



2026:AHC:197366

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 10317 of 2026

Masers Rajasthan Motors

.....Petitioner(s)

Versus

State of U.P. and 2 others

.....Respondent(s)

Counsel for Petitioner(s)	: Brajesh Kumar Singh
Counsel for Respondent(s)	: Ankush Tandon, C.S.C.

AFR

Court No. - 35

HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Heard Sri Brajesh Kumar Singh, learned counsel for the petitioner and Sri Ankush Tandon, learned counsel for the respondent.

2. The present petition has been filed assailing the order dated 16.07.2026 passed by the learned Additional District Judge, Court No. 9, in Misc. Civil Appeal No. 98 of 2026 (Messers Rajasthan Motors through its Proprietor Ramesh Kumar Sharma Vs. Hari Shankar Gupta). By the order impugned, the appellate court has partly allowed the application, Paper No. 23-Ga, filed by the petitioner-tenant seeking a report from the Ameen and has directed the petitioner to deposit fifty percent of the monthly rent as determined under the order dated 30.01.2026 passed in Case No. 328 of 2023, which order is the subject matter of challenge in the appeal.

3. Learned counsel for the petitioner submits that the petitioner, at the time of filing the appeal, had already made the requisite pre-deposit contemplated under the proviso to Section 35(1) of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act No. 16 of 2021) and, consequently, no further deposit could have been directed by the appellate court during the pendency of the appeal. It is contended that the requirement contemplated by the proviso is a condition precedent for institution of the

appeal and stands satisfied once fifty percent of the amount payable under the impugned order is deposited at the stage of filing the appeal.

4. Learned counsel appearing for the respondents, on the other hand, submits that the deposit made at the stage of institution of the appeal does not exhaust the statutory obligation where the order under challenge gives rise to a recurring liability. According to him, the expression “entire payable amount” occurring in the proviso to Section 35(1) has to be understood with reference to the nature of the liability created by the order under challenge. Where such liability accrues periodically, the statutory requirement correspondingly operates in respect of the amount becoming payable during the pendency of the appeal. Reliance has been placed upon the judgment of this Court in **Hemant Kumar Garg Vs. Pulkit Garg**¹, wherein the question whether the requirement of pre-deposit under the proviso to Section 35(1) is confined to a one-time deposit calculated up to the date of institution of the appeal or extends to recurring liabilities accruing during its pendency was considered in detail.

5. The submission gives rise to a short question as to the true scope and operation of the proviso to Section 35(1) of U.P. Act No. 16 of 2021 in a case where the order of the Rent Authority determines a recurring liability.

6. Section 35(1) of U.P. Act No. 16 of 2021 provides for an appeal against an order passed by the Rent Authority. Section 35(1), including the proviso thereto, reads as follows:

“**35. Appeal.**- (1) Any person aggrieved by an order passed by the Rent Authority may prefer an appeal along with a certified copy of such order to the Rent Tribunal within the local limits of which the premises is situated, within a period of thirty days from the date of that order:

Provided that no appeal shall lie unless the appellant has deposited fifty per cent of the entire payable amount under the impugned order of the rent authority.”

7. The proviso thus makes the pre-deposit a condition precedent to the maintainability of the appeal. The expression “no appeal shall lie unless” makes the deposit contemplated therein a condition precedent to the maintainability of the statutory appeal. The right of appeal, being a creature of

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statute, is available subject to the conditions imposed by the legislature for its exercise. The requirement of pre-deposit is thus not a matter resting upon the discretion of the appellate authority, but a statutory condition governing the right to invoke the appellate jurisdiction.

8. The question, however, is not whether the requirement of pre-deposit is mandatory. That position is not in dispute. The question is as to the point of time up to which the amount contemplated by the expression “entire payable amount” is to be computed where the liability under the impugned order is not a one-time liability but continues to accrue periodically.

9. The answer must necessarily depend upon the nature of the liability created by the order under challenge. Where the order determines a liability which becomes payable once and for all, the computation of the amount for purposes of the proviso may ordinarily be made with reference to the liability so determined. The position is materially different where the order determines or revises an amount payable periodically, such as rent payable from month to month.

10. In the latter situation, the liability cannot be regarded as a static amount crystallised on the date on which the appeal is instituted. The order under challenge continues to operate and gives rise to a corresponding liability as each succeeding period expires. The expression “entire payable amount” must, therefore, be understood in the context of the character of the liability created by the order and cannot, in the case of a recurring liability, be artificially frozen as on the date of filing of the appeal.

