

Court No. - 50

1) Case :- MATTERS UNDER ARTICLE 227 No. - 3112 of 2023

Petitioner :- Nirmal Agarwal

Respondent :- Pradeep Kumar Gupta

Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal

Counsel for Respondent :- Rama Goel Bansal

Along With

2) Case :- MATTERS UNDER ARTICLE 227 No. - 5221 of 2023

Petitioner :- Suresh Kumar

Respondent :- Pradeep Kumar Gupta

Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal

Counsel for Respondent :- Rama Goel Bansal

3) Case :- MATTERS UNDER ARTICLE 227 No. - 5222 of 2023

Petitioner :- Maya Maheshwari And Another

Respondent :- Pradeep Kumar Gupta

Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal

Counsel for Respondent :- Rama Goel Bansal

4) Case :- MATTERS UNDER ARTICLE 227 No. - 5223 of 2023

Petitioner :- Arun Kumar Jain

Respondent :- Pradeep Kumar Gupta

Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal

Counsel for Respondent :- Rama Goel Bansal

5) Case :- MATTERS UNDER ARTICLE 227 No. - 5224 of 2023

Petitioner :- Suman Mittal And 2 Others

Respondent :- Pradeep Kumar Gupta

Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal

Counsel for Respondent :- Rama Goel Bansal

6) Case :- MATTERS UNDER ARTICLE 227 No. - 5225 of 2023

Petitioner :- Naresh Kumar Anandani

Respondent :- Pradeep Kumar Gupta

Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal

Counsel for Respondent :- Rama Goel Bansal

7) Case :- MATTERS UNDER ARTICLE 227 No. - 5227 of 2023

Petitioner :- Govind Kumar Agarwal

Respondent :- Pradeep Kumar Gupta
Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal
Counsel for Respondent :- Rama Goel Bansal

8) Case :- MATTERS UNDER ARTICLE 227 No. - 5228 of 2023
Petitioner :- Vinay Mittal
Respondent :- Pradeep Kumar Gupta
Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal
Counsel for Respondent :- Rama Goel Bansal

9) Case :- MATTERS UNDER ARTICLE 227 No. - 5230 of 2023
Petitioner :- Devansh Goyal
Respondent :- Pradeep Kumar Gupta
Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal
Counsel for Respondent :- Rama Goel Bansal

10) Case :- MATTERS UNDER ARTICLE 227 No. - 5233 of 2023
Petitioner :- Manoj Kumar Agarwal And Another
Respondent :- Pradeep Kumar Gupta
Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal
Counsel for Respondent :- Rama Goel Bansal

11) Case :- MATTERS UNDER ARTICLE 227 No. - 5236 of 2023
Petitioner :- Sanjeev Kumar Agarwal And Another
Respondent :- Pradeep Kumar Gupta
Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal
Counsel for Respondent :- Rama Goel Bansal

12) Case :- MATTERS UNDER ARTICLE 227 No. - 5237 of 2023
Petitioner :- Kamal Agarwal And Another
Respondent :- Pradeep Kumar Gupta
Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal
Counsel for Respondent :- Rama Goel Bansal

13) Case :- MATTERS UNDER ARTICLE 227 No. - 5238 of 2023
Petitioner :- Arun Kumar And Another
Respondent :- Pradeep Kumar Gupta
Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal
Counsel for Respondent :- Rama Goel Bansal

14) Case :- MATTERS UNDER ARTICLE 227 No. - 5239 of 2023
Petitioner :- Mohan Kumar Agarwal
Respondent :- Pradeep Kumar Gupta
Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal
Counsel for Respondent :- Rama Goel Bansal

15) Case :- MATTERS UNDER ARTICLE 227 No. - 5240 of 2023

Petitioner :- Sumer Chand Agarwal

Respondent :- Pradeep Kumar Gupta

Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal

Counsel for Respondent :- Rama Goel Bansal

16) Case :- MATTERS UNDER ARTICLE 227 No. - 5241 of 2023

Petitioner :- Anoop Kumar Bansal

Respondent :- Pradeep Kumar Gupta

Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal

Counsel for Respondent :- Rama Goel Bansal

17) Case :- MATTERS UNDER ARTICLE 227 No. - 5242 of 2023

Petitioner :- Tara Chand Agarwal

Respondent :- Pradeep Kumar Gupta

Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal

Counsel for Respondent :- Rama Goel Bansal

18) Case :- MATTERS UNDER ARTICLE 227 No. - 5245 of 2023

Petitioner :- Rakesh Kumar Agarwal

Respondent :- Pradeep Kumar Gupta

Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal

Counsel for Respondent :- Rama Goel Bansal

19) Case :- MATTERS UNDER ARTICLE 227 No. - 5246 of 2023

Petitioner :- Vinod Kumar And Another

Respondent :- Pradeep Kumar Gupta

Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal

Counsel for Respondent :- Rama Goel Bansal

20) Case :- MATTERS UNDER ARTICLE 227 No. - 5247 of 2023

Petitioner :- Amit Kumar

Respondent :- Pradeep Kumar Gupta

Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal

Counsel for Respondent :- Rama Goel Bansal

21) Case :- MATTERS UNDER ARTICLE 227 No. - 5248 of 2023

Petitioner :- Vipin Chand Agarwal

Respondent :- Pradeep Kumar Gupta

Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal

Counsel for Respondent :- Rama Goel Bansal

22) Case :- MATTERS UNDER ARTICLE 227 No. - 5249 of 2023

Petitioner :- Navin Kumar Jain

Respondent :- Pradeep Kumar Gupta

Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal

Counsel for Respondent :- Rama Goel Bansal

23) Case :- MATTERS UNDER ARTICLE 227 No. - 5250 of 2023

Petitioner :- Naresh Kumar Anandani

Respondent :- Pradeep Kumar Gupta

Counsel for Petitioner :- Rishabh Agarwal, Tarun Agrawal

Counsel for Respondent :- Rama Goel Bansal

Hon'ble Ashutosh Srivastava, J.

All the above referred petitions involve identical questions of law and facts. The petition, being Matters under Article 227 No. - 3112 of 2023 is being treated as the leading petition and the facts pertaining to the same are being considered for deciding the controversy involved.

Heard Shri Rishabh Agarwal, learned counsel for the petitioner and Smt. Rama Goel Bansal, learned counsel who has put in appearance on behalf of the sole respondent.

The petition, being No. 3112 of 2023, under Article 227 of the Constitution of India has been filed questioning the order dated 1.3.2023 passed by the Addl. District Magistrate (EC)/Rent Authority, Agra in Case No. 1116 of 2022 (Pradeep Kumar Gupta versus Nirmal Kumar Agarwal). A suitable direction to the Addl. District Magistrate (EC)/Rent Authority, Agra to adjudicate upon the issue of maintainability of the application under Section 10 of the U.P. Act No. 16 of 2021 at the instance of the sole respondent has been sought.

By the order impugned, the Addl. District Magistrate (EC)/Rent Authority, Agra has entertained the application of the sole respondent for determination of rent under Section 10 of the U.P. Act No. 16 of 2021 without considering the objection of the tenant petitioner to the maintainability of the application itself granting liberty to take all objections at the time of filing reply to the application under Section 10 of the Act.

The undisputed facts necessary for adjudicating the controversy involved in the instant petition under Article 227 of the Constitution of India are that the petitioner herein is tenant of a shop on the ground floor of property No. 31/58-59, Kokamal Market, Rawatpara, Agra let out to him by Seth Girwar Lal Pyare Lal Shiksha Trust. The petitioner has been regularly tendering the rent of the tenanted premises to the aforesaid Trust and receipts have been issued by the Trust.

