

prior to the passing of the impugned order of cancellation of allotment, the operation of the impugned order dated 15.6.2001 shall remain stayed till further orders of the court. However, it will be open to the concerned authority to initiate appropriate proceedings and pass orders after affording due opportunity to the petitioner in accordance with law. In the meantime, the residential house of the petitioner shall not be demolished."

7. While granting the interim order, it was noticed that no opportunity of hearing was afforded to the petitioner, while passing the impugned order of cancellation of allotment and the operation of the order was stayed till further orders and it was left open to the concerned authority to initiate appropriate proceeding and pass order after affording opportunity of hearing to the petitioner in accordance with law. It was also ordered that in the meantime, the residential house of the petitioner shall not be demolished.

8. In pursuance to the order of this Court, the respondents did not initiate proceeding of passing fresh order, after affording opportunity of hearing to the petitioner.

9. In view of the admission of non-grant of opportunity of hearing to the petitioner, the impugned order suffers from apparent illegality and is liable to be set aside. The interim order granted on 29.10.2001 also gave liberty to the respondents to pass a fresh order, after affording an opportunity of hearing to the petitioner, but the same has not been done.

10. In view of the admitted position in the matter that no notice nor opportunity of hearing was granted to the petitioner, the

impugned order suffers from apparent illegality and is violative of principles of natural justice.

11. Accordingly, the impugned order dated 15.6.2001 (Annexure-1 to the writ petition) is hereby set aside by giving liberty to the respondents to pass fresh order, after giving opportunity of hearing to the petitioner in accordance with law.

12. With the aforesaid observation and direction, the writ petition succeeds and is **allowed**.

(2025) 4 ILRA 709
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 28.04.2025

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Matr Under Article 227 No. 1281 of 2024

Hari Shankar Kushwaha ...Petitioner
Versus
A.D.J. E.C. Act. Lko. & Anr. ...Respondents

Counsel for the Petitioner:
 Adnan Ahmad

Counsel for the Respondents:
 Anurag Shukla

**Civil Law-Constitution of India, 1950-
 Article 227 - The Code of Civil Procedure,
 1908-Order 21 - Rule 97, 98 & 101-**
 Application under Order 21 Rule 97 CPC is available only to a stranger, who claims to be in possession of the properties in his rights which are independent and is a third person claiming right, title or interest in the property to seek restoration of the decretal property in contradiction to the powers under Order 21 Rule 35 which prescribes for removal of any person who is bound by the decree--- In the present case that the respondent tenant, having failed to establish any of his defenses taken in reply to

the SCC Suit, has tried one after the other tricks to avoid execution--- Proceedings under Order 21 Rule 97, 98 and 101 CPC not maintainable and were nothing but an abuse of the process of law--- Executing Court has erred in directing for framing of issues---Impugned order quashed.

Petition allowed. (Para 7 & 8) (E-15)

List of Cases referred:-

1. Brahmadeo Choudhary Vs Rishikesh Prasad Jaiswal & anr.(1997) 3 SCC 694
2. Shreenath & anr.Vs Rajesh & ors.(1998) 4 SCC 543
3. Silverline Forum Pvt. Ltd. Vs Rajiv Trust & anr.(1998) 3 SCC 723
4. NSS Narayan Sarma & ors.Vs Goldstone Exports (P) Ltd. & ors.(2002) 1 SCC 662
5. Samir Singh & anr.Vs Abdul Rab (2015) 1 SCC 379
6. Periyammal (dead) through LRs & ors.Vs V. Rajamani & anr.etc. (2025) Legal Eagle SC 274

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. The present petition has been filed by the petitioner challenging an order dated 20.02.2024 passed by the Additional District Judge, E.C. Act Court no.4 Lucknow in Misc. Case No.257 of 2023 (Jai Prakash Singh Vs. Hari Shankar Kushwaha) whereby directions were issued for framing the issues under Order 21 Rule 101 CPC. The petitioner is also sought the quashing of entire proceedings of Misc. Case No.257 of 2023 (Jai Prakash Singh Vs. Hari Shankar Kushwaha) under Order 21 Rule 97, 98 and 101 CPC pending before the Additional District Judge, EC Act, Court no.4. A further prayer has been sought seeking direction for concluding the

Execution Case No.23 of 2021 (Hari Shankar Kushwaha vs. Jai Prakash Singh).

2. The facts, in brief, are that the landlord, the petitioner herein, filed a SCC Suit for arrears of rent, eviction and damages against the tenant Jai Prakash Singh bearing SCC Suit No.26 of 2010. On 01.02.2011, Sri Jai Prakash Singh, the tenant, filed a written statement in which a ground was taken that he had lend a sum of Rs.50,000/- to the landlord and an agreement was also executed in between the parties being a notarized agreement. On 29.10.2013, the SCC Court dismissed the suit filed by the landlord against which a SCC Revision No.1 of 2014 was preferred and during the pendency of the revision, the court directed the verification of the signatures on the alleged agreement through an expert, in which it was revealed that the signatures on the alleged agreement were forged, as such, the SCC Revision No.1 of 2014 was allowed on 07.11.2016. The judgment of the SCC Court dated 29.10.2013 was set aside and the matter was remanded for deciding the suit expeditiously. Ultimately on 08.02.2021, the SCC Suit was decreed and a decree for eviction was passed, against which a SCC Revision No.5 of 2021 was filed and is pending before the Hon'ble High Court. It has been clarified by the High Court vide its order dated 02.09.2021 that there is no interim order pending and directions were also issued to the Executing Court to proceed for execution, which is said to be pending.

