

ITEM NO.107

Court No.6

SECTION XI

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(s). 1264 OF 2009

MEHMOOD RAHMAT ULLAH KHAN & ANR.

Appellant (s)

VERSUS

NIYAZ AHMAD KHAN

Respondent(s)

(With prayer for interim relief and office report)

WITH Civil Appeal NO. 1073 of 2009

(With prayer for interim relief and office report)

Date: 23/02/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Appellant(s)

Mr. Irshad Ahmad, Adv.

Mr. Bimal Roy Jad, Adv.

For Respondent(s)

Mr. Bimal Roy Jad, Adv.

Mr. Vikram Rathore, Adv.

Mr. Irshad Ahmad, Adv.

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

CIVIL APPEAL NO. 1264 OF 2009

The appeal is disposed of accordingly.

CIVIL APPEAL NO. 1073 OF 2009

The appeal is allowed with no order as to costs.

(Deepak Mansukhani)
Court Master

(Indu Satija)
Court Master

(The signed order is placed on the file)

REPORTABLE
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1264 OF 2009

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CIVIL APPEAL NO. 1073 OF 2009

O R D E R

CIVIL APPEAL NO. 1264 OF 2009

Heard learned Counsel for the parties.

This Appeal has been filed against the impugned Judgment dated 8.10.2007 passed by the High Court of Allahabad.

The appellant herein is a landlord of premises in question and the respondent is the tenant. The appellant filed a Petition under Section 21(1)(a) of U.P. Urban Building Act, 1972 alleging that he has bonafide need of the premises and hence the tenant should be evicted. The prescribed authority found that the landlord could not establish his bonafide need and hence it rejected the Petition. The tenant filed an appeal and the Appellate Court has upheld the finding that there is no bonafide need of the premises of the landlord.

Surprisingly, the High Court while upholding the finding that there is no bonafide need of the landlord has allowed the Writ Petition by the impugned Judgment dated 8.10.2007 by increasing the rent.

It is well settled that a High Court in Writ Petition cannot interfere with the finding of fact, regarding bonafide need.

We are also of the opinion that under Section 21, there is no question of enhancement of rent. That may be done under some other provision of the Act.

Accordingly, we dispose of this appeal with the direction that the impugned Judgment is set aside and Judgment of First Appellate Court rejecting the Petition under Section 21 is upheld. The direction increasing rent is set aside.

The appeal is disposed of accordingly.

CIVIL APPEAL NO. 1073 OF 2009

This Appeal has been filed against the impugned Judgment dated 8.10.2007 passed by the High Court of Allahabad.

The facts have been set out in the impugned judgment and hence we are not repeating the same here.

Under Section 21(1)(a) of U.P. Urban Buildings Act, 1972, the

prescribed authority can either allow the Petition for eviction of the tenant or it can refuse to do so. It cannot enhance the rent under those proceedings. Hence, we set aside the impugned Judgment of the High Court.

The appeal is allowed with no order as to costs.

.....J.
(MARKANDEY KATJU)

.....J.
(GYAN SUDHA MISRA)

NEW DELHI
FEBRUARY 23, 2011.



JUDGMENT