It has been submitted that an application under Section 10 of the Act for determination of the rent of the premises has been filed by the sole respondent Shri Pradeep Kumar Gupta in the capacity of Secretary of Girwar Lal Pyare Lal Shiksha Trust. The said application under Section 10 has been objected to by the petitioner by filing an application dated 20.1.2023 under Order 7 Rule 11 CPC read with

Section 34 (1) (h) of the U.P. Act No. 16 of 2021. In the said application besides an objection as to the deficiency in the payment of the Court Fee, the petitioner has raised specific objection to the maintainability of the application at the behest of the respondent on the ground that the Trust has not been impleaded as a party to the application under Section 10 of the U.P. Act No. 16 of 2021.

Learned counsel for the petitioner submits that the learned Addl. District Magistrate (EC)/Rent Authority, Agra has manifestly erred in not considering the objections of the petitioner to the maintainability of the application and instead of deciding the same upfront has directed the petitioner to instead file his written statement and take all objections which shall be considered at the time of final arguments.

Learned counsel for the petitioner vehemently submits that an application under Section 10 of the U.P. Act No. 16 of 2021 can be filed only by the landlord. As per Section 2(b) of the U.P. Act No. 16 of 2021 'Landlord' means a person who receives or is entitled to receive the rent of any premises and includes a Trustee. The respondent admittedly is only a Secretary of the Trust. The Secretary of the Trust is not statutorily recognized as Landlord and even though he may be entitled to collect rent, at best, he would qualify as a property Manager under Section 2 (d) and a property manager has not been conferred with any rights to institute any application on behalf of the Landlord for determination of rent or for eviction.

Learned counsel for the petitioner has tried to draw a distinction between the definition of 'Landlord' as contained in U.P. Act No. 13 of 1972 and U.P. Act No. 16 of 2021. Landlord as per the U.P. Act No. 13 of 1972 in relation to a building has been described to mean a person to whom its rent is or if the buildings were let, would be payable and includes except in Clause (g) the agent or attorney, or such person. Thus, according to learned counsel for the petitioner under the U.P. Act No. 13 of 1972 it is only the actual owner or person authorized by him for receiving notice or letting out the premises who will be the landlord. The position under the U.P. Act No. 16 of 2021 is, however, different and landlord means a person who receives or is entitled to receive the rent of any premises and includes a Trustee. Learned counsel for the petitioner further submits that all the trustees of the Trust have since expired and the respondent cannot continue to act on behalf of the Trust and maintain any application on behalf of the Landlord/Trust. Reliance is placed upon the decision of the Apex Court reported in **2005 (10) SCC 274** and a decision of the co-ordinate Bench of this Court reported in **2017 SCC Online All 1356** to buttress the point that the issue of maintainability of a proceeding is to be decided first before passing any order. It is accordingly prayed that this Court may either decide the issue of maintainability or remit the matter to the Rent Authority for decision on the issue of maintainability.

Smt. Rama Goel Bansal, learned counsel appearing for the sole respondent has filed counter affidavit in opposition to the petition and submits that the petitioner is a tenant of the ground floor of the premises No. 31/58-59 Kokamal Market, Rawatpura, Agra at the rate of Rs. 1212/- per month. The rent is very low

considering the location of the premises which can command a rental of at least Rs. 100/- per square feet, which works out to Rs. 14,500/- per month besides taxes and GST. The petitioner is a defaulter in payment of rent since 01.04.2021 and legal notice has already been sent on 12.09.2022 through registered post which has been duly served on 14.09.2022. Proceedings under Section 10 of the UP Act No. 16 of 2021 has been drawn against the petitioner. The petitioner has taken an objection to the maintainability of the application under Section 10 of the UP Act No. 16 of 2021 which does not merit consideration. In the form for information of tenancy under Section 4 (1) of the Act No. 16 of 2021 before the Rent Authority as specified in the 1st Schedule, in the first column description of landlord has been mentioned as Seth Girwar Lal Pyare Lal Shiksha Trust 31/58-59, Kokamal Market Rawatpura, Agra through Secretary Mr. Pradeep Kumar Gupta but in the application under Section 10 the description has been wrongly mentioned by typographical error which is a curable defect and to remove the said defect an amendment has already been sought which is pending. The objections have been taken just to delay the proceedings. It is also stated in the counter affidavit that the application moved by the petitioner purportedly under Order 7 Rule 11 CPC is not maintainable in view of the provisions made under Section 33 of the UP Act No. 16 of 2021 which provides for the procedure to be followed by the Rent Authority and Rent Tribunal and further provides that nothing contained in CPC, 1908 shall be applied to the Rent Authority or Rent Tribunal which shall be guided by the principles of natural justice and shall have power to regulate their own procedure in the manner as provided in the section itself. It has also been stated that the application under Order 7 Rule 11 CPC is not maintainable and liberty has already been granted to the petitioner to take all objections in the written statement to be filed to the proceedings under Section 10 of the Act. It is also stated that no prejudice/injustice has been caused to the petitioner as full opportunity to raise the issue of non maintainability of the application under Section 10 has been provided to the petitioner.

