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(2006) 3 ARC 107 : (2006) 24 LCD 838

**ALLAHABAD HIGH COURT (LUCKNOW BENCH)**

SHYAM LAL KASHYAP — Appellant

Vs.

PRESCRIBED AUTHORITY/CIVIL JUDGE (SENIOR DIVISION), MOHAN  
LAL GANJ, LUCKNOW AND OTHERS — Respondent

( Before : Shri Narayan Shukla, J )

Writ Petition No.716 (M/S) of 2006

Decided on : 15-02-2006

- Civil Procedure Code, 1908 (CPC) - Order 19 Rule 2, Section 151

**A. U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 21(1)(a) — Eviction proceedings — Cross-examination of deponents — Order 19 Rule 2 read with Section 151 of Civil Procedure Code, 1908 — Petitioner, in a permanent injunction suit, sought to cross-examine respondents who, in their written statement, claimed petitioner was not their tenant — Prescribed Authority rejected the application stating no landlord-tenant dispute existed — Held, cross-examination is a valuable right to test the veracity of affidavits and oral evidence — Merely filing a counter-affidavit is often insufficient to test a witness's credibility — Unless exceptional circumstances exist, a party should not be deprived of this right — Impugned order quashed, and Prescribed Authority directed to permit cross-examination. (Paras 2, 3, 4, 5, 6, 7)**

**JUDGMENT**

Shri Narayan Shukla, J.—Heard Sri Shiv Nath Tilhari, learned counsel for the petitioner and learned Standing Counsel for opposite party No.1.

2. The petitioner is aggrieved with the order dated 17.9.2005 passed by the Civil Judge,

Mohanlalganj (SD), Lucknow, in PA case No.82 of 2004 Gulamnabi and others v. Shyam Lal Kashyap whereby the petitioner's application to provide an opportunity to crossexamine the respondents No.2 and 3 has been rejected on the ground that in the present case there is no dispute between the Landlord and tenants. That is why it is not necessary to provide an opportunity to the petitioner for crossexamination to the respondents No.2 and 3.

3. The petitioner has filed an application under Section 21(1)(a) of U.P. Act No.13 of 1972 before the Civil Judge (SD), Mohan Lal Ganj, Lucknow, which is numbered as PA Case No.82 of 2004 Gulamnabi and another v. Shyam Lal Kashyap for permanent injunction and in this suit the opposite parties No.2 and 3 filed their written statement and asserted that the present petitioner had not been their tenant and had made the deposition to the above effect to the Court. The copies of the written statement and depositions of opposite parties No.2 and 3 have been brought on record as Annexures 3 and 3A to the petition. In pursuance of the plea taken by the respondents No.2 and 3 in their written statement filed in the earlier case the petitioner moved an application in the present case under Order XIX Rule 2 read with Section 151 CPC for being permitted to crossexamine to respondents No.2 and 3 to test the varacity of the affidavits of opposite parties. The Prescribed Authority (Civil Judge SD, Mohan Lal Ganj) through this order dated 17.9.2005 has rejected the petitioners application to crossexamine the respondents No.2 and 3.

4. In support of his case the learned counsel for the petitioner has placed reliance in the case of Rang Lal v. Prescribed Authority and another, reported in 1982 (1) ARC page 449 in which it has been held that in a case wherein an affidavit has been filed the veracity on the credibility of a witness cannot be tested unless he is subjected to crossexamination and that in the instant case the Prescribed Authority was directed to permit the crossexamination of the witnesses whose affidavits have been filed by the respective parties.

5. Learned counsel for the petitioner has further placed reliance in the case of Khusi Ram Dedwal v. Additional Judge, Small Causes Court, Meerut/ Prescribed Authority, Meerut and another reported in Allahabad Rent Cases, 1995 (1) page 308 in which it has been held that merely filing a counter affidavit in a case under Section 21 would very often not be a sufficient remedy for the opposite party because merely by filing a counter affidavit the varacity of witnesses cannot be tested. The whole purpose of the crossexamination is to find out whether the allegations of the opposite party either in affidavit or oral evidence is true or not. Hence crossexamination is a valuable right and normally a party should not be deprived of this right unless for exceptional reasons.

6. In view of the facts and circumstances of the present case I do not find that there was any exceptional circumstance which led the Prescribed Authority to reject the petitioner's application.

7. Accordingly the writ petition is allowed. The order dated 12.9.2005 passed by the Civil

Judge, Mohan Lal Ganj (SD) Lucknow, in PA case No.82 of 2004 Gulamnabi and others v. Shyam Lal Kashyap is hereby quashed. A direction is issued to the Prescribed Authority concerned to permit the petitioner to crossexamine the respondents No.2 and 3.

(Petition allowed)