

ITEM NO.3D(MM)

COURT NO.3

SECTION XI

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).7453/2012

(From the judgment and order dated 31/01/2012 in CMWP  
39629/2004 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

No.

PAWAN KUMAR

Petitioner(s)

VERSUS

RAMESHWAR DAYAL AGARWAL & ORS.

Respondent(s)

(With application for exemption from filing Official  
Translation, prayer for interim relief and office report)

Date: 28/02/2012

This Petition was called on for mentioning today.

CORAM :

HON'BLE MR. JUSTICE DALVEER BHANDARI  
HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s)

Mr. Sanjay Parikh, Adv.  
Mr. Abinash Kumar Mishra, Adv.  
Mr. A.N. Singh, Adv.  
Ms. Mamta Saxena, Adv.

For Respondent(s)

Mr. Dinesh Kumar Garg, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Taken on board.

Leave granted.

The appeal stands disposed of in terms of the

signed order.

SLP(C) No. 7453 of 2012

1

[KALYANI GUPTA]  
COURT MASTER

[INDU SATIJA]  
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE.]

SLP(C) No. 7453 of 2012

2

CIVIL APPEAL NO. 2686 OF 2012  
ARISING OUT OF S.L.P.(C) NO. 7453 OF 2012

PAWAN KUMAR ..... APPELLANT

VERSUS

RAMESHWAR DAYAL AGARWAL & ORS. .... RESPONDENTS

O R D E R

1. Taken on board.
2. We have heard learned counsel for the parties.
3. Leave granted.

4. Relevant facts leading to the filing of this appeal are as under:-

4.1 The original suit is between the lessor Babu Ram Gupta and lessees being Ram Kumar and Krishna Kumar. The appellant herein is the son of one of

the lessees Krishna Kumar. On 15th May, 1964 suit was instituted for eviction on the ground of bona fide

need. The trial court vide its order dated 18th

January, 1966 arrived at the conclusion that the land

SLP(C) No. 7453 of 2012

3

is covered by the provisions of the 1947 U.P. Rent Control and Eviction Act (UP Act III of 1947) and the constructions are in accordance with the lease deed. The trial court had decreed the suit only with regard to arrears of rent and other reliefs were denied.

Having gone in appeal, the First Appellate Court decreed that the UP Act, 1947 was not applicable since the suit property was not an "accommodation" as required, but just a plot of land to enable business and that the constructions were in accordance with

the lease deed. The Second Appellate Court from the findings of the lower courts, held that the intention of the parties was to lease out the land for enabling constructions and that the khaprail structure was appurtenant to the land.

4.2 In the meanwhile, the Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Amendment Act 1976 was promulgated and provisions of Section 29A were inserted and the appellant herein filed an application/objection under Section 47 of the Code of Civil Procedure seeking protection under the amended provisions of Section 29A of the 1972 Act contending that Section 29A was maintainable insofar as it related to tenants who had erected permanent

structures with consent. After receiving the

SLP(C) No. 7453 of 2012

4

Commissioner's report it was held that Section 29A was applicable and that the lessor is entitled to arrears of rent.

4.3 In the year 1981, the suit property was purchased and went into the hands of the respondents herein. Revision Petition filed against the 1997

order was dismissed and the Revisional Court agreed with the decision of the Executing Court by holding that the jurisdiction under Revision is only to see if there is any glaring error and the decision is contrary to the evidence.

The subsequent purchases filed Civil Miscellaneous Writ Petition before the High Court and the High Court allowed it by setting aside the concurrent findings of fact given by the Executing Court and the Revisional Court on the issue of applicability of Section 29A. Hence this appeal

by way of special leave.

5. Having heard the learned counsel for the parties, the appellant is granted time till 31st July, 2013 to vacate the suit premises subject to his filing usual undertaking in the Registry of this Court within a period of four weeks from today.

6. The appellant is presently paying rent at the SLP(C) No. 7453 of 2012

5

rate of ` 125/- per month. Rentals have increased manifold. In the interest of justice, the respondent-landlord should get rent akin to the market rent. Learned counsel for the appellant after taking instructions from him states that the appellant-tenant undertakes to pay rent at the rate of ` 10,000/- per month from 1st March 2012 till the date he vacates the premises.

7. The impugned order is partly allowed to the extent that costs of ` 1,00,000/- (Rupees One lakh) as directed by the High Court shall not be recovered from the appellant.

8. The appeal stands disposed of in the aforesaid terms.

.....J  
[DALVEER BHANDARI]

.....J  
[DIPAK MISRA]