



2026:AHC:138547

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD
MATTERS UNDER ARTICLE 227 No. - 3192 of 2026

Smt. Bashiran and another

.....Petitioner(s)

Versus

Smt. Harpal Kaur

.....Respondent(s)

Counsel for Petitioner(s)	: Madhav Jain
Counsel for Respondent(s)	: Rajesh Kumar Sharma, Shobh Nath

Court No. - 35

HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Heard Shri Madhav Jain, learned counsel for the petitioners and Shri Shobh Nath, learned counsel for the respondent.

2. The present petition under Article 227 of the Constitution of India has been filed assailing the judgment and order dated 03.02.2026 passed by the Appellate Authority/District Judge, Agra in Rent Control Appeal No.32 of 2025, whereby the appeal preferred by the petitioners has been dismissed as not maintainable. The petitioners have also challenged the order dated 07.02.2025 passed by the Prescribed Authority/Judge, Small Causes Court, Agra in Misc. Case No. 3 of 2024, rejecting their application seeking recall of the *ex parte* release order, as well as the *ex parte* judgment and order dated 22.12.2023 passed in P.A. Case No. 16 of 2016, whereby the release application instituted by the respondent-

landlord under Section 21(1)(a) of U.P. Act No. XIII of 1972 (hereinafter referred to as "the Act") came to be allowed.

Factual Background

3. The dispute relates to Shop No.4, forming part of property bearing No.4/51, situated at Kachahri Road, Baluganj, Agra, which was admittedly in the tenancy of late Mohammad Shamim at a monthly rent of Rs.500/-. The respondent-landlord instituted proceedings under Section 21(1)(a) of the Act seeking release of the disputed premises on the ground of *bona fide* requirement, which came to be registered as P.A. Case No.16 of 2016.

4. The release proceedings were initially contested by the original tenant by filing a written statement denying the *bona fide* need and comparative hardship pleaded by the landlord. In support of the release application, the respondent-landlord filed documentary evidence, including a copy of the notice dated 31.07.2015 issued through counsel to the tenant, a copy of the reply notice dated 28.08.2015 sent on behalf of the tenant, the service discharge certificate and educational certificates of her son, a communication issued by the Chief Medical Officer, Agra regarding payment of honorarium to him, and certain photographs relating to the premises in question.

5. The case of the respondent-landlord before the Prescribed Authority was that the disputed shop was *bona fide* required for establishment of a clinic for her son, who possessed the requisite medical qualifications, and that the disputed premises, being situated on the main road, was eminently suitable for the said purpose. It was further pleaded that the tenant was carrying on motorcycle repairing and welding work from another property bearing No. 4/236, Gwalior Road, Baluganj, Agra, situated at a short distance from the disputed premises and, therefore, greater comparative hardship would be caused to the landlord in the event the release application was rejected.

6. During the pendency of the proceedings, the original tenant died on 15.12.2020. Thereafter, his legal representatives were brought on

record pursuant to orders passed by the Prescribed Authority, and notices were directed to be served upon them through registered post. The record further indicates that thereafter an application bearing Paper No. 23-Ga came to be filed through counsel on behalf of the substituted legal representatives seeking permission to contest and pursue the proceedings after substitution.

7. The aforesaid application came to be rejected by the Prescribed Authority by an order dated 20.07.2023. While doing so, the Prescribed Authority also recorded that despite having full knowledge of the pendency of the proceedings, the substituted legal representatives had failed to adduce any evidence in support of their defence. Consequently, by order dated 25.09.2023, their opportunity to lead evidence was closed. Thereafter, the matter remained pending for final arguments from 09.10.2023, and detailed submissions were heard on 14.12.2023.

8. Ultimately, by judgment and order dated 22.12.2023, the Prescribed Authority allowed the release application holding that the relationship of landlord and tenant stood established between the parties, that the need set up by the respondent-landlord for establishment of a clinic for her son was *bona fide* and genuine, and that the balance of comparative hardship also tilted in favour of the landlord, particularly in view of the finding that the tenants had another alternative accommodation available at property No. 4/236, Gwalior Road, Baluganj, Agra and had failed to make any effort to search for alternative accommodation during the pendency of the proceedings.