In the supplementary counter affidavit certain exemplars have been brought on record to demonstrate that the premises under the tenancy of the petitioner can fetch rent to the tune of Rs.14,500/- per month.

In the rejoinder affidavit the averments made in the counter affidavit have been denied and averments made in the petition have been reiterated.

By way of a supplementary rejoinder affidavit, learned counsel for the petitioner has brought on record proceedings of Civil Suit No. 32 of 2014 filed for eviction of a tenant before the Civil Court at Morina (MP) by Shri Pradeep Gupta in which evidence of Shri Pradeep Gupta was recorded and the said Pradeep Gupta admitted in his cross examination that the registered trustees of the Trust had already expired and the Application under Section 10 of the UP Act No. 16 of 2021 is clearly without Authority.

I have heard the learned counsels for the parties and have perused the record. From

the arguments advanced and perusal of the materials on record. The following questions fall for consideration in the present petition:

"I. Whether the Application under Section 10 of the UP Act No. 16 of 2021 has been filed at the behest of Sri Pradeep Kumar Gupta describing himself as Secretary Seth Girwar Lal Pyare Lal Shiksha Trust and claiming himself to be exclusive landlord of the premises under the tenancy of the petitioner rendering the application non maintainable as asserted by the petitioner or has been filed by the Trust through the Secretary Sri Pradeep Kumar Gupta of the Trust as asserted by the respondent?

ii. Whether the Application under Order 7 Rule 11 CPC read with Section 34 (1)(h) of the UP Act No. 16 of 2021 is maintainable?

iii. Whether the order dated 01.03.2023 passed by the Rent Authority can be said to suffer from patent illegality by declining to decide the Application of the petitioner under Order 7, Rule 11 CPC read with Section 34 (1)(h) of the UP Act No. 16 of 2021 but at the same time granting opportunity to the petitioner to take all objections as to the maintainability of the Application under Section 10 of the Act in the written statement to the Application under Section 10 to be considered at the final hearing stage?"

Admittedly, the petitioner is a tenant of the ground floor of the premises No. 31/58-59 Kokamal Market, Rawatpura, Agra which premises is owned by Seth Girwar Lal Pyare Lal Shiksha Trust, Agra.

In order to appreciate the rival contentions of the learned counsels for the parties, it would be apt to analyze the definition of "Landlord" under the U.P. Regulation of Urban Premises Tenancy Act, 2021. The definition is contained in Section 2 (b) of the Act which is quoted as under:-

2. (b) "Landlord",

"landlord", whether called landowner or lessor or by any other name, means a person who receives or is entitled to receive, the rent of any premises, on his own account, if the premises were let to a tenant, and shall include –

(i) *successor, transferee or assignee;*

(ii) *a trustee or guardian or receiver receiving rent for any premises or entitled to so receive, on account of or on behalf of or for the benefit of, any other person such as minor or person of unsound mind who cannot enter into a contract;*

The definition of Landlord under Section 2 (b) embraces within its scope landowner or lessor called by any other name, a person who receives or is entitled

to receive the rent of any premises, on his own account and includes the successor, transferee or assignee of such person as also a trustee or guardian or receiver receiving rent for the premises on account of or on behalf of or for the benefit of any other person such as minor or person of unsound mind who cannot enter into a contract.

