 on which date an Application 14C was moved and the tender was passed and immediately thereafter the defendant-petitioner deposited a sum of Rs.16,000/- vide Paper No.33C. Thus, he submits that provisions of Section 20(4) of the Act were complied with and, therefore, both the courts below have committed manifest error of law and facts to hold the default in payment of rent. He further submits that the amount deposited under Section 30(1) of the Act for the period from 1997 to

31.08.2008 should be adjusted towards arrears of rent.

No other point has been argued before me by the learned counsel for the defendant-petitioner.

Sri Murli Dhar Mishra, learned counsel for the plaintiffs-respondents supports the impugned judgements and submits that default in payment of rent and non-compliance of the provisions of Section 20(4) of the U.P. Act 13 of 1972, is evident on record and, therefore, both the courts below have not committed any error of law to pass the impugned judgement and to uphold the eviction of the defendant-petitioner.

I have carefully considered the submissions of learned counsels for the parties.

The S.C.C. Suit No.46 of 2010 was filed by the plaintiffs-respondents on 08.09.2010. In paragraph-8 of the plaint, the amount demanded was Rs.4800/- towards court fees, Rs.14,400/- towards arrears of rent of one years and Rs.800/- towards damages, total Rs.20,000/-. A sum of Rs.16,000/- was deposited by the defendant-petitioner on 07.04.2011 by a tender being Paper No.33C. Neither the total arrears of rent was deposited nor interest @ 9% as required under Section 20(4) was deposited. Thus, the defendant-petitioner was not entitled for the benefit of Subsection (4) of Section 20 of the Act. The default in payment of rent stands admitted and remained undisputed.

In view of the afore-noted facts, I do not find any grave error of law in the impugned judgments to interfere under Article 227 of the Constitution of India.

In view of the aforesaid, I do not find any merit in this petition. Consequently, petition fails and is hereby **dismissed**.

After this order was dictated in open court Sri Rajendra Prasad Tiwari, learned counsel for the defendant-petitioner states on the basis of instructions that the defendant-petitioner is ready to submit an

undertaking on oath to the effect that he shall vacate the disputed shop, and, handover its vacant and peaceful possession to Plaintiffs-Respondents on or before 31.07.2018 and shall also deposit a sum of Rs.6000/- for use and occupation of the disputed shop for a period from today till 31.07.2018 and thereupon till 31.07.2018 no coercive action may be taken against the defendant-petitioner for dispossession from the disputed shop.

Sri Murli Dhar Mishra, learned counsel for plaintiffs-respondents opposes the request.

Considering the statement made by learned counsel for the defendant-petitioner, it is provided that in the event an undertaking on oath to the aforesaid effect is submitted by the defendant-petitioner before the concerned court below within four weeks from today and a sum of Rs.6000/- is also deposited within the same period for the purposes as aforesaid, then in that event, no coercive action shall be taken against the defendant-petitioner with respect to the disputed shop till 31.07.2018. On or before 31.07.2018, the defendant-petitioner shall vacate the disputed shop and shall handover its vacant and peaceful possession to the plaintiffs-respondents. In case of failure to comply with any of the conditions as aforementioned, the aforesaid protection given to the defendant-petitioner shall automatically stand vacated. In the event, the disputed shop is not vacated, and, its vacant and peaceful possession is not handed over by the defendant-petitioner to the plaintiffs-respondents on or before 31.07.2018, then the plaintiffs-respondents shall be entitled to initiate appropriate proceedings against the defendant-petitioner including the proceedings for contempt.

Order Date :- 31.01.2018
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