9. The present petitioners, claiming themselves to be the legal representatives of the deceased tenant, thereafter instituted proceedings seeking recall of the aforesaid *ex parte* judgment and order dated 22.12.2023, which came to be registered as Misc. Case No.3 of 2024. The recall application, however, came to be rejected by the Prescribed Authority by order dated 07.02.2025. Aggrieved thereby, the petitioners preferred Rent Control Appeal No.32 of 2025 before the

Appellate Authority. The Appellate Authority, by the impugned judgment and order dated 03.02.2026, dismissed the appeal as not maintainable.

10. It is in the aforesaid factual backdrop that the present petition has been instituted.

Submissions on behalf of the petitioners

11. Learned counsel appearing for the petitioners submits that the application seeking recall of the *ex parte* release order was maintainable in exercise of the powers conferred upon the Prescribed Authority under Section 34(1)(g) of U.P. Act No. XIII of 1972 read with Rule 22(b) of the Rules framed thereunder. It is contended that the recall application arose directly out of proceedings instituted under Section 21(1)(a) of the Act and, therefore, formed an integral and inseparable part of the original release proceedings.

12. Elaborating the aforesaid submission, it is urged that although the source of power to entertain the recall application may be traceable to Section 34(1)(g) read with Rule 22(b), the exercise of such power is nonetheless in continuation of the proceedings under Section 21 of the Act. According to learned counsel, the recall proceedings are neither independent nor collateral in nature but constitute a continuation of the original adjudication concerning the landlord's release application.

13. It is further submitted that rejection of the recall application has the effect of affirming and perpetuating the *ex parte* release order dated 22.12.2023, thereby directly affecting the substantive rights of the petitioners in respect of the tenanted premises. It is, therefore, argued that such an order cannot be viewed as merely procedural in character but must be regarded as partaking the character of an order passed under Section 21 of the Act.

14. On the aforesaid premise, learned counsel contends that Section 22 of the Act deserves to receive a purposive and liberal construction so as to include within its ambit an order rejecting a recall application arising out of proceedings under Section 21. Any restrictive

interpretation, it is submitted, would leave an aggrieved tenant remediless against an order having serious civil consequences. It is, accordingly, urged that the Appellate Authority committed manifest error in dismissing the appeal as not maintainable.

Submissions on behalf of the respondent

15. *Per contra*, learned counsel appearing for the respondent-landlord submits that the entire edifice of the petitioners' argument proceeds on a misconception of the statutory scheme. It is contended that the petitioners seek to conflate a substantive adjudication under Section 21 of the Act with a procedural order passed in exercise of the ancillary powers conferred by Section 34.

16. It is submitted that the order dated 07.02.2025 rejecting the recall application is not an order passed under Section 21 of the Act but one rendered in exercise of the procedural jurisdiction traceable to Section 34 read with the Rules. Such an order, therefore, falls outside the scope of Section 22 of the Act, which expressly provides an appellate remedy only against orders passed under Sections 21 and 24.

17. It is further submitted that the right of appeal is a creature of statute and can neither be inferred nor expanded by implication. In the absence of any express statutory provision providing for an appeal against an order rejecting a recall application, no such appellate remedy can be recognised by judicial interpretation. According to the respondent, the legislative intent underlying Section 22 is to confine the appellate jurisdiction to final adjudications under Sections 21 and 24 and not to interlocutory or ancillary orders passed during the course of the proceedings.

18. Learned counsel lastly submits that after the death of the original tenant, the petitioners were duly substituted and had full knowledge of the pendency of the proceedings. Despite such knowledge, they failed to contest the matter, resulting in the *ex parte* release order dated 22.12.2023. The Prescribed Authority has, while rejecting the recall application, recorded categorical findings regarding due service and the

petitioners' knowledge of the proceedings, which are findings of fact based upon the record. It is, therefore, submitted that the petitioners cannot be permitted to circumvent the statutory scheme by seeking an appellate remedy where none exists, nor do the impugned orders disclose any jurisdictional error warranting interference in exercise of supervisory jurisdiction under Article 227 of the Constitution.

19. Heard learned counsel for the parties and perused the record.

Questions for determination

20. On the submissions advanced and the material brought on record, the following questions arise for determination:

20.1 Maintainability of an appeal under Section 22 of U.P. Act No. XIII of 1972 against an order rejecting an application for recall of an *ex parte* release order passed in proceedings under Section 21(1)(a) of the Act.

