

Sardar Harvinder Singh And Ors. vs IInd Additional District Judge And Ors. on 16 May, 2007

Equivalent citations: 2008(1)AWC964

Author: R.K. Rastogi

Bench: R.K. Rastogi

JUDGMENT

R.K. Rastogi, J.

1. This is a writ petition for quashing the judgment and decree dated 19.12.2003 passed by Sri Subodh Kumar, then IInd Addl. District Judge, Raebareilly, in S.C.C. Revision No. 27/2003, Sardar Harvinder Singh and Ors. v. Farhat Sultana, and the judgment and decree dated 2.8.2003, passed by Sri Ezaz Ahmad Ansari, then learned Judge Small Causes Court, (Civil Judge, (Sr. Division), Raebareilly), in S.C.C. Suit No. 6/2001, Farhat Sultana v. Harvinder Singh and Ors.

2. The facts relevant for disposal of this writ petition are that the respondent No. 3 of the present writ petition had filed the aforesaid S.C.C. Suit No. 6/01, in the Court of J.S.C.C. (Civil Judge, Sr. Division), Raebareilly, against the petitioners for their eviction from Shop No. 152/1, Rashid Market, Kaiparganj, Raebareilly and for recovery of arrears of rent and mesne profits with these allegations that she is owner/landlady of the above shop and the shop was let out to the defendant petitioners No. 1 and 2 at the rent of Rs. 911.95 paise per month. The shop is governed by the provisions of U.P. Act No. 13 of 1972. The defendants No. 1 and 2 (present petitioners No. 1 and 2), had paid rent of the above shop for the period upto August, 2000, only and thereafter they stopped its payment. They also sublet the shop to defendant No. 3 (petitioner No. 3 in the present writ petition) in October, 2000, for running a Hotel business and defendant No. 3 was running a business there in the name of "Bara Sahab Veg Non Veg Fast Food." Defendants No. 1 and 2 had thus violated the terms and conditions of the contract of tenancy. Hence the plaintiff sent a notice to defendants No. 1 and 2 through her counsel on 8.1.2001 by registered post as well as under Certificate of Posting terminating their tenancy. Defendants No. 1 and 2 received the notice but they did not pay the amount of arrears of rent and thus committed default in its payment and the amount of Rs. 5,623.68 paise was due from them. The plaintiff, therefore, filed the suit for obtaining possession of the shop and for recovery of arrears of rent and mesne profits.

3. All the defendants contested the suit. They tiled a joint written statement in which they pleaded that all the defendants are real brothers and members of the joint Sikh family and at present they are running a business in the name of "Pinki Sari Centre" in the disputed shop. Prior to it they had originally started business in the shop in the name of "Guru Nanak Emporium", and thereafter a

business of 'Fast Food' in the name of "Bara Sahab" was being run, but all these businesses were being run by the joint family of the defendants and no body was sub-tenant. The shop was never sublet to defendant No. 3. Rent of the shop was being paid to the plaintiff at the rate of Rs. 911.95 paise per month but the plaintiff did not regularly issue rent receipts. In the month of September, 2000, Mohd. Naushad, husband of the plaintiff demanded rent at rate of Rs. 1,500 per month. Even then the defendants continued to pay the rent to the plaintiff and her husband by hand as usual. Then the plaintiff sent a notice to them on 8.1.2001. Then the defendants approached the plaintiff to settle the dispute. At that time the plaintiff and her husband told them that they had some family dispute which shall be settled soon and so the defendants should not be worried, hence the defendants did not take any legal action. When the defendant No. 3 went to the plaintiff in May, 2001 to pay rent for the month of April, 2001 and demanded receipt, the plaintiff told him that she would issue rent receipts only after settlement of family dispute. The defendants again insisted on 20.5.2001 for issuing rent receipts. Then the plaintiff and her husband asked them to vacate the shop. Then the defendants sent a reply to the plaintiff's notice by registered post and also sent the rent for the month of April, 2001 by money order. This reply was received by the plaintiff but she refused to take money order, and thereafter the defendants received summons of the suit. Then the defendants with a view to avoid any complications deposited the entire rent from September, 2000 alongwith necessary costs of the suit and they have been regularly depositing rent. The shop was never sub-let and so the suit is not maintainable.

