

## **Bishan Chand vs Vth Additional District Judge, ... on 22 September, 1980**

**Equivalent citations: AIR1982SC1230, (1982)1SCC626, AIR 1982 SUPREME COURT 1230(1), 1982 (1) SCC 626, 1982 ALL LJ 882(1), (1982) ALL RENTCAS 440, (1982) GUJ LH 545, (1982) 2 RENCER 272**

**Author: V.D. Tulzapurkar**

**Bench: R.S. Sarkaria, V.D. Tulzapurkar**

### **JUDGMENT**

V.D. Tulzapurkar, J.

1. Special leave to appeal granted.

2. On hearing counsel on either side we are satisfied that in the circumstances of the case the matter requires to be remanded. In the ejectment suit by the landlord the Vth Addl. District Judge, Bullandshahr, who disposed of the appeal, has unfortunately recorded a finding on the question of comparative hardship in a peculiar way. He held that hardship to both the landlord and the tenant would be the same. If that be the finding, in the absence of any additional circumstance indicating that preference could be shown to the landlord the ejectment order in his favour could not be made. Apart from this, it does appear that Rule 16(2) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 has not been considered at all by the appellate court. Such an order has been confirmed by the High Court. We, therefore, set aside the High Court's order and send the case back to the District Judge for disposal of the appeal in accordance with law with a direction to consider the question of comparative hardship in the light of the aforesaid Rule 16(2) While considering this question it will be open to the appellate court to take into consideration the facts relating to the earlier agreement, the offer of the appellant before us to give back his own shop to the respondent and the equities arising in the case. Opportunity is given to the parties to lead additional evidence in the form of affidavits before the appellate Court. The matter is accordingly remanded. There will be no order as to costs of the appeal.