20.2 Recall of the *ex parte* release order dated 22.12.2023 on the grounds of absence of due service or sufficient cause.

Statutory Scheme

21. The controversy in the present case essentially turns upon the true scope and interplay of Sections 21, 22 and 34 of U.P. Act No. XIII of 1972, read with the relevant Rules framed thereunder. It is, therefore, apposite to notice the material statutory provisions before adverting to the questions formulated above. The relevant provisions read as under:

“Section 21(1)(a) Proceedings for release of building under occupation of tenant (1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists; namely:-

(a) that the building is *bona fide* required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust.”

“Section 22 Appeal: Any person aggrieved by an order under section 21 or section 24 may within thirty days from the date of the order prefer an appeal against it to the District Judge, and in other respects, the provisions of section 10 shall *mutatis mutandis* apply in relation to such appeal.”

“Section 34(1): Powers of District Magistrate, Prescribed Authority and appellate and revising authorities

(1) The District Magistrate, the prescribed authority or any appellate or revising authority shall for the purposes of holding any inquiry or hearing any appeal under this Act have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely,-

...

...

...

(g) any other matter which may be prescribed.”

Rule 22(b) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972

“22. Powers under the Code of Civil Procedure, 1908 [Section 34 (1)

(g)- The District Magistrate, the Prescribed Authority or the Appellate or Revising Authority shall, for the purposes of holding any inquiry or hearing any appeal or revision under the Act, shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908 (Act No. V of 1908), when trying a suit, in respect of the following matters, namely-

...

(b) the power to proceed *ex parte* and to set aside, for sufficient cause, an order passed *ex parte*;

... ”

22. It is also relevant to notice the statutory scheme governing continuation of proceedings after the death of a party. Section 34(4) of the Act, read with Rule 25 of the Rules framed thereunder, expressly contemplates continuation of pending proceedings against the legal heirs

or legal representatives of a deceased landlord or tenant. The provisions are as follows:

“Section 34(4) Powers of various authorities and procedure to be followed by them-

(4) Where any party to any proceeding for the determination of standard rent of or for eviction from a building dies during the pendency of the proceeding, such proceeding may be continued after bringing on the record:

(a) in the case of the landlord or tenant, his heirs or legal representatives;

(b) in the case of an un-authorized occupant, any person claiming under him or found in occupation of the building.”

“Rule 25. Bringing legal representatives on record [Section 34 (4)].-

(1) Every application for substituting the names of ¹[the heirs or legal representatives, the claimants or occupants] of any person who was a party to any proceedings under the Act and died during the pendency of the proceedings shall be preferred within one month from the date of the death of such person.

(2) The application shall contain the names and addresses and other details of the heirs or legal representatives and their relationship with the deceased and, be accompanied by any affidavit in its support, and thereupon, the application shall be decided after a summary inquiry by the authority concerned.”

23. A conjoint reading of the aforesaid provisions indicates that while Section 21 constitutes the substantive source of jurisdiction empowering the Prescribed Authority to adjudicate the landlord's claim for release of a building, Section 22 confers a limited statutory right of appeal only against orders passed under Sections 21 and 24 of the Act. Section 34, on the other hand, merely vests the authorities under the Act with procedural powers akin to those exercisable by a Civil Court for the effective conduct of proceedings. Rule 22(b), read with Section 34(1)(g), supplements such procedural jurisdiction. Equally, Section 34(4) read with Rule 25 manifests the legislative intent that proceedings continue against the legal representatives of a deceased party and do not abate

upon death. It is in the backdrop of this statutory scheme that the questions formulated above fall for consideration.

Question No.1: Maintainability of Appeal under Section 22 of the Act

24. The right of appeal is neither an inherent nor a natural right; it is a creature of statute. It is well settled that such right must be conferred expressly or by necessary implication, and in the absence thereof, no appeal can be maintained. Section 22 of the Act, in clear terms, restricts the right of appeal to orders passed under Section 21 or Section 24. The legislative intent, thus, is to confine the appellate remedy to final adjudications affecting substantive rights under the Act.

25. A careful reading of the statutory scheme indicates that Section 21 embodies the substantive provision governing the rights of the parties. It confers jurisdiction upon the Prescribed Authority to adjudicate the landlord's claim for release of a tenanted building on the grounds specified therein, including *bona fide* requirement. An order passed under Section 21 thus culminates in an adjudication of substantive civil rights, resulting either in eviction of the tenant or continuation of the tenancy.

26. A careful reading of the statutory scheme indicates that Section 21 embodies the substantive provision governing the rights and liabilities of the parties. It confers jurisdiction upon the Prescribed Authority to adjudicate the landlord's claim for release of a tenanted building on the grounds specified therein, including *bona fide* requirement. An order passed under Section 21 is, therefore, one determining substantive civil rights and culminates either in release of the building in favour of the landlord or in continuation of the tenancy. It is such adjudication which the Legislature has made appealable under Section 22 of the Act.

27. Section 34, on the other hand, operates in an altogether different sphere. It neither creates substantive rights nor authorises adjudication upon the merits of the landlord's claim. The provision merely confers procedural powers upon the authorities constituted under the Act to enable them to effectively discharge their adjudicatory functions. The

powers enumerated therein, including those exercised under the residuary clause read with the Rules relating to recall of orders, are procedural in character and are analogous to the powers vested in a Civil Court under the Code of Civil Procedure for regulating the conduct of proceedings.

28. The distinction between substantive and procedural provisions assumes decisive significance in the present case. While a substantive provision such as Section 21 culminates in an adjudication determining the rights of the parties, a procedural provision such as Section 34 merely regulates the manner in which such adjudication is conducted or, in an appropriate case, revisited on limited procedural grounds. An order passed in exercise of procedural powers cannot, merely because it arises in proceedings under Section 21, be elevated to the status of an order passed under Section 21 itself. The source of the power exercised by the authority, and not merely the subject-matter of the proceedings, furnishes the true test for determining the character of the order.

29. In the present case, the release order dated 22.12.2023 was admittedly passed under Section 21(1)(a) of the Act and was, therefore, appealable under Section 22. The petitioners, however, did not avail the statutory remedy against the said order. Instead, they invoked the procedural jurisdiction of the Prescribed Authority by filing an application seeking recall of the *ex parte* release order under Section 34 read with the relevant Rules. The order dated 07.02.2025 rejecting the recall application does not adjudicate afresh upon the landlord's claim for release, nor does it determine the substantive rights of the parties under Section 21. It merely determines whether the *ex parte* order deserved to be recalled on recognised procedural grounds such as absence of due service or existence of sufficient cause for non-appearance.

30. The submission advanced on behalf of the petitioners that the recall proceedings constitute a continuation of the original proceedings under Section 21 and that the order passed thereon must consequently be

treated as an order under Section 21, though attractive at first blush, cannot be accepted. The continuity of proceedings does not alter the juridical character of the power exercised. The determinative consideration is the source from which the authority derives its jurisdiction to pass the impugned order. Where the authority exercises procedural powers referable to Section 34 read with the Rules, the resultant order retains its procedural character notwithstanding that it arises out of proceedings originally instituted under Section 21.

31. The further submission that a restrictive construction of Section 22 would leave an aggrieved tenant remediless against an order having serious civil consequences also does not merit acceptance. Hardship or perceived inadequacy of a statutory remedy cannot furnish a legitimate basis for enlarging the scope of a right of appeal which the legislature has consciously circumscribed. The right of appeal being a creature of statute, its existence and extent must necessarily be gathered from the language employed by the legislature. In the present case, the *ex parte* release order dated 22.12.2023 was itself an order passed under Section 21(1)(a) of the Act and, therefore, was appealable under Section 22. The petitioners, however, did not avail of the said statutory remedy and instead chose to invoke the recall jurisdiction of the Prescribed Authority under Section 34 read with the Rules. Having elected to pursue such procedural remedy, they cannot contend that the absence of an appeal against the order rejecting the recall application leaves them remediless. The Court cannot, on considerations of equity or perceived hardship, create an additional appellate remedy where the statute has consciously not provided one.

32. Merely because the recall application arises from proceedings under Section 21 does not *ipso facto* render the order passed thereon an order under Section 21. Acceptance of such a construction would amount to enlarging the scope of Section 22 beyond its plain language and legislative intent. The Court cannot, under the guise of purposive interpretation, expand the statutory right of appeal to categories of orders which the Legislature has consciously excluded. The right of appeal

being purely statutory, its existence, extent and conditions are governed exclusively by the language employed by the Legislature and cannot be enlarged by judicial interpretation.

33. If the contention of the petitioners were to be accepted, every interlocutory or ancillary order passed during the pendency of proceedings under Section 21—including orders relating to amendment of pleadings, production of documents, summoning of witnesses, adjournments, recall of witnesses or other procedural matters—could equally be contended to partake the character of an order under Section 21 merely because such orders arise in the course of those proceedings. Such an interpretation would obliterate the clear legislative distinction between substantive adjudication and procedural facilitation, render the statutory restriction embodied in Section 22 otiose, and defeat the legislative objective of ensuring expeditious adjudication of landlord-tenant disputes under the Act.

34. For all the reasons aforesaid, this Court is of the considered opinion that an appeal under Section 22 of U.P. Act No. XIII of 1972 would not lie against an order rejecting an application for recall of an *ex parte* release order, such order being one referable to the procedural powers exercisable under Section 34 read with the Rules and not an order passed under Section 21 or Section 24 of the Act. The Appellate Authority, therefore, committed no error, either of jurisdiction or of law, in dismissing Rent Control Appeal No. 32 of 2025 as not maintainable.

Question No. 2: Recall of the *Ex Parte* Release Order

35. Having answered the first question, the Court now proceeds to examine whether the petitioners have made out any case for recall of the *ex parte* release order dated 22.12.2023.

36. The consideration of an application seeking recall of an *ex parte* order is governed by well-settled principles akin to those underlying Order IX Rule 13 of the Code of Civil Procedure. A party seeking recall must establish either that the summons were not duly served or that he was prevented by "sufficient cause" from appearing when the matter was

called on for hearing. These two grounds constitute the recognised and exhaustive bases upon which an *ex parte* order may be recalled.

37. The principles governing recall of an *ex parte* order are no longer *res integra*. The jurisdiction to set aside such an order is founded upon the twin requirements that the applicant must establish either that summons were not duly served or that he was prevented by “sufficient cause” from appearing when the matter was taken up for hearing. The expression “sufficient cause”, though incapable of precise definition, has consistently been construed by the Supreme Court as a cause beyond the control of the party concerned, to be determined on the facts and circumstances of each case. While the expression deserves a liberal construction to advance substantial justice, such interpretative generosity cannot be extended to condone negligence, indifference, want of *bona fides* or deliberate inaction. The discretionary jurisdiction to recall an *ex parte* order is intended to prevent miscarriage of justice and not to revive proceedings where the absence of the party is attributable to lack of due diligence or vigilance. The relevant enquiry is confined to the cause which prevented the party from appearing on the date fixed for hearing, though the antecedent conduct of the litigant may legitimately be considered insofar as it bears upon his *bona fides* and diligence. (See **Parimal v. Veena** (2011) 3 SCC 545; **G.P. Srivastava v. R.K. Raizada**, (2000) 3 SCC 54; **Arjun Singh v. Mohindra Kumar**, AIR 1964 SC 993.)

38. The explanation furnished in support of recall must be reasonable, plausible and supported by the material on record so as to satisfy the Court that the absence was neither deliberate nor attributable to negligence. The Court is entitled to scrutinize the entire factual matrix, including the conduct of the parties and the probabilities emerging from the record, while maintaining a balance between the imperative of affording a genuine opportunity of hearing and the equally salutary principle that judicial proceedings must attain finality. The power to recall an *ex parte* order is, therefore, discretionary in nature and must be

exercised judiciously upon a careful appraisal of all relevant circumstances.

39. It bears emphasis that a plea of non-service or lack of knowledge must be substantiated by cogent material. The judicial record relating to service carries a presumption of correctness, and the burden rests upon the party concerned to establish, by cogent material, that the service was legally deficient or wholly illusory.

40. From the settled legal position discussed above, the following principles emerge for determining whether sufficient cause has been established for recall of an *ex parte* order:

(i) The applicant must establish that his absence was neither deliberate nor attributable to negligence and that, despite exercising reasonable care and vigilance, he was genuinely prevented from appearing before the Court on the relevant date.

(ii) Mere assertions regarding non-service, lack of knowledge or procedural irregularity, unsupported by cogent and reliable material, would ordinarily not constitute sufficient cause. Judicial orders recording due service carry a presumption of correctness which cannot be displaced by vague or unsubstantiated allegations.

(iii) The Court is entitled to examine the overall conduct of the applicant, including his diligence before and after the *ex parte* order, the promptness with which he approached the Court, and whether the explanation furnished inspires confidence on ordinary standards of human conduct and probabilities.

(iv) The relevant enquiry is confined to the cause which prevented the applicant from appearing on the date when the matter was taken up for hearing. Earlier defaults or subsequent conduct are relevant only insofar as they bear upon the *bona fides* and credibility of the explanation offered.

(v) While the expression "sufficient cause" deserves a liberal construction to advance substantial justice, such latitude cannot be

extended to condone negligence, indifference, want of *bona fides* or deliberate inaction.

(vi) The jurisdiction to recall an *ex parte* order is discretionary and must be exercised judiciously upon a consideration of the entire factual matrix. The Court must balance the need to afford a fair opportunity of hearing with the equally important principle that judicial proceedings should attain finality.

(vii) The principle that procedural law is the handmaid of justice does not imply that concluded proceedings may be reopened merely because an adverse order has been passed. The jurisdiction to recall an *ex parte* order exists to remedy genuine inability to appear and not to revive proceedings where the absence is attributable to negligence, prolonged inaction or lack of due diligence.

41. The true enquiry, therefore, is whether the party seeking recall acted with *bona fide* diligence and whether the circumstances disclose a genuine inability to participate in the proceedings despite exercising reasonable vigilance. The answer to that enquiry necessarily depends upon the facts and circumstances of each case and must be arrived at upon an overall appraisal of the record, the conduct of the parties and the attendant probabilities. Where the material on record reflects prior contest by the original party, continuation of proceedings after substitution, judicial orders recording due service, participation through counsel, prolonged inaction despite pendency of the proceedings, absence of reasonable enquiry regarding the litigation, and failure to rebut the judicial record relating to service and conduct of the proceedings, the Court would ordinarily be justified in concluding that no sufficient cause has been established for recalling the *ex parte* order.

Application of the Above Principles to the Facts of the Present Case

42. The case set up by the petitioners may now be examined in the light of the aforesaid principles.

43. The release proceedings under Section 21(1)(a) of U.P. Act No. XIII of 1972 were instituted in the year 2016 against the original tenant.

The record unmistakably reflects that the original tenant entered appearance, filed a written statement and contested the proceedings on merits by disputing the respondent-landlord's plea of *bona fide* requirement and comparative hardship. The release application was founded upon the respondent-landlord's case that the disputed shop was *bona fide* required for establishment of a clinic for her son, who possessed the requisite medical qualifications.

44. During the pendency of the proceedings, the original tenant died on 15.12.2020. Thereafter, the present petitioners, being his legal representatives, were brought on record by order dated 26.07.2022. In view of Section 34(4) of the Act read with Rule 25 of the Rules framed thereunder, the proceedings did not abate upon the death of the original tenant but continued against the substituted legal representatives as a continuation of the original proceedings.

45. Following the substitution, notices were directed to be issued to the substituted legal representatives through registered post. It was at this stage that the counsel who had earlier represented the deceased tenant filed Application Paper No. 27-Ga and appeared before the Prescribed Authority on 20.07.2023 asserting that the substituted legal representatives had not been served through registered post. The Prescribed Authority thereupon required the learned counsel to disclose on whose behalf he was appearing and whether he had received any authority from the substituted legal representatives. The learned counsel stated that he had not been authorised by any of them.

46. Upon verification of the judicial record, the Prescribed Authority found that notices had already been issued to the substituted legal representatives through registered post and that the service report disclosed sufficient service. Accordingly, the objection regarding non-service was rejected. Nevertheless, with a view to ensuring complete fairness, the Prescribed Authority granted yet another opportunity to the substituted legal representatives to file their written statement and fixed 29.07.2023 for the said purpose.

47. The record further discloses that despite the aforesaid opportunity, the substituted legal representatives neither filed any written statement nor adduced any evidence. Consequently, by order dated 25.09.2023, their opportunity to lead evidence was closed. The matter thereafter remained pending for final arguments from 09.10.2023. Arguments were heard on 14.12.2023 and the release application ultimately came to be decided by judgment and order dated 22.12.2023.

48. Aggrieved thereby, the petitioners instituted Misc. Case No. 3 of 2024 seeking recall of the release order dated 22.12.2023. The principal foundation of the recall application was that after substitution no notice had ever been served upon them and that they remained wholly unaware of the pendency of the proceedings until 17.01.2024, when, according to them, they came to know through a person known to them that an eviction order had been passed. It was their case that inspection of the record was thereafter obtained on 19.01.2024, whereupon they first acquired knowledge of the judgment dated 22.12.2023. They further alleged that notices had neither been served through ordinary process nor by registered post; that the postal receipts relied upon by the respondent-landlord were suspicious; that effective steps for service had not been taken after substitution; that despite orders directing fresh steps, the proceedings continued *ex parte* without ensuring proper service. On these premises, it was pleaded that the release order stood vitiated for violation of the principles of natural justice.

49. The recall application was opposed by the respondent-landlord by filing detailed objections. It was contended that the judgment and release order dated 22.12.2023 was not an *ex parte* order in the strict sense but a judgment rendered on merits after due compliance with the prescribed procedure; that the plea regarding incorrect description of the legal representatives was wholly misconceived; that the substituted legal representatives had been duly served; that no fresh notice was required after valid substitution and service; and that the applicants had full knowledge of the pendency of the proceedings but deliberately chose not

to participate therein with a view to delaying execution of the release order. It was accordingly prayed that the recall application be dismissed.

50. The Prescribed Authority examined the aforesaid objections in the light of the judicial record and found no merit in the recall application. It noticed that notices had been issued to the substituted legal representatives through registered post and that service had already been held to be sufficient by judicial order dated 20.07.2023. It further noticed that, notwithstanding the order dated 20.7.2023 holding service to be sufficient, the Prescribed Authority, by way of abundant caution, granted a further opportunity to the substituted legal representatives to file their written statement. Thus, the grievance that the proceedings were concluded without affording an adequate opportunity is not borne out from the judicial record. The Prescribed Authority also took note of the fact that despite such opportunity, no written statement was filed, no evidence was adduced and, ultimately, the opportunity to lead evidence was closed on 25.09.2023 before the matter proceeded for final hearing.

51. Equally significant is the circumstance that the judicial record does not support the plea that the proceedings remained wholly beyond the knowledge of the tenant's side after substitution. As noticed hereinabove, the issue regarding service upon the substituted legal representatives came to be raised before the Prescribed Authority itself, whereafter the Court verified the record, recorded a finding regarding sufficient service and, by way of abundant caution, granted a further opportunity to the substituted legal representatives to participate in the proceedings. Despite such opportunity, no written statement was filed, no evidence was led and the proceedings thereafter culminated in the judgment dated 22.12.2023. These contemporaneous judicial proceedings lend little support to the petitioners' subsequent plea that they remained completely unaware of the litigation until after the release order had been passed.

52. The plea of complete ignorance of the proceedings also rests entirely upon the self-serving averments contained in the affidavit filed

in support of the recall application. No independent material has been produced to establish that the notices were never tendered, that the service reports were fabricated, or that the judicial orders recording sufficient service were erroneous. Mere allegations that the postal receipts appeared suspicious or that service was not properly effected, unsupported by any cogent evidence, cannot rebut the presumption of correctness which attaches to judicial proceedings.

53. The conduct of the petitioners, viewed in its entirety, also assumes relevance while examining the plea of sufficient cause. The release proceedings had remained pending since the year 2016 in relation to a commercial tenancy. The original tenant had actively contested the proceedings throughout his lifetime. After his demise, the petitioners admittedly inherited the tenancy rights and continued in possession of the disputed commercial accommodation. In these circumstances, a reasonable degree of diligence and vigilance was expected from them in monitoring litigation directly concerning the tenancy rights inherited by them.

54. The release order dated 22.12.2023 further demonstrates that the Prescribed Authority adjudicated the release application upon consideration of the pleadings and evidence available on record. It recorded findings that the respondent-landlord had established her *bona fide* requirement for establishment of a clinic for her son; that the tenants had alternative accommodation available at property No.4/236, Gwalior Road, Baluganj, Agra, from where motorcycle repairing and welding work was being carried on; and that no endeavour had been made by the tenants to secure alternative accommodation despite pendency of the proceedings for several years. The release order, therefore, cannot be characterised as a mechanical *ex parte* order passed without consideration of the merits.

55. The maxim *vigilantibus non dormientibus jura subveniunt*—the law assists those who are vigilant and not those who sleep over their rights—squarely applies to the facts of the present case. The petitioners

have failed to establish that they were prevented by circumstances beyond their control from participating in the proceedings. Their explanation is founded principally upon a generalized plea of non-service and lack of knowledge, unsupported by any reliable material capable of displacing the judicial record.

56. For the reasons discussed hereinabove, this Court is of the considered opinion that the petitioners have failed to establish either that summons were not duly served upon them or that they were prevented by any sufficient cause from appearing when the release proceedings were taken up for hearing. The conclusion reached by the Prescribed Authority in rejecting the recall application is fully borne out by the material available on record and warrants no interference.

Conclusion:

57. Having answered the questions formulated for determination, it now remains to examine whether the impugned orders warrant interference in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

58. It is well settled that the jurisdiction of this Court under Article 227 is supervisory and not appellate. The power is intended to ensure that subordinate courts and tribunals act within the limits of their authority and in accordance with law. It is not an avenue for correction of every error of fact or law, nor does it permit this Court to re-appreciate the evidence or substitute its own conclusions merely because another view may also be possible. Interference is warranted only where the impugned order suffers from patent lack or excess of jurisdiction, manifest illegality, perversity, or such grave procedural irregularity as has resulted in failure of justice.

59. Tested on the aforesaid parameters, this Court finds no such jurisdictional infirmity in the orders impugned.

60. The Prescribed Authority has considered the pleadings of the parties, examined the record relating to substitution and service of the legal representatives, adverted to the proceedings conducted after

substitution, including the objection regarding service, the grant of further opportunity to the substituted legal representatives, the closure of their opportunity to adduce evidence and the subsequent adjudication of the release application, and has thereafter assigned cogent and reasoned findings while rejecting the recall application. The conclusions so recorded are founded upon the material available on record and cannot be characterised as arbitrary, perverse or unsupported by evidence.

61. The Appellate Authority, in turn, confined its consideration to the question of maintainability of the statutory appeal and rightly concluded that an appeal under Section 22 of U.P. Act No. XIII of 1972 would not lie against an order rejecting an application for recall referable to the procedural powers contained in Section 34 of the Act read with the Rules framed thereunder. Once the appeal itself was found to be not maintainable, the Appellate Authority cannot be faulted for declining to examine the merits of the controversy relating to service or existence of sufficient cause.

62. No jurisdictional error, manifest illegality, perversity or failure of justice has been demonstrated so as to warrant interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution. The findings recorded by the Prescribed Authority on the question of service and sufficient cause are essentially findings of fact based upon appreciation of the material on record, while the conclusion of the Appellate Authority regarding maintainability correctly reflects the statutory scheme of Sections 21, 22 and 34 of the Act. Neither of the impugned orders suffers from any error warranting exercise of the supervisory jurisdiction of this Court.

63. Accordingly, this Court holds that-

(i) an appeal under Section 22 of U.P. Act No. XIII of 1972 is not maintainable against an order rejecting an application for recall of an *ex parte* release order, such order being referable to the procedural powers contained in Section 34 of the Act read with the Rules framed thereunder and not being an order under Section 21 or Section 24 of the Act;

(ii) the petitioners have failed to establish either that summons were not duly served upon them or that they were prevented by sufficient cause from appearing before the Prescribed Authority when the proceedings were taken up for hearing. The explanation furnished by them does not satisfy the settled judicial test of diligence, *bona fides* and genuine inability; and

(iii) the impugned orders suffer from no jurisdictional error, patent illegality or perversity warranting interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

64. Consequently, the judgment and order dated 03.02.2026 passed by the Appellate Authority/District Judge, Agra in Rent Control Appeal No. 32 of 2025, the order dated 07.02.2025 passed by the Prescribed Authority/Judge, Small Causes Court, Agra in Misc. Case No. 3 of 2024, and the judgment and release order dated 22.12.2023 passed in P.A. Case No. 16 of 2016 warrant no interference.

65. The petition is, accordingly, **dismissed**.

66. There shall be no order as to costs.

(Dr. Yogendra Kumar Srivastava, J.)

July 07, 2026

RKK/-