4. Learned J.S.C.C., held that the shop had been let out to defendants No. 1 and 2 only on rent of Rs. 911.95 paise per month. He further held that the defendants No. 1 and 2 had sub-let the shop to the defendant No. 3. He also held that no amount of rent was due from the defendants as the entire amount had either been paid to the plaintiff or had been deposited in the Court and so the plaintiff was not entitled to recover any amount as rent from the defendants. However, in view of the finding that the defendants No. 1 and 2 had sublet the shop to the defendant No. 3, he was of the view that the defendants were liable to be evicted from the disputed shop on the ground of subletting. He, therefore, decreed the suit for eviction of the defendants from the disputed shop vide judgment and decree dated 2.8.2003 and directed them to vacate the shop within a period of two months from the date of the Judgment. Then the defendants filed J.S.C.C. Revision No. 27/2003 in the Court of District Judge, Raebareilly. The revision was heard and decided by Sri Subodh Kumar, J. District Judge, Raebareilly vide judgment and decree dated 19.12.2003, confirming the finding of the Judge Small Causes Court on the point of sub-letting and dismissing the revision. Aggrieved against the above said judgments and decrees the defendant-petitioners have filed this writ petition.

5. I have heard the learned Counsel for the parties and have perused the record.

6. The only point that arises for determination in this writ petition is whether the defendants No. 1 and 2 have sub-let the shop to the defendant No. 3 or not?

7. Learned Counsel for the petitioners submitted that in order to prove sub-tenancy it must be established by cogent evidence that there existed relationship of lessor and lessee between the original tenant and the sub-tenant and possession of the premises in question had been parted by the tenant in favour of subtenant exclusively and there was payment of rent by sub-tenant to the

original tenant. He submitted that in the present case there was no evidence to prove these essentials of sub-tenancy and so the learned trial court as well as revisional court erred in law by holding sub-tenancy. He further submitted that the finding of both the courts below are perverse on the point of sub-tenancy and so they should be set aside by this Court.

8. In reply the learned Counsel for the opposite party No. 3, submitted that the general law of sub-tenancy which has been referred to by the learned Counsel for the petitioners during the course of arguments is not applicable to the facts of the present case. He further submitted that in U.P. there are special provisions regarding sub-tenancy as contained in the U.P. Act No. 13 of 1972, and so the case has been decided under those provisions. He further submitted that there was sufficient evidence to prove the allegation of sub-tenancy and courts below have not committed any error by decreeing the suit for eviction on the ground of sub-tenancy.

9. Let me now first take up the law as applicable in U.P. in view of provisions of U.P. Act No. 13 of 1972.

10. Section 20(e) of the Act provides for eviction of the tenant on the ground of sub-tenancy which runs as under:

20 (e). That the tenant has sub-let, in contravention of the provisions of Section 25, or as the case may be, of the old Act the whole or any part of the building.

11. Section 25 of the Act which prohibits sub-letting runs as under:

25. Prohibition of sub-letting.

--(1) No tenant shall sub-let the whole of the building under his tenancy.

(2) The tenant may with the permission in writing of the landlord and of the District Magistrate, sub-let a part of the building.

Explanation.--For the purpose of this section,-

(i) where the tenant ceases, within the meaning of Clause (b) of Sub-section (1) or Sub-section (2) of Section 12, to occupy the building or any part thereof he shall be deemed to have sub-let that building or part;

(ii) lodging a person in a hotel or a lodging house shall not amount to sub-letting.

12. Sections 12(1) and (2) of the above Act, which has been referred to in the aforesaid Section 25(2)(1) runs as under:

12. Deemed vacancy of building in certain cases.--(1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if-

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere. (2) In the case of a nonresidential building, where a tenant carrying on business in the building admits a person who is not a member of his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building.

13. A composite reading of the aforesaid sections makes it clear that where the original tenant has allowed the premises to be occupied by a person who is not a member of his family shall be deemed to have vacated premises and it shall be considered that he has sub-let the premises to that person. Similarly in case of any non-residential building if the tenant carrying on business in that building admits a person, who is not a member of his family as a partner in the business, he shall be deemed to have ceased to occupy the premises and it shall also amount to sub-tenancy under Section 25 of the Act.

14. The word "Family" has been defined in Section 3(g) of the Act, which runs as under:

3. "Family" in relation to a landlord or tenant of a building, means, his or her-

(i) spouse,

(ii) male lineal descendants,

(iii) such parents, grand-parents and any unmarried or widowed or divorced or Judicially separated daughter or daughter of a male lineal descendant, as may have been normally residing with him or her, and includes, in relation to a landlord, any female having a legal right of residence in that building.

15. In the present case, the allegation of landlady opposite party No. 3, is that the petitioners No. 1 and 2 were her original tenants and they sub-let it to their brother petitioner No. 3 by putting him in exclusive possession of the shop and so their above act amounts to sub-tenancy. It is clear from perusal of definition of word "Family" under Section 3(g) that the brother of a tenant is not included in his family and so he shall be considered to be outsider. It is not the case of the landlady that her tenants petitioners No. 1 and 2 had admitted petitioner No. 3 as a partner in their business, so Sub-section (2) of Section 12 is not applicable in the present case; and according to the plaintiff landlady her case is covered by Section 12(1)(b) as "deemed vacancy" where original tenant had permitted the premises to be occupied by any person who is not a member of his family. Such occupation shall be deemed to be sub-tenancy without proof of payment of any consideration money or rent between the tenant and the sub-tenant in view of aforesaid deeming provision, provided other conditions of Section 12(1)(b) are satisfied.

16. Let me now consider the evidence on the point.

17. It is admitted by both the parties that a lease deed was executed between the landlady/opposite party No. 3 Mrs. Farhat Sultana and the tenants, petitioners No. 1 and 2 named Sardar Harvinder Singh and Sardar Harmander Singh at the time of creation of tenancy. A copy of that lease agreement has been filed as Annexure-4 to this writ petition.

18. It is clear from perusal of the above agreement that this agreement took place between the landlady/ opposite party No. 3 and petitioners No. 1 and 2. There is no dispute on this point that actually this agreement of tenancy took place amongst these persons only. The rent receipt Annexure-C.A. 1 is also in the name of petitioners No. 1 and 2 only.

19. the landlady opposite party No. 3, filed photo copies of two advertisements published in the news paper (Annexures-CA 2 and CA 3). These advertisements were issued by Sardar Devendra Singh, petitioner No. 3, the real brother of petitioners No. 1 and 2 and it has been stated in them that a shop of 'Veg and non Veg Fast Food' in the name of "Bara Sahab" had been opened in Rashid Market, Raebareilly near Ghantaghar. There is no dispute on this point that this shop of Fast Food was opened in that very shop of opposite party No. 3, which had been let out to petitioners No. 1 and 2. It has also been stated in this advertisement that 'Fry Fish, Chicken, Biryani Kavab, Roomali Roti, Chilli Chicken, Chilli Paneer, Chaumin, Burger, etc. are being provided in the shop. It is admitted that prior to establishment of this business, the business of cloth was being run in the shop in the name of "Gurunanak Emporium" by petitioners No. 1 and 2. The case of the landlady is that petitioners No. 1 and 2, who were her original tenants, had put their brother Sardar Devendra Singh in the said shop as proprietor of the business in the name of 'Bara Sahab Veg Non Veg Fast Food' and in this way Sardar Devendra Singh had started the new business in his own capacity and he had been put in the exclusive possession of the shop by petitioners No. 1 and 2 who had stopped their business of cloth in the shop and thus, the original tenants had withdrawn from the disputed shop and had put their brother petitioner No. 3 in the shop not on their own behalf but in his own capacity as proprietor of Hotel business 'Bara Sahab' and so it is a clear cut case of sub-tenancy taking into consideration the provisions of Sections 12(1)(b) and 25 of U.P. Act No. 13 of 1972.

20. Learned Counsel for the petitioners submitted that actually petitioners No. 1 and 2 had not withdrawn from the disputed shop but all the petitioners are members of joint Sikh family and they were jointly running the business of cloth in the disputed shop in the name of "Guru Nanak Emporium", and thereafter they started the business of "Fast Food" in the name of "Bara Sahab" and thereafter they stopped this business also, and restarted the business of cloth in the name of "Pinki Sari Centre" and as such there has been no sub-tenancy. They had examined Sardar Harmendar Singh petitioner No. 2 as D.W. 1 and one Avadhesh Kumar Ahooja as D.W. 2. On the other hand the plaintiff landlady examined her husband Mohd. Naushad as P.W. 1 and Ashok Kumar as P.W. 2 and Shatrughan Singh as P.W. 3.

21. Mohd. Naushad has stated as P.W. 1 that when the business of Fast Food in the name of "Bara Sahab" was opened in the disputed shop, it was started by petitioner No. 3 Sardar Devender Singh and since then Sardar Devender Singh has been continuously sitting in the disputed shop and

petitioners No. 1 and 2 had not been sitting in this shop. Ashok Kumar P.W. 2 has stated that since the opening of hotel business, petitioner No. 3 alone was sitting in the shop and now he is running business in the shop in the name of "Pinki Sari Centre". Shatrughan Singh P.W. 3 is the Advertisement Manager of the news paper "Lucknow Mail" and he has proved the advertisement in the name of "Bara Sahab" printed in the news paper "Lucknow Mail".

22. Sardar Harmender Singh petitioner No. 2 (D.W. 1), on the other hand, stated in his statement that all the petitioners are members of a joint Sikh family and all of them were doing the business jointly and petitioners No. 1 and 2 had not withdrawn themselves from the disputed shop and all the petitioners were running business in the name of "Gurunanak Emporium". Thereafter the business of "Fast Food" in the name of "Bara Sahab" was opened and thereafter the business of garments in the name of "Pinki Sari Centre" was being run. The same statement has been given by Ashok Kumar D.W. 2 who is another shop owner in the Rashid Market, Raebareilly and he stated that all the three brothers are continuously running business in the shop jointly; and all of them are sitting in the shop.

23. It was submitted by the learned Counsel for the petitioners that all the petitioners are members of a joint Sikh family and they were Jointly running their business in the shop, and there is nothing on record to show that the petitioners No. 1 and 2 had withdrawn from the shop, and had put petitioner No. 3, in its exclusive possession and so the finding recorded by the courts below that the defendants No. 1 and 2 had sub-let the shop to the defendant No. 3, is erroneous.

24. In reply, learned Counsel for the opposite party No. 3, submitted that the shop was actually taken on rent by petitioners. No. 1 and 2 as is clear from the lease agreement. He further submitted that there is no evidence to this effect that all the petitioners were running any business as members of a joint Sikh family. He further submitted that if it had been the case, there must have been the registration etc. of the firm showing that the business which was being run in the disputed shop was a joint family business of the petitioners. He further submitted that on the other hand execution of the lease deed in favour of the defendants No. 1 and 2 only goes to show that the shop was taken by them in their personal capacity, and nowhere it has been stated in the said deed that the shop was being taken by them as members of the joint Sikh family.