Thus, the definition includes a person who receives rent on behalf of the owner/lessor as per Section 2 (b) (ii) of the Act. In the case at hand, admittedly the tenant petitioner has been tendering rent of the premises to the respondent who is the Secretary of Seth Girwar Lal Pyare Lal Shiksha Trust, Agra/owner/lessor of the premises as is evident from the rent receipt filed on record as Annexure-CA-1 to the counter affidavit which bears the signatures of the tenant petitioner. The Court is not impressed by the submissions of learned counsel for the petitioner that the respondent cannot come within the definition of Landlord under the Act in view of the fact that the respondent is merely a Secretary of the Trust and even though entitled to collect rent at best would qualify as a Property Manager under Section 2 (d) of the Act and a Property Manager has not been conferred with rights to institute any application on behalf of the landlord for determination of rent or for the eviction of the tenant. In the opinion of the Court, the argument is based upon the cause title of the application under Section 10 of the U.P. Act No. 16 of 2021 wherein the proceedings have been drawn in the name of the respondent discharging himself as Secretary of the lessor Trust. The Court finds substance in the submissions of the learned counsel for the respondent that though in the Form for information of Tenancy under Section 4 (1) of the Act No. 16 of 2021 before the Rent Authority, Trust has been described as Landlord through the Secretary, but in the application under Section 10 of the Act, the description has been wrongly mentioned and the error has been sought to be rectified by moving appropriate amendment application, which is pending consideration. This Court finds that the attempt made by the respondent in curing the defect of the Section 10. Application is of utmost importance in view of it being a curable defect. The Form of Information of Tenancy under Section 4 (1) of the Act as provided in the First Schedule of the Act 16 of 2021 has been brought on record as Annexure-CA-1 to the counter affidavit. From the materials brought on record, it does not appear to be a case of challenge to the title of the landlord. The Court after perusal of the materials on record comes to the conclusion that the application under Section 10 of the U.P. Act No. 16 of 2021 has been filed by the Trust Seth Girwar Lal Pyare Lal Shiksha Trust, Agra through the Secretary Shri Pradeep Kumar Gupta and not by Shri Pradeep Kumar Gupta in his own capacity claiming exclusive ownership of the premises and is maintainable. The issue No. 1 is decided accordingly.

Now coming to the issue No. 2 as to whether the application under Order 7 Rule 11 CPC read with Section 34 (i) (h) of the U.P. Act No. 16 of 2021 is maintainable or not, the Court finds that Section 33 of the U.P. Act No. 16 of 2021 which deals with the procedure to be followed by the Rent Authority and Rent Tribunal has specifically laid down that nothing contained in the Code of Civil Procedure, 1908

(Act No. 5 of 1908) shall apply to the Rent Authority and Rent Tribunal and they have been conferred with power to regulate their own procedure in the manner detailed in the section and such authorities shall be guided by the principles of natural justice. The provision of Section 33 of the U.P. Act No. 16 of 2021 is quoted hereunder:-

33. Procedure to be followed in Rent Authority and Rent Tribunal – (1) *Save as provided in this Act, nothing contained in the Code of Civil Procedure 1908 (Act No. 5 of 1908) shall apply to the Rent Authority and Rent Tribunal, which shall be guided by the principles of natural justice and shall have power to regulate their own procedure in the following manner, namely :-*

(a) *the landlord or the tenant may file an application or appeal before the Rent Authority or Rent Tribunal, as the case may be, accompanied by affidavit and documents, if any;*

(b) *the Rent Authority or Rent Tribunal, as the case may be, shall then issue notice to the opposite party, accompanied by copies of application or appeal, affidavit and documents;*

(c) *the opposite party shall file a reply accompanied by affidavit and documents, if any, after serving a copy of the same to the applicant;*