3. During the pendency of the execution, objections were initially filed under Section 47 of CPC by the tenant, the said are still said to be pending. In the said objection, prayer was to quash the judgment and decree dated 08.02.2021

passed in SCC Suit No.26 of 2010. The tenant thereafter filed an application under Order 21 Rule 97, 98 and 101 of CPC. In the said application, which is on record as Annexure no.10, the entire history of the case was pleaded and a prayer was made for setting aside the judgment and decree dated 08.02.2021 passed in SCC Suit No.26 of 2010. The petitioner filed objection and sought dismissal of the application which was registered as Misc. Case No.257 of 2023, however, no orders were passed on the said application and straightway an order came to be passed for framing of the issues under Order 21 Rule 101 CPC.

4. In the backdrop of the said facts, the contention of the counsel for the petitioner is that once the petitioner was a judgment debtor and had contested the entire suit, the application under Order 21 Rule 97 CPC at his instance was not maintainable and thus, the entire proceedings deserves to be quashed.

5. The counsel for the respondents, on the other hand, strenuously argues on the strength of the Order 21 Rule 97 CPC that the application is maintainable at the instance of any party. Reliance is placed upon the judgment of the Hon'ble Supreme Court in the cases of **Brahmadeo Choudhary vs. Rishikesh Prasad Jaiswal and another (1997) 3 SCC 694**; **Smt. Ved Kumari through her LRs Dr. Vijay Agarwal vs. Municipal Corporation of Delhi through its Commissioner (2023) Live Law (SC) 712**; **Shreenath and another vs. Rajesh and others (1998) 4 SCC 543**; **Sameer Singh and another vs. Abdul Rab and others (2015) 1 SCC 379**; **Jini Dhanrajgir and another vs. Shibu Mathew and another (2023) SCC Online SC 643**. The said judgments are

being pressed to argue that it is not necessary that a person should be stranger to the suit for filing and continuing of an application under Order 21 Rule 97 CPC.

6. The counsel for the landlord, on the other hand, places strong reliance on the judgment of the Supreme Court in the case of **Periyammal (dead) through LRs and others vs. V. Rajamani and another etc. (2025) Legal Eagle SC 274**.

7. Considering the argument raised at the bar and the judgment relied upon, the only question to be considered is whether the application under Order 21 Rule 97 CPC is maintainable at the instance of a person who has been held to be a tenant and who contested the proceedings was a judgment debtor. The said issue was extensively considered in the case of **Periyammal (dead) (supra)**. The Supreme Court recorded its analysis in paragraph (e) wherein the Supreme Court considered the scope of Section 47, Order 21 Rule 97, 98, 99, 100, 102 and 103 CPC. While interpreting the nature of the application under Order 21 Rule 97 CPC, the Supreme Court considered the judgment in the cases of **Brahmadeo Chaudhary (supra)**, **Shreenath (supra)**, **Silverline Forum Pvt. Ltd. vs. Rajiv Trust and another (1998) 3 SCC 723**, **NSS Narayan Sarma and others vs. Goldstone Exports (P) Ltd. and others (2002) 1 SCC 662** & **Samir Singh and another vs. Abdul Rab (2015) 1 SCC 379** and ultimately held that the application under Order 21 Rule 97 CPC is available only to a stranger, who claims to be in possession of the properties in his rights which are independent and is a third person claiming right, title or interest in the property to seek restoration of the decretal property in contradiction to the powers

under Order 21 Rule 35 which prescribes for removal of any person who is bound by the decree.

8. Considering and following the said judgments, the submissions made by the counsel for the petitioner merits acceptance and are accepted. It is also to be noticed in the present case that the respondent tenant, having failed to establish any of his defenses as taken in reply to the SCC Suit, has tried one after the other tricks to avoid execution. The proceedings under Order 21 Rule 97, 98 and 101 CPC were not maintainable at his instance and were nothing but an abuse of the process of law, as such, the Executing Court has erred in directing for framing of issues.

9. Thus, the order dated 20.02.2024 passed by the Executing Court as well as the application filed under Order 21 Rule 97, 98 and 101 CPC deserves to be quashed and is accordingly quashed.

10. The Executing Court is directed to execute the decree within a period of two months as held in the case of **Periyammal (dead) (supra)**. The executing court shall proceed to ensure that the vacant and peaceful possession of the suit property shall be handed over to the petitioner as a decree holder and if necessary, with the aid of the police. The said exercise shall be concluded within a period of two months from today.

11. The writ petition stands allowed in terms of the said order.

(2025) 4 ILRA 712
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 04.04.2025

BEFORE

THE HON'BLE SAURABH SRIVASTAVA, J.

Application U/S 482 No. 551 of 2025

Devendra Pandey ...Applicant
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Applicant:
Pankaj Kumar Gupta

Counsel for the Respondents:
G.A., Narendra Kumar Tiwari

Criminal Law - Indian Electricity Act, 2003 - Sections 135 & 149 - Against summon order - Quashing of - Applicant challenged proceedings which is primarily based on procedural illegality of implicating him in capacity of 'Manager' and instituting FIR against Institution under Electricity Act, 2003 - Such prosecution is not maintainable, as applicable provision is Section 149 of Act, which governs offences committed by group of person or association of individual, such as Committee of Management that runs educational institution, also covers offences under Sections 135, 136, and 138 - Hence, FIRs against such institution must proceed under Section 149 alone - Cognizance order dated 02.05.2024, summoning applicant as Manager of institution, is unsustainable as it ignores mandatory application of Section 149, and therefore quashed. (Para 6, 11, 14)

Application allowed. (E-13)

(Delivered by Hon'ble Saurabh Srivastava, J.)

Order on Exemption Application
No. Nil of 2025

1. Sri Narendra Kumar Tiwari, learned counsel appearing for opposite party nos. 2 and 3 preferred counter affidavit along with exemption application,