

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

CIVIL APPEAL NO. 1655 OF 1999@@
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MOHAMMAD SHAHNAWAZ AKHTAR & ANR. ... APPELLANT (S)

VERSUS

1ST ADJ VARANASI & ORS. ... RESPONDENT (S)

Date : 07/11/2001 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.C.LAHOTI
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Appellant (s)

Mr. Dinesh Kumar Garg, Adv.

For Respondent (s)

Mr. R.C. Kaushik, Adv.

UPON hearing counsel the Court made the following
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The appeal is disposed of in terms of the signed
order.

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Sarita (Radha Rani Bhatia)@@
AA
Court Master@@
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(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1655 OF 1999@@

MOHAMMAD SHAHNAWAZ AKHTAR & ANR. ...APPELLANTS

VERSUS

1ST ADJ VARANASI & ORS. ...RESPONDENTS

O R D E R@@  
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.....L.....I.....T.....T.....T.....T.....T.....T.....J  
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The appellants, who are landlords of the suit accommodation, filed a suit for ejection of the respondent-tenant from a non-residential accommodation, i.e., a shop, on the ground available under Clause (e) of sub-Section (2) of Section 20 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'the Act', for short). It was alleged that the tenant had discontinued using the shop for his own business. The shop was lying closed. However, the platform in the front part of the shop but forming part of the tenancy premises was allowed to be used by an unidentified person for holding the shop of ready-made garments. That person would display ready-made garments on the platform and on the front portion of the shop and sell the same therefrom. It was also alleged that some fruit vendors were allowed to keep their fruits in the shop during the night time allowing ..2/-

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the suit premises to be used as a cloak-room. On the evidence adduced by the parties, the Small Causes Court, Varanasi, which tried the suit, found the averments made in the plaint proved. On a cumulative effect of the circumstances that the tenant had himself discontinued his business which he was carrying on in the shop, while a ready-made garments' dealer was allowed to regularly hold the sale of garments on the platform of the shop, the trial court concluded that a case of sub-letting of a part of the tenancy premises, which is prohibited by Section 25 of the Act, was made out. The trial court also formed an opinion that the landlords could not be excepted to adduce the independent evidence as to the arrangement between the tenant and the sub-tenant as to whether any rent was being charged by the tenant from the sub-tenant or not.

As against the decree of eviction passed by the trial court, the tenant preferred a revision in the Court of Additional District Judge. The revisional court, on an independent appreciation of evidence, found that no fault could be found with the finding of fact arrived at by the trial court and therefore, confirmed the finding of sub-tenancy and dismissed the revision. The tenant ..3/-

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filed a writ petition in the High Court which was heard

and disposed of by the learned Single Judge who re-appreciated the evidence and set aside the finding of fact arrived at by the trial court and maintained by learned Additional District Judge in revision.~

We have carefully perused the judgment of the trial court and the orders of learned Additional District Judge as also of the High Court. The High Court, we are constrained to observe, has acted like an Appellate Court and re-appreciated the evidence and thereby exercised a jurisdiction which it did not have. The High Court has nowhere arrived at a finding that there was any error of jurisdiction committed by any of the courts below or the finding of fact impugned before it suffered from perversity. In our opinion, in exercise of writ jurisdiction, the High Court ought not to have entered into re-appreciation of evidence and dislodged the finding of fact recorded by the trial court and maintained in revision by the learned Additional District Judge. To satisfy our own conscience, we have gone through the record. In our opinion, the findings arrived at by the trial court are such as could have been reasonably arrived at and are well reasoned and

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therefore, they are not open to interference. The learned Additional District Judge rightly affirmed those findings. Inasmuch as the orders of the courts below were not liable to be interfered in exercise of the writ jurisdiction by the High Court, the impugned order of the High Court dated 30th April, 1997 cannot be sustained and is set aside. The order of the trial court, as upheld by the learned District Judge, is restored. No orders as to the costs.

The appeal is disposed of.

.SP1

.....J.  
(R.C. LAHOTI)

New Delhi,  
November 7, 2001.

.....J.  
(BRIJESH KUMAR)