11. The contrary construction would lead to an anomalous result. A tenant could deposit fifty percent of the amount payable up to the date of institution of the appeal and, thereafter, during the entire pendency of the appellate proceedings, continue to retain the premises without depositing even the statutory proportion of the rent which becomes payable from month to month pursuant to the order under challenge. Such an interpretation would effectively sever the statutory requirement from the continuing operation of the very order against which the appeal is pending.

12. The question came up for consideration before this Court in **Hemant Kumar Garg**. In that case also, the order under challenge had given rise to a recurring liability by way of revised rent. The contention raised on behalf of

the appellant was that the requirement of deposit stood satisfied upon deposit of fifty percent of the amount due as on the date of filing of the appeal and that no further direction for deposit during the pendency of the appeal could be made. Upon examining the language of the proviso to Section 35(1), this Court held that the expression “entire payable amount” could not, in the case of a recurring liability, be confined to the amount quantified as on the date of institution of the appeal.

13. The Court held that where the impugned order gives rise to a recurring or continuing liability, the statutory requirement of deposit necessarily extends to such continuing accruals and is not exhausted by the initial deposit made at the time of filing the appeal. The obligation, in such circumstances, continues so long as the liability under the impugned order continues to accrue during the pendency of the appeal. The Court further held that a direction requiring deposit of fifty percent of the recurring liability during the pendency of the appeal is not an additional or extraneous condition imposed by the appellate authority, but is in furtherance of the statutory mandate contained in the proviso to Section 35(1).

14. The aforesaid construction is consistent with the language employed by the legislature. The expression “entire payable amount” cannot be read in isolation from the words “under the impugned order”. The amount payable under an order has to be determined with reference to the nature of the liability which that order creates. If the liability is recurring, the amount payable under the order correspondingly continues to accrue. The statutory requirement of deposit must, therefore, operate with reference to such accruals.

15. It is also relevant that the deposit contemplated under the proviso is not a direction for full satisfaction of the order under challenge. The statutory requirement is confined to fifty percent of the payable amount. A direction requiring deposit of fifty percent of the recurring rent, therefore, does not amount to execution of the order under challenge. It merely ensures continued compliance with the statutory condition attached to the appellate remedy and secures, to the extent prescribed by the legislature, the interest of the party in whose favour the impugned order operates.

16. The distinction between the initial deposit and the subsequent deposits is thus one of timing and the nature of the liability, and not of the existence of two independent conditions. The initial deposit is necessary for the appeal to

lie. Where the liability under the impugned order continues to accrue during the pendency of the appeal, the statutory requirement correspondingly continues to operate in respect of such accruals. The subsequent direction for periodic deposit is consequently not a fresh condition added by the appellate authority but a means of giving continuing effect to the statutory condition already imposed by the proviso.

17. Such an interpretation also accords with the object of the provision. The legislature, while conferring a right of appeal, has simultaneously required the appellant to secure fifty percent of the amount payable under the impugned order. The provision thereby balances the right to pursue an appellate remedy with the interest of the party in whose favour the order has been passed. If the obligation were treated as exhausted on the date of filing of the appeal even in cases involving a continuing liability, the statutory protection afforded to the successful party would substantially cease to operate during the pendency of the appeal.

18. It follows that the pendency of an appeal cannot, by itself, have the effect of suspending the recurring liability created by the order under challenge. Unless the operation of such order has been otherwise stayed or modified in accordance with law, the liability flowing from it continues to accrue. Where the statutory scheme requires fifty percent of such liability to be deposited for maintaining the appellate remedy, the appellate authority is competent to issue appropriate directions to secure compliance with that requirement during the pendency of the appeal.

19. In the present case, the order dated 30.01.2026, which is under challenge before the appellate court, determines the monthly rent payable in respect of the premises in question. The liability is consequently recurring in nature. The initial deposit made by the petitioner at the time of filing the appeal cannot, in view of the aforesaid legal position, be treated as exhausting the requirement under the proviso to Section 35(1). The appellate court was, therefore, justified in directing the petitioner to deposit fifty percent of the monthly rent during the pendency of the appeal.

20. Learned counsel for the petitioner has not been able to point out any distinguishing feature which may take the present case outside the principle laid down in **Hemant Kumar Garg** (supra). Nor has any submission been advanced to demonstrate that the monthly liability determined under the order

dated 30.01.2026 ceased to be operative or that the appellate court lacked jurisdiction to issue directions for securing compliance with the statutory requirement during pendency of the appeal.

21. The direction contained in the order impugned, therefore, cannot be characterised either as an additