



2026:AHC-LKO:21215

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

MATTERS UNDER ARTICLE 227 No. - 886 of 2026

Suresh Sharma

.....Petitioner(s)

Versus

Smt. Sindhuja Mishra

.....Respondent(s)

Counsel for Petitioner(s)	: Naresh Kumar Pathak, Ajay Pratap Singh, Sachin Chaturvedi, Shailesh Tripathi
Counsel for Respondent(s)	: Sharad Nandan Ojha

Court No. - 5

HON'BLE ALOK MATHUR, J.

1. Heard Shri Naimish Mishra, Advocate holding brief of Shri Naresh Kumar Pathak on behalf of the petitioner as well as Shri Sharad Nandan Ojha has appeared on behalf of opposite party.
2. It has been submitted on behalf of the petitioner that the petitioner had taken on rent a shop situated at APS Market, 11 Senani Vihar, near Sainik Dhaba, Raebareli Road, District Lucknow from the opposite party along with 9 other persons.
3. It has been stated that lease and license agreement was entered into between the petitioner on 10.01.2007, where it was agreed for rent of the said property, which was Rs. 800/- per month.
4. It is a case of the petitioner that the opposite party has sought to dispossess the petitioner, due to which he had filed a suit for permanent injunction against the opposite party, in the court of Additional Civil Judge (J.D.), Lucknow, which was registered as Regular Suit No. 1476 of 2013 along with the said suit an application under Order XXXIX Rule 1 and 2 was also preferred by the petitioner seeking interim order to restrain the respondent from interfering in lawful possession of the petitioner, which was duly considered and rejected by the trial court on 16.05.2015. Before the trial court the petitioner had produced the lease and license agreement and also submitted that he had paid Rs. 10,000/- towards

advance security. He had further filed the documents of the Electricity Bills indicating that he was in possession of the disputed property. The trial court was of the view that the petitioner could not produce prima facie evidence and merely the commission report and the electricity bill cannot be determinated of the possession of the petitioner and consequently rejected the application under Order XXXIX Rule 1 and 2 C.P.C. by means of the order dated 16.05.2015.

5. The petitioner being aggrieved by the order dated 16.05.2015, had preferred a revision in the court of Special Judge, E.C. Act III, Lucknow. The opposite party has also filed an objection stating that the *Manav Vikash Evam Shiukshan Sansthan* was a necessary party in the suit proceedings, in as much as, the agreement dated 10.01.2007 was entered into between the petitioner and Manv Vikash Evam Sikshan Sanstha (hereinafter referred to as the society). The opposite party being the society, therefore the lease/ licence agreement was duly signed by Smt. Sindhuja Mishra, who was the Secretary of the Society, at the relevant point of time. He has stated that in the suit proceedings the petitioner had only made Smt. Sindhuja Mishra as a defendant and the society, which was necessary and a proper party, was not impleaded as defendant and accordingly the suit proceedings are required to be rejected. The District Judge also found that the society had not been made a party and even according to the lease deed the period of lease was 11 months, which had expired long back and consequently did not find infirmity in the order of the trial court dated 16.05.2015 and accordingly, rejected his revision affirming the order of the trial court.

6. Counsel for the petitioner while assailing both the impugned orders has submitted that undoubtedly the agreement entered into between the petitioner and the opposite party for tenancy of the disputed property on 10.01.2007 and without determining the said agreement, the petitioner was sought to be illegally evicted from the tenant premises and consequently he has further demonstrated that he was in possession by filing various documents including the electricity bill and even the commission report was submitted in his favour and consequently both the courts below have erred in not granting protection tot he petitioner as prayed ;by him in his application under Order XXXIX Rule 1 and 2

C.P.C. and consequently the same is required interference of this Court in exercise of power under Article 227 of the Constitution of India.

7. The petition has been vehemently opposed the opposite party stating that the plaint suffered from mis-joinder of the parties. He has further stated that agreement dated 10.01.2007 itself indicates that agreement of tenancy was entered into between the petitioner and the society while the petitioner has deliberately not made the society as a party and without making the society as a party the plaint has been rejected. Accordingly he submits that there is no infirmity in the impugned order.

8. I have considered the rival submissions and perused the record. Considering the arguments and rival contentions, it is noticed that the claim of the petitioner is based on the agreement dated 10.01.2007, as per the said agreement a tenancy was treated in favour of the petitioner by the society and the said agreement was signed by Smt. Sindhuja Mishra in her capacity as Secretary of the said Society. Perusal of the plaint further indicates that Smt. Sindhuja Mishra was made a defendant and the Society was not made a defendant is the serious infirmity in the plaint. Despite objections have been taken by the opposite party, the petitioner had not chosen to amend the plaint and the suit proceeding was still continuing against Smt. Sindhuja Mishra. The allegation according to the petitioner even in the plaint there is no allegation that the defendant is responsible for seeking to evict the plaintiff and the cause of action, if any, by the petitioner is against the society.

9. It is in the aforesaid circumstances, both the courts below were justified in not allowing the application under Order XXXIX Rule 1 and 2 C.P.C. undoubtedly for the suit proceeding to proceed an opportunity has to be given to the petitioner to amend the suit and make necessary parties.

10. Considering the fact that the initial lease agreement was only for the period of 11 months and the petitioner has been in possession of the disputed property for last more than 13 years during pendency of the suit, accordingly, for the reasons aforesaid, I do not find any infirmity in the impugned orders. The trial Court is directed to expedite the trial proceedings and both the parties have undertaken to cooperate in the said

proceedings.

11. Subject to the aforesaid directions, the petition stands ***dismissed.***

(Alok Mathur,J.)

March 24, 2026
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