25. Learned Counsel for the opposite party No. 3 further pointed out that the advertisement, which was published in the news paper "Lucknow Mail", goes to show that this advertisement was given by the petitioner No. 3, as sole proprietor of the firm 'Bara Sahab' and he had nowhere stated in this advertisement that this business was of the joint family of all the petitioners. The names of petitioners No. 1 and 2, who had taken the shop on rent, do not find place in the advertisement. He further submitted that all these facts clearly establish that defendants No. 1 and 2 (petitioners No. 1 and 2 in the petition) withdrew their possession after closing their business in the name of 'Gurunanak Emporium' in the said shop and their brother petitioner No. 3 who is not a member of their family under the provisions of U.P. Act No. 13 of 1972, obtained exclusive possession of the shop in his personal capacity, and petitioner No. 3 started the business of 'Fast Food' in the shop in the name of "Bara Sahab" and this act of the petitioners clearly amounts to grant of subtenancy of petitioners No. 1 and 2 in favour of petitioner No. 3, in view of Section 12(1)(b) and Section 25 of

U.P. Act No. 13 of 1972.

26. Learned Counsel for the petitioners submitted that the petitioner No. 3 also used to pay rent some times to the landlady and in this connection he referred to the statement of P.W. 1 Mohd. Naushad who has admitted signature of Devender Singh, petitioner No. 3, on the counterfoil of some receipts (Annexure-9 to the writ petition). It may, however, be noted that all these receipts are in the name of petitioners No. 1 and 2 only. In all these receipts the names of petitioners No. 1 and 2 only have been written in the column of tenant and the name of petitioner No. 3 does not find place in that column and so merely on account of this fact that the petitioners No. 1 and 2 sent the amount of rent to the landlady through petitioner No. 3 and that the signatures of petitioner No. 3 were obtained at the time of issuing the rent receipts will not create relationship of landlady and tenant in between respondent No. 3 and petitioner No. 3.

27. Learned Counsel for the petitioners cited before me a ruling of Hon'ble Supreme Court in Jagdish Prasad v. Smt. Angoori Devi . In this case the Courts had recorded finding of sub-tenancy on the basis of a photograph in which the so called sub-tenant was shown as sitting in the disputed shop and there was no other evidence to prove allegation of sub-tenancy. It was held by the Hon'ble Apex Court that subtenancy could not be proved on the basis of a photograph only because any one could visit the shop for any other purpose, i.e., for purchase or sale of some articles or realising prices of goods sold etc. and so on the basis of presence of a person in the shop as shown in the photograph, it could not be concluded that the shop had been sub-let to that person. This ruling has got no application to the present case where so called sublettee, petitioner No. 3, had published an advertisement of the business of 'Fast Food' in the name and style of "Bara Sahab" showing himself as the sole proprietor of the business which leads to the conclusion that the shop had been sub-let to him for running the business in his own exclusive proprietorship in place of the old business of cloth in the shop in the name of 'Gurunanak Emporium' run by original tenants (petitioners No. 1 and 2).

28. Learned Counsel for the petitioners also cited before me another ruling of Hon'ble Supreme Court in Dipak Banerjee v. Lilabati Chakraborty . This was a case of West Bengal and the tenant had permitted a person to keep a sewing machine in the disputed premises, and that person who had kept that sewing machine in the premises, used to stitch clothes of the tenant also. It was held that it did not amount to sub-tenancy because no exclusive possession was given to him but only permission to keep the machine was given to the sewing machine owner, and there was no payment of rent by the machine owner to the original tenant. Thus facts of the above case are quite different. Moreover the law of sub-tenancy as application in U.P. under the provisions of U.P. Act No. 13 of 1972 has not been considered in this case.

29. Learned Counsel for the petitioners also cited before me another ruling of Hon'ble Supreme Court in Gopal Saran v. Satya Narayan . It was a case of Rajasthan and in this case the tenant had put the advertisement boards (hoardings) of another person on the roof of the shop for the purpose of advertisement. It was held that the above act of the tenant did not amount to sub-letting as he was still in possession of the shop. This ruling has also got no application to the present case.

30. Learned Counsel for the petitioners also cited before me another ruling of Hon'ble Supreme Court in *Delhi Stationers and Printers v. Rajendra Kumar*. It was also a case of Rajasthan and in this case the original tenant had permitted his brother-in-law who was living as tenant in the adjacent room to use his kitchen and latrine. It was held that this permission would not amount to sub-letting or parting with possession of part of the premises. This ruling also is not applicable to the facts of the present case.

31. Learned Counsel for the petitioners also cited before me another ruling of Hon'ble Supreme Court in *Resham Singh v. Raghbir Singh and Anr.*. This was a case of Punjab and in this case the original tenant, who was a criminal and had been absconding, had kept his real brother to look after his business in the shop. It was held that taking into consideration the facts and circumstances of the case, the above act of the original tenant did not amount to sub-letting. The facts of this case are also different from the facts of the present case, and moreover, it was a case of Punjab and the law applicable in U.P. has not been considered in this ruling.

32. Learned Counsel for the petitioners cited before me another ruling of Hon'ble Supreme Court in *Shama Prashant Raje v. Ganpatrao and Ors.*. It was a case of C.P. and Berar, and in this case it was held that two ingredients, i.e., parting with possession and payment of some consideration therefor must be established to prove sub-letting. The law contained in U.P. Act No. 13 of 1972 as applicable in the present case has not been considered in the above ruling, and so it has got no application to the facts of the present case.

33. Learned Counsel for the petitioners also cited before me a ruling of this Court in *Badri Nath Garg v. Sheo Prasad Tandon* 1990 (1) ARC 93. In this case a joint family business was being run in the disputed shop and so it was held that sub-tenancy could not be inferred merely on the basis of the fact that the real brother of the original tenant was looking after that business. The facts of the above ruling are also different from the facts of the present case because the above case was of a Joint Hindu Family business in the shop but in the present case there is nothing on record to show that the petitioners were running a Joint family business in the present disputed shop. On the other hand the documents go to show that the shop had been taken on rent by the petitioners No. 1 and 2 only from the landlady in their personal capacity and then after running the business of cloth in this shop in the name of "Gurunanak Emporium" they had closed that business and had given its possession to their brother (petitioner No. 3), to run the business of 'Fast Food' in the name of "Bara Sahab" in his exclusive proprietorship which amounts to sub-letting.

34. Learned Counsel for the petitioners also cited before me the rulings of this Court in *Fazalur Rehman v. XIIth Addl. District Judge, Kanpur Nagar and Ors.*; *Sangamlal Gopal Das and Ors. v. Special Judge (Economic Offences), Allahabad and Ors.* 1999 (2) ARC 64; *Manohar Lal and Ors. v. Rent Control and Eviction Officer and Anr.*; *Rajendra Nath Tripathi and Ors. v. Jagdish Dutt Gupta and Ors.*; *Madan Mohan v. City Magistrate/Rent Control and Eviction Officer and Ors.* 1998 and *Mohd. Ibrahim Ansari v. District Judge, Jalaun and Anr.* 1995 (2) ARC 526 : 1995 (3) AWC 1647.

35. I have very carefully gone through all these rulings. The facts of these rulings are different from those of the present case and so they are not applicable to the present case.

36. Learned Counsel for the respondent No. 3 has cited before me a ruling of Hon'ble Apex Court in *Harish Tandon v. Addl. District Magistrate, Allahabad* and Ors. 1995 (1) ARC 220 : 1995 (1) AWC 106 (SC). This was a case where original tenant had admitted his son-in-law in the premises as one of the partners in the business run in those premises and so it was held to be a case of subtenancy under the provisions of Section 12 (2) and Section 25 of U.P. Act No. 13 of 1972. Section 12(1)(b) of the Act was also considered in this ruling, and it was held that where landlord or tenant allowed any person, who was not a member of the family within the meaning of the Act to occupy the premises with the object that such persons shall occupy such premises in his own rights, then in that event, Clause (b) of Sub-section (1) of Section 12 shall be attracted.

