

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).10483/2005

(From the judgement and order dated 05/11/2004 in CMWP No. 7326/2004 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

KRISHI UTPADAN MANDI SAMITI, KHAIR & ANR

Petitioner(s)

VERSUS

RANVEER SINGH

Respondent(s)

(With appln(s) for recalling the court's order and prayer for interim relief and office report)

WITH SLP(C) NO. 10484 of 2005

(With prayer for interim relief and office report)

SLP(C) NO. 11365 of 2005

(With prayer for interim relief and office report)

Date: 07/08/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Petitioner(s)

Mrs. Shobha Dikshit, Sr. Adv.

Mr. Pradeep Misra, Adv.

For Respondent(s)

Mr. M.P. Shorawala, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

Appeals stand allowed in terms of the signed order. No costs.

(J.S. Rawat)

(Kanwal

Singh)

AR-cum-PS

Court M

aster

[Signed order is placed on the file].

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3399 OF 2006
(Arising out of SLP(C) No. 10483 of 2005)

Krishi Utpadan Mandi Samiti, Khair & Anr.

Appellant(s)

Versus

Ranveer Singh

Respondent(s)

With

CIVIL APPEAL NO. 3401 OF 2006
(Arising out of SLP(C) No. 10484 of 2005)

CIVIL APPEAL NO. 3400 OF 2006
(Arising out of SLP(C) No. 11365 of 2005)

O R D E R

CIVIL APPEAL NO. 3399 OF 2006

Leave granted.

The respondent was allotted a canteen by the appellant-Samiti on a
monthly rental of Rs.200/- vide allotment order dated 6th August, 1988

The respondent was required to deposit six months' rent in advance. An agreement to this effect was executed on 6th August, 1988. Clause (1) of the agreement stipulated that the rent would be Rs.200/- per month. Clause (2) of the agreement stipulated that the tenant would be liable to vacate the shop if he defaults in payment of rent as stipulated in the agreement and that his tenancy would be terminated if he violates any terms and conditions of the agreement. Clause (8) of the agreement stipulated that the tenancy would be month to month and that it could be terminated by either party by giving a month's notice.

Secretary of the appellant-Samiti issued a notice dated 6th February, 2004, stating that the respondent was in arrears of rent to the tune of Rs.7,008/- upto February, 2004, and therefore directed the respondent to deposit the same within one week failing which the amount would be recovered under Section 20(1) of The Transfer of Property Act [for short "the Act"]. It was also stated therein that the appellant wanted to give the canteen on rent after holding an auction in public interest and therefore the respondent should vacate the premises and handover the possession to the appellant within one month from the date of the receipt of that notice.

The said notice was challenged by the respondent by filing a writ petition in the High Court which was entertained and allowed. The impugned notice was held to be illegal and therefore quashed. It was further held that the decision of the Samiti to auction the canteen does not

arise till the time the tenancy is determined and vacant possession is given to the appellant.

Being aggrieved, the Samiti has filed the present appeal.

On 25th of April, 2005 a notice was issued by this Court to the following effect:

"Delay condoned.

Counsel for the petitioners contends that the High Court in exercise of its writ jurisdiction could not hold that notice issued under section 106 of the Transfer of Property Act is defective and quash the proceedings initiated by the petitioners for evicting the respondent from the suit premises.

Issue notice limited to the question as to why the impugned order be not set aside and the respondent be relegated to the alternate remedy of filing the suit."

As the disputed questions of fact were involved, in our view, the High Court should not have entertained the writ petition and quashed the notice under Section 106 of the Act. Respondent should have been relegated to the alternate remedy of filing civil suit to prove the questions on fact.

For the foregoing reasons, the order under appeal is set aside and the writ petition is ordered to be dismissed on the ground of alternative remedy being available to the writ-petitioner. Respondent, if so advised, may file a civil suit. If such a suit is filed, the trial Court shall decide the suit without being influenced by any of the findings recorded by the High Court or any of the observations made in this order.

The appeal is allowed. No costs.

CIVIL APPEAL NOS. 3401 and 3400 OF 2006

In view of the foregoing order in C.A. No. 3399/2005, these

appeals also stand allowed.

.....J.

.....
(ASHOK BHAN)

New Delhi;
August 07, 2006.

.....J.
(MARKANDEY KATJU)