(d) *the applicant may file a rejoinder, if any, after serving the copy to the opposite party;*

(e) *the Rent Authority or Rent Tribunal, as the case may be, shall fix a date of hearing and may hold such summary inquiry as it deems necessary.*

(2) *The Rent Authority or Rent Tribunal, as the case may be, shall endeavour to dispose the case as expeditiously as possible, not exceeding a period of more than sixty days from the date of receipt of the application or appeal:*

Provided that where any such application or appeal, as the case may be could not be disposed of within the said period of sixty days, the Rent Authority or Rent Tribunal, as the case may be, shall record its reasons in writing for not disposing of the application or appeal within that period.

(3) *In every application or appeal, before the Rent Authority or Rent Tribunal, as the case may be, the evidence of a witness shall be given by affidavit:*

Provided that the Rent Authority or Rent Tribunal, as the case may be, may where it appears to it that it is necessary in the interest of justice to call a witness for examination or cross-examination, order attendance of such witness to be present for examination or cross-examination.

(4) *The provisions of the Code of Civil Procedure, 1908 (Act No. 5 of 1908) regarding service of summons shall be applicable mutatis mutandis for service of notice by the Rent Authority or Rent Tribunal. In addition to the said mode of service, the service of notice to landlord or tenant may also be effected through e-mail, Whatsapp, SMS or other recognized electronic mode.*

(5) Every application or appeal shall be in such form as may be prescribed.

(6) The Rent Authority or Rent Tribunal, as the case may be, shall not allow more than three adjournment at the request of a party throughout the proceedings and in case of reasonable and sufficient cause to do so, it shall record the reasons for the same in writing and order the party requesting adjournment to pay a reasonable cost.

(7) Every application under clauses (a), (b), (e), (f) and (g) of sub-section (2) of Section 21 or under Section 22 shall be decided within ninety days from the date of filing of such application before the Rent Authority.

(8) The Rent Authority shall decide every application filed under clause (c) and (d) of sub-section (2) of Section 21 within thirty days from the date of filing of such application.

Section 34 of the U.P. Act No. 16 of 2021 permits limited application of the provisions of the Code of Civil Procedure, 1908 as is evident from the Section 34 of the U.P. Act No. 16 of 2021 quoted hereunder:-

34. Powers of Rent Authority and Rent Tribunal.—(1) *The Rent Authority and the Rent Tribunal shall, for discharging their functions under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Act No. 5 of 1908) for the purposes of, –*

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) issuing commission for examination of the witnesses or documents;

(d) issuing commission for local investigation;

(e) receiving evidence on affidavits;

(f) dismissing an application or appeal for default or deciding it ex-parte;

(g) setting aside any order of dismissal of any application or appeal for default or any other order passed by it ex-parte;

(h) any other matter, which may be prescribed.

(2) Any proceedings before the Rent Authority or Rent Tribunal shall be deemed to be a judicial proceeding within the meaning of Section 193 and 228, and for the purpose of Section 196, of the Indian Penal Code, 1860 (Act No. 45 of 1860); and the Rent Authority and the Rent Tribunal shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974).

(3) For the purposes of holding any inquiry or discharging any duty under this Act, the Rent Authority may,–

(a) after giving not less than twenty-four hours' notice in writing, enter and inspect or authorize any officer, subordinate to it, to enter and inspect, any premises at any time between sunrise and sunset;

(b) by written order, require any person to produce for its inspection such books or documents relevant to the inquiry, at such time and at such place as may be specified in the order.

(4) The Rent Authority may, if it thinks fit, appoint one or more persons having special knowledge of the matter under consideration as an assessor or valuer to advise it in the proceedings before it.

(5) Any clerical or arithmetical mistake in any order passed by the Rent Authority or any other error arising out of any accidental omission may, at any time, be corrected by the Rent Authority on an application received by it in this behalf from any of the parties or otherwise.

(6) The Rent Authority may exercise the powers of a Judicial Magistrate of the first class for the recovery of the fine under the provisions of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) and the Rent Authority shall be deemed to be a Magistrate under the said Code for the purposes of such recovery.

(7) An order made by a Rent Authority or an order passed in appeal under this Chapter shall be executable by the Rent Authority as a decree of a Civil Court and for this purpose, the Rent Authority shall have the powers of a Civil Court.

(8) The Rent Authority may set aside or recall any order passed ex-parte if the aggrieved party files an application and satisfies it that the notice was not duly served or that he was prevented by any sufficient cause from appearing when the case was taken up for hearing.

(9) Save as otherwise expressly provided in this Act, every order made by the Rent Authority shall, subject to decision in appeal, be final and shall not be called in question in any original suit, application or execution proceedings.

In the opinion of the Court, the provisions of Order 7 Rule 11 would not be covered under Section 34 (1) (h) of the Act since it would run contrary to the scheme of the Act. A bare perusal of Section 33 of the Act goes onto show that the legislature has specifically excluded the application of the provisions of the Code of Civil Procedure, 1908 except as provided for in the Act. The same provision further provides that the Rent Authority/Tribunal shall be guided by the principles of natural justice and have the power to regulate their own procedure subject to the sub-clauses (a) to (e). Sub-clauses (a) to (e) lay down the procedure that is to be followed by a Rent Authority/Tribunal on receipt of an application/appeal by a landlord or a tenant. Thereafter, sub-clause (b) provides for notices to be issued to the other party. Sub-clause (c) permits the other party to file their reply to the application/appeal. Sub-clause (d) allows the original applicant/appellant to file their rejoinder, if they so wish to. Thereafter, sub-clause (e) provides that the Rent Authority/Tribunal shall fix a date for hearing/disposing off the application/appeal finally.

It is pertinent to note here that as per the Scheme of the Act, the entire exercise is to be completed within a specific period and reasons have to be mandatorily recorded in case the application/appeal is not disposed of within the stipulated period.

Section 33 (4) of the Act makes the provisions regarding service of summons (particularly Order 5 of the Code of Civil Procedure, 1908) applicable to the proceedings before the Rent Authority/Tribunal. This Court finds that there is no similar provision adopting the provision relating to rejection of Plaint (Order 7 Rule 11 of the Code of Civil Procedure, 1908) in the entirety of the Act. Even otherwise, in the opinion of the Court, the adoption of the provisions of Order 7 Rule 11 CPC would run counter productive to the scheme of the Act as it would result in unnecessary delays. Importantly, it is to be noted that the other party can raise the same objections which would have raised in an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 in their reply which is permitted under sub-clause (c) of Section 33 (1) of the Act.

The Court finds substance in the submissions of learned counsel for the respondent that the application under Section 7 Rule 11 CPC would not be maintainable even otherwise as liberty has already been granted to the tenant/petitioner to take all objections in the written statement to the application under Section 10 of the Act. The issue No. 2 is decided accordingly.

Now, coming to the issue No. 3, the Court after hearing the parties and perusing the materials on record and in view of the discussion hereinabove comes to the conclusion that the impugned order dated 1.3.2023 passed by the Rent Authority cannot be said to suffer from patent illegality by declining to decide the application of the petitioner under Order 7 Rule 11 CPC read with Section 34 (1) (h) of the U.P. Act No. 16 of 2021 inasmuch as opportunity has already been granted to the petitioner to take all objections as to the maintainability of the application under Section 10 of the Act in the written statement to be considered at the final hearing stage.

Consequently, the Court finds no merit in all the aforesaid writ petitions. All the aforesaid writ petitions are accordingly **dismissed**. The interim order operating is discharged. The Rent Authority is, however, directed to decide the application under Section 10 of the Act No. 16 of 2021 with all expedition preferably within **Sixty days** as mandated by Section 33 (2) of the U.P. Act No. 16 of 2021 from the date of service of certified copy of the order of this Court. No order as to costs.

Order Date :- 15.7.2024

Ravi Prakash

(Ashutosh Srivastava, J.)