37. It is to be seen that in the present case the petitioners No. 1 and 2 permitted the petitioner No. 3 to occupy the disputed shop in his own rights to run the business of 'Fast Food' in the name and style of "Bara Sahab" as its proprietor and this act of the petitioners No. 1 and 2 amounts to creation of sub-tenancy in favour of petitioner No. 3. There is no error in the findings of the lower courts on this point.

38. Learned Counsel for the petitioners also contended before me that even concurrent findings of the lower court can be set aside if they are perverse and are not based on the evidence and in support of this contention he relied upon the following four rulings of the Hon'ble Apex Court:

1. *Othayath Lakshmy Ama and Anr. v. Nellachinumgil* ;
2. *Parole Products (P.) Ltd. v. J. P. & Co.* ;
3. *Narasimharaju v. Gurumurthy Rqju* AIR 1963 SC 108 (Paras 20 and 21);
4. *Ganga Bishan and Ors. v. Jai Narain* .

39. I have carefully gone through all these rulings. I am in total agreement with the law laid down in those rulings. But in the present case I do not find any perversity in the findings recorded by the courts below. The findings recorded regarding subtenancy are based on evidence and so the above rulings do not render any help to the petitioners.

40. The position in this way is that the findings of the courts below that petitioners No. 1 and 2 had sublet the disputed shop to the petitioner No. 3 are based on evidence and so these findings based on evidence are confirmed. There is no force in this writ petition and it is liable to be dismissed with costs.

41. Learned Counsel for the petitioners has moved an application (Civil Misc. Application No. 165 (W) of 2004) for taking action against the opposite party No. 3, for filing false affidavit.

42. I have heard the learned Counsel for both the parties on this application also. It appears that the opposite party No. 3, decree holder moved two execution applications before the trial court, the first after decision of the J.S.C.C, in S.C.C. Suit No. 6/01, and the second after decision of S.C.C. Revision

No. 27/03. Different dates were fixed in both these executions. The petitioners moved an application before this Court in which they prayed for early hearing of their stay application with this allegation that the date 9.1.2004 was fixed in the execution case and so if no stay order is passed in their favour before that date, they shall be ousted from the premises in dispute. The opposite party No. 3, filed objection in which she asserted that the allegations were false because the date 9.1.2004 had not been fixed in the execution case and the date 17.1.2004 was the next date fixed in the execution case. The petitioner Sardar Harvinder Singh filed an affidavit asserting that the decree holder had filed a false affidavit and actually the date 9.1.2004 had been fixed in one of the execution cases. At the time of hearing of this application, a question was asked from respondent No. 3 as to why two execution applications were filed by her. There was no satisfactory reply on the point. It is apparent that two different dates, i.e., 9.1.2004 and 17.1.2004 were fixed in the two execution cases and so this allegation made in the counter-affidavit of opposite party No. 3 that the date 9.1.2004 was not fixed in the execution case was apparently wrong. Any how instead of passing any order in this matter here in this Court, I order that since both these affidavits were filed in the Court of Judge, Small Causes (Civil Judge, Sr. Division), Rae Bareilly, the Presiding Officer of that Court shall hold an inquiry under Section 340(1), Cr. P.C. in this matter and then he shall proceed further in accordance with the result of that inquiry without being influenced by any observation made by this Court.

43. In the end the writ petition is dismissed with costs. The judgment and decree dated 19.12.2003 passed by the IInd Addl. District Judge, Rae Bareilly in S.C.C. Revision No. 27/2003, Sardar Harvinder Singh and Ors. v. Farhat Sultana, and the judgment and decree dated 2.8.2003, passed by the Judge Small Causes Court (Civil Judge, Sr. Division, Rae Bareilly in S.C.C. Suit No. 6/2001, Farhat Sultana v. Harvinder Singh and Ors. are hereby confirmed.

44. Judgment is pronounced by me under Chapter VII, Rule (1) Sub-rule (3) of High Court Rules, Allahabad.