

प्रेषक,

राहुल सिंह प्रथम
अपर जिला एवं सत्र न्यायाधीश,
कोर्ट नं०-15, कानपुर नगर।
(I.D. No.- UP 6358)

सेवा में,

श्रीमान निबन्धक (जे) गोपनीय,
माननीय उच्च न्यायालय,
इलाहाबाद।

द्वारा,

श्रीमान जनपद न्यायाधीश,
कानपुर नगर।

विषय— श्रीमान जनपद न्यायाधीश, कानपुर नगर द्वारा अंकित वार्षिक गोपनीय प्रविष्टि वर्ष 2019-2020 के उन्नयन (upgradation) के सम्बन्ध में प्रत्यावेदन।

महोदय,

ससम्मान निवेदन है कि अधोहस्ताक्षरी अपर जिला एवं सत्र न्यायाधीश, कोर्ट नं०-15, कानपुर नगर के पद पर कार्यरत है। अधोहस्ताक्षरी को 01 अप्रैल 2019 से 31 मार्च, 2020 तक के कार्यकाल के संबंध में वार्षिक गोपनीय प्रविष्टि सम्बन्धी जानकारी माननीय उच्च न्यायालय की साइट "ई-सर्विसेज" के माध्यम से प्राप्त हुई है।

श्रीमान जनपद न्यायाधीश, कानपुर नगर द्वारा अधोहस्ताक्षरी को दी गयी वार्षिक गोपनीय प्रविष्टियों के उन्नयन के सम्बन्ध में निम्नलिखित विनम्र निवेदन है:-

1. अधोहस्ताक्षरी द्वारा वर्ष 2019-2020 के अपने स्वमूल्यांकन प्रलेख में माननीय उच्च न्यायालय द्वारा कुल 1200 यूनिट का कार्य किये जाने का मानक निर्धारित किया गया था, जिसके सापेक्ष अधोहस्ताक्षरी द्वारा मानक से अधिक कुल 1805.38 यूनिट का कार्य किया गया है।
2. अधोहस्ताक्षरी द्वारा गुणदोष के आधार पर कुल 66 वाद (सिविल व आपराधिक प्रकीर्ण वादों को अपवर्जित करते हुए) निर्णीत किये गए हैं।
3. अधोहस्ताक्षरी द्वारा उक्त अवधि में 39 प्राचीन वाद निर्णीत किये गये हैं, जिसमें 35 वर्ष से लम्बित, वर्ष 1984 का वाद सबसे प्राचीन है।
4. श्रीमान जनपद न्यायाधीश, कानपुर नगर द्वारा अधोहस्ताक्षरी का कार्यालय पर नियंत्रण व प्रशासनिक कार्यक्षमता को उत्तम (गोपनीय प्रविष्टि के कालम-1 एच), बार एसोसिएशन के सदस्यों से सम्बन्ध, अन्य अधिकारियों से सम्बन्ध व महिलाओं के प्रति व्यवहार उत्तम (गोपनीय प्रविष्टि के कालम-1 आई, 1-जे तथा 1-एन) होना अंकित किया है।

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5. श्रीमान जनपद न्यायाधीश महोदय द्वारा प्रविष्टि के कॉलम सं०-01 (f) (iii) Application of Law कॉलम में "Satisfactory" का अंकन किया गया है जबकि इसके विपरीत स्वयं श्रीमान जनपद न्यायाधीश महोदय द्वारा प्रविष्टि के कॉलम सं०-01 (f) अधोहस्ताक्षरी के निर्णयों को Fact एवं Law पर Sound, well reasoned और Expressed in good language होना अंकित किया है।

6. अधोहस्ताक्षरी द्वारा अपने स्वमूल्यांकन प्रलेख में अपने द्वारा निर्णीत एस०सी०टी० वाद संख्या-32/2017 प्रेम कुमार बनाम राकेश कुमार गुप्ता का निर्णय संलग्न किया गया है। इस निर्णय के विरुद्ध माननीय उच्च न्यायालय में एस०सी०टी० रिवीजन संख्या-104/2019 प्रस्तुत की गयी, जिसमें माननीय उच्च न्यायालय ने अपने निर्णय दिनांकित 01.11.2019 के पैरा-11 में अधोहस्ताक्षरी के उक्त निर्णय के बारे में निम्न मत व्यक्त किया है-"The impugned judgement has been passed by the court below after well considering the fact and evidence on record and it does not suffer from any manifest error of law". इस प्रकार माननीय उच्च न्यायालय ने भी अधोहस्ताक्षरी के निर्णय में तथ्य एवं विधि सम्बन्धी कोई त्रुटि नहीं पायी है। अतः अधोहस्ताक्षरी की यह प्रविष्टि उच्चिकृत किए जाने योग्य है। (संलग्नक-1)

