

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE COURT
NO. 8 LUCKNOW**

Regular Civil Appeal No. 176 of 2013

Rajeev ChawlaAppellant

Versus

Smt. Siddheshwari Gupta & others Respondents

F.F. : 24.09.2015

**APPLICATION UNDER ORDER XLI RULE 27, RULE 33
READWITH ORDER XI RULE 14 CODE OF CIVIL
PROCEDURE FOR SUMMONING THE ORIGINAL JUDICIAL
RECORD OF S.C.C. SUIT NO. 45 OF 2002 (SMT.
SIDDHESHWARI GUPTA VS. RAJEEV CHAWLA) (DECIDED
ON 29.01.2010) FROM THE COURT OF LEARNED JUDGE
SMALL CAUSES LUCKNOW AND RECORD OF REGULAR
SUIT NO. 245 OF 1991 (CANTONMENT BOARD VS. SMT.
SIDDHESHWARI GUPTA & ANOTHER) FROM THE COURT
OF LEARNED SECOND ADDITIONAL JUDGE SMALL
CAUSES, LUCKNOW FOR ADJUDICATION OF THE APPEAL**

The appellant most humbly and respectfully submits as under :-

1. That the appellant has filed above noted Regular Civil Appeal Under Section 96 Civil Procedure Code against the judge ment and decree dated 08.05.2013 passed by learned Trial Court in Regular Suit No. 322 of 2010 (Smt. Siddheshwari Devi Gupta & others Vs. Rajeev Chawla).
2. That the respondents have filed Regular Suit no. 322 of 2010 for recovery possession on 22.03.2010 in the court of learned Civil Judge (S.D.) Lucknow stating therein that late Mahaveer Prasad Gupta was the landlord owner of the shop in the tenancy of the appellant on a monthly rent of Rs. 660/-. The respondents have further alleged in the suit for possession that during the pendency of the SCC Suit No. 45

of 2002 Sri Mahaveer Prasad Gupta died leaving behind him Smt. Siddheshwari Gupta as wife and she got herself substituted.

3. That the suit for recovery of possession has been filed by the respondents together with Smt. Siddheshwari Gupta claiming that the cause of action arose on 29.01.2010 when the SCC Suit No. 45 of 2002 was dismissed which is continuing as the appellant has not vacated the shop in suit. Thus, the controversy regarding the shop in question had already been adjudicated finally between appellant and respondent no. 1 as the respondent no. 1 has chooses not to file any revision against the judgment and decree passed by learned Judge Small Causes Lucknow in SCC Suit.
4. That the respondents have relied upon the judgment passed by learned Judge Small Causes in SCC Suit no. 45 of 2002 and filed the certified copy of said judgment in the judicial record of learned Trial Court as Annexure 4 which clearly shows that the respondent no. 2 to 5 are not the party in the said suit.
5. That the respondents have not adduced any evidence before the learned Trail Court though the learned Trial Court has fixed the case for evidence of the plaintiffs as the learned Trail Court on 20.05.2011 framed as many eight issues for adjudication of the controversy between the parties.
6. That the plaintiffs/respondents have not adduced any evidence in support of their pleading and the relevant documents pertaining to the proceeding of SCC Suit No. 45 of 2002 have not been submitted and the defendant has already adduced his oral evidence by appearing in the witness box but no proper opportunity have been given.

7. That the original judicial record of SCC Suit no. 45 of 2002 (Smt. Siddheshwari Gupta Vs. Rajeev Chawla) decided on 29.01.2010 by the learned Judge Small Causes Lucknow deserves to be summoned before this Hon'ble Court together with the record of R.S. No. 245 of 1991 (Cantonment Board Vs. Smt. Siddheshwari Gupta & others) which is pending in the court of learned Second Additional Civil Judge Lucknow in which the injunction order dated 23.08.1991 has been passed which is still in force and all these documents are relevant to adjudicate the controversy between the parties in the above noted First Appeal. Since the First Appeal is the continuation of the Trail as such for proper adjudication of the controversy between the parties the aforesaid two judicial records are necessary to be summoned before this Hon'ble Court.
8. That since the respondent have not adduced any evidence and the documents enclosed alongwith plaint cannot be treated as evidence as such there is no evidence available in the record of learned Trial Court on behalf of plaintiffs/ respondents.

PRAYER

It is therefore, most respectfully prayed that the Hon'ble Court be pleased to summon the judicial record of SCC Suit No. 45 of 2002 (decided on 29.01.2010) from the court of learned Judge Small Causes Lucknow and record of Regular Suit No. 245 of 1991 (Cantonment Board Vs. Smt. Siddheshwari Gupta & Another) from the court of learned Second Additional Judge Small Causes, Lucknow for adjudication of the appeal.

The appellant shall ever pray for this act of kindness.

Lucknow

Dated : 24.09.2015

(x)

Advocate
Counsel for the appellant

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AFFIDAVIT IN SUPPORT OF APPLICATION

I, Rajeev Chawla, aged about 40 years, son of Sri Chandra Mohan Chawla, resident of House No. 82, Saudagar Mohal, Sadar Bazar, P.S. Cantt, Lucknow, do hereby solemnly affirm and state on oath as under :-

1. That the deponent is the appellant himself as such he is fully conversant with the facts deposed.
2. That the contents of para 1 to 8 of the application are true to my persona knowledge.

Lucknow

Dated : 24.09.2015

Deponent

VERIFICATION

I, the deponent do hereby verify the contents of para 1 to 2 of this affidavit are true to my personal knowledge.

Signed and verified on this 24th day of September, 2015 at
Lucknow

Lucknow

Dated : 24.09.2015

Deponent

I, identify the deponent who has signed before me.

Advocate