7. श्रीमान जनपद न्यायाधीश द्वारा प्रविष्टि के कॉलम सं०-01 (e) (vii) में जो एम०ए०सी०टी० वादों से सम्बन्धित है, में यह अंकन किया गया है कि As per information given in the self assessment, the officer has not decided any claim petition hence no remark can be given in this column. इस सम्बन्ध में निवेदन है कि दिनांक 29.07.2019 को अधोहस्ताक्षरी ने अपर जिला एवं सत्र न्यायाधीश के रूप में पदोन्नत होकर कार्यभार ग्रहण किया है। इसी समय मोटर दुर्घटना दावा प्राधिकरण (MACT) के विशेष न्यायालय का गठन होने पर स्वयं श्रीमान जनपद न्यायाधीश द्वारा दिनांक 26.08.2019 को समस्त एम०ए०सी०टी० वाद को नवगठित विशेष न्यायालय में स्थानान्तरित करने का आदेश पारित किया गया जिसके क्रम में संबंधित समस्त वाद विशेष न्यायालय में स्थानान्तरित हो गया। इस कारण उक्त प्रकृति का मामला लंबित नहीं था, इसलिए उक्त प्रकृति का मामला निर्णीत नहीं किया जा सकता था। अधोहस्ताक्षरी ने अपने स्वमूल्यांकन प्रलेख के साथ संलग्नक 5/4 संलग्न किया था, जिसमें उक्त वादों के अन्तरण होने का उल्लेख है। (संलग्नक-2)

8. प्रविष्टि सं०-01 (k) Whether the officer has made regular inspection of his court and office in his charge and whether such inspection were full and effective ? में श्रीमान जनपद न्यायाधीश महोदय ने अधोहस्ताक्षरी द्वारा किये गये चारों त्रैमासिक निरीक्षण को full and effective होने का अंकन किया है। अधोहस्ताक्षरी द्वारा दिनांक 16.03.2019 को अपने न्यायालय व कार्यालय का औचक निरीक्षण किया गया था, किन्तु त्रुटिवश उसका उल्लेख स्वमूल्यांकन प्रलेख में नहीं हो सका था। अधोहस्ताक्षरी के त्रैमासिक निरीक्षण full and effective हैं।

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9. अधोहस्ताक्षरी द्वारा 1200 यूनिट के सापेक्ष विभिन्न न्यायालयों में कार्य करते हुए 1805.38 यूनिट कार्य किया गया तथा कई पुराने वादों को निर्णीत करते हुए वर्ष 1984 के प्राचीनतम वाद को गुणदोष के आधार पर निर्णीत किया गया। श्रीमान जनपद न्यायाधीश महोदय द्वारा अधोहस्ताक्षरी का समग्र आंकलन करते समय "Good" रिमार्क दिया गया है।

अतः श्रीमान जी से निवेदन है कि अधोहस्ताक्षरी के सम्पूर्ण कार्य, व्यवहार, आचरण तथा समग्र आंकलन को दृष्टिगत रखते हुए तथा उपरोक्त समस्त तथ्य व स्पष्टीकरण को सहानुभूतिपूर्वक विचार में लेते हुए अधोहस्ताक्षरी के "Good" रिमार्क को उच्चतम श्रेणी में करने हेतु माननीय न्यायालय के समक्ष प्रस्तुत करने की कृपा करें।

प्रार्थी आपका सदैव आभारी रहेगा।

सादर।

दिनांक 17.09.2020

संलग्नक—यथोक्त।

भवदीय
Rahul Singh
(राहुल सिंह प्रथम)
अपर जिला एवं सत्र न्यायाधीश,
कोर्ट नं०-15, कानपुर नगर।
(I.D. No.- UP 6358)

कार्यालय जनपद न्यायाधीश, कानपुर नगर।

पत्रांक सं०- 1509/5 कानपुर नगर

दिनांक 17/9/2020

श्रीमान निबन्धक (जे) गोपनीय, माननीय उच्च न्यायालय, इलाहाबाद को सादर अग्रसारित।

जनपद न्यायाधीश,
कानपुर नगर।
17 SEP 2020
कानपुर नगर

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HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 5

Case :- S.C.C. REVISION No. - 104 of 2019

Revisionist :- Rakesh Kumar Gupta

Opposite Party :- Prem Kumar Arora

Counsel for Revisionist :- Om Prakash, Onkar Nath Vishwakarma, Praveen Kumar

Counsel for Opposite Party :- Arvind Kumar Trivedi

Hon'ble Surya Prakash Kesarwani, J.

1. Heard Sri Pradeep Kumar, learned Senior Advocate, assisted by Sri Om Prakash-I and Sri Arvind Kumar Trivedi, learned counsel for the plaintiff respondent.

2. Briefly stated facts of the present case are that father of the plaintiff-respondent had purchased Plot No.36, Block P-1, Rattu Purwa, Hamirpur Road, Kanpur, from the Kanpur Development Authority by a registered sale deed/free hold deed dated 29.11.1996. The plaintiff-constructed a house over it bearing Municipal No.133/P-1/36, Rattu Purwa, Hamirpur Road, Kanpur in the year 1999. In the ground floor portion of the said house there are certain shops. The defendant-revisionist was inducted as tenant of one shop (hereinafter referred to as "shop No.1"). According to the plaintiff-respondent the rent of the shop was Rs.2800/- per month. According to the plaintiff-respondent, the defendant-revisionist is a bad pay master and has also defaulted in payment of rent for more than four months after 01.11.2016 and has also illegally and unauthorisedly occupied another portion being shop No.5. Thus, by notice dated 29.03.2017, the plaintiff-respondent determined the tenancy and asked the defendant-revisionist to vacate the shop and give its possession and also pay the arrears of rent. The defendant-revisionist sent a reply dated 09.04.2017. Since the notice was not complied with by the defendant-revisionist, therefore, the plaintiff-respondent filed SCC Suit No.32 of 2017 (Prem Kumar Arora Vs. Rakesh Kumar Gupta) which has been decreed in respect of shop No.1 by the impugned judgment dated 27.08.2019, passed by the Judge Small Cause Court/Additional District Judge, Court No.15, Kanpur Nagar. Aggrieved with this judgment the defendant-revisionist has filed the present revision under Section 25 of the Provincial Small Cause Courts Act, 1887.

3. Learned counsel for the revisionist submits that since the defendant-revisionist has deposited the entire amount of rent and expenses etc. in terms of the plaint, on the first date of hearing, therefore, the defendant-revisionist was entitled for the benefit of Section 20(4) of U.P. Act No.13 of 1972 read with Section 114 of the Transfer of Property Act, 1882. But the court below has completely ignored the fact of deposit and the effect of the aforesaid provisions and illegally passed the impugned order.

4. He further submits that the rent of the disputed shop no.1 was Rs.1500/- per month but The court below has illegally held the rent of shop No.1 to be Rs.2800/- per month. Therefore, the impugned judgment and decree is arbitrary and illegal.

5. No other submissions has been made by learned counsel for the revisionist except those aforesaid.

6. Learned counsel for the plaintiff-respondent supports the impugned judgment.

7. I have carefully considered the submissions of learned counsels for the parties and perused the impugned judgment.

8. So far as the submission of learned counsel for the defendant-revisionist with regard to the provisions of Section 20(4) of U.P. Act No.13 of 1972 and Section 114 of Transfer of Property Act, 1882 is concerned, I find that the submission has no substance. Admittedly, the property in question was constructed in the year 1999. Therefore, the provisions of U.P. Act No.13 of 1972 are not applicable in view of Section 2(2) of the U.P. Act No. 13 of 1972. So far as the provisions of Section 114 of the Transfer of Property Act, 1882 is concerned I find that Section 114 provides for relief against forfeiture of a lease of immovable property for non payment of rent. The Section 107 of the Act 1882 provides that a lease of immovable property for any term exceeding one year can be made only by registered instrument. According to own case of the defendant-revisionist he is tenant of the disputed shop no.1 w.e.f. 01.04.2009. There is no allegation that there was any registered lease deed. That apart the tenancy of the defendant-revisionist was determined by the plaintiff-respondent as he does not want to keep the defendant-revisionist as tenant. Therefore, on the facts and circumstances of the present case the provisions of Section 20(4) of the U.P. Act No.13 of 1972 or the provisions of Section 114 of the Act 1882 have no application.

9. The second submission of learned counsel for the defendant-revisionist with regard to the monthly rent to be only Rs.1500/- has no substance and is also contrary to the evidences on record.

10. In paragraph 3 of the plaint the plaintiff-respondent has clearly stated that the defendant-revisionist is tenant of shop No.1 at a monthly rent of Rs.2800/- and he paid rent for the month of March and April 2016 by cheque dated 11.05.2016 of Rs.5600/- which the plaintiff deposited in his bank account No.10499992717. He also stated that the rent for the month of September and October was also paid by the defendant-revisionist by cheque dated 08.11.2016 of Rs.5600/-. Paragraph 3 of the plaint has been replied by the defendant-revisionist in paragraph 3 of the written statement in which he merely stated "that the contents of paras 3 and 4 of the plaint as stated are not admitted. Kindly additional pleas be perused. However it is not disputed that the answering defendant is tenant of private shop No.1". In the additional please of the written statement the

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defendant-revisionist has neither disputed nor denied the specific averment of paragraph 3 of the plaint with regard to the monthly rent of Rs.2800/- and payment thereof by cheque by the defendant-revisionist to the plaintiff-respondent. This Court specifically requested learned counsel for the defendant-revisionist to point out from the written statement any averment denying the specific averment of paragraph 3 of the plaint but nothing could be pointed out. The plaintiff-respondent has also proved by documentary evidences that the monthly rent of shop No.1 was Rs.2800/- which has been discussed by the court below while deciding issue No.2. Thus, the court below has not committed any manifest error of law to hold that the rent of shop No.1 was Rs.2800/- per month. The defendant-revisionist in his cross examination has also admitted the fact that after the shop no.5 was vacated on 30.07.2016 by one Sri Narendra Kumar, thereafter he occupied the shop No.5. The relevant portion of the cross examination of the defendant-revisionist as DW 1 has been reproduced by the court below while deciding issue no.1 which fact has not been disputed before me. Thus, it is evident on record that rent of disputed shop No.1 was Rs.2800/- per month.

11. Since the tenancy of the defendant-revisionist has been determined by the plaintiff-respondent in accordance with law and also since the impugned judgment has been passed by the court below after well considering the facts and evidences on record and it does not suffer from any manifest error of law, therefore, I do not find any good reason to interfere with it.

12. For all the reasons aforesaid, I do not find any merit in this revision. Consequently, the petition fails and is hereby dismissed.

13. After the judgment was dictated in open court, Sri Pradeep Kumar, learned Senior Advocate, states on instructions of the defendant-revisionist that the defendant-revisionist undertakes to vacate the disputed shop No.1 and shall handover its vacant and peaceful possession to the plaintiff-respondent on or before 31.05.2020 and shall deposit the entire decretal amount within one month from today after adjusting the amount already deposited and shall further deposit a sum of Rs.42,000/- within the same period i.e. within one month for use and occupation of the disputed shop no.1 for the period from today till 31.05.2020 and in that event the defendant-revisionist may not be dispossessed from the disputed shop till 31.05.2020.

14. Learned counsel for the plaintiff-respondent has no serious objection to the aforesaid undertaking of the defendant-revisionist given before this Court.

15. In view of the statement made by learned counsels for the parties as aforesaid, it is provided that the defendant-revisionist shall file an undertaking to the aforesaid effect before the court below within three weeks and shall deposit the entire amount as mentioned above within one month from today. If these conditions are complied with by the defendant-revisionist then he shall not be evicted from the disputed shop till 31.05.2020. If any of the aforesaid conditions are not complied with by the defendant-revisionist then the protection given above shall automatically stand vacated. In the event the defendant-revisionist complies with the conditions aforementioned but does not vacate the disputed shop and also does not handover its vacant and peaceful possession to the respondent-landlord on or before 31.05.2020 then in that event besides other consequences which may follow, the defendant-revisionist shall also pay to the plaintiff-respondent an additional sum of Rs.1000/- per day for every day of delay in vacating and handing over vacant and peaceful possession of the disputed shop to the plaintiff-respondent

Order Date :- 1.11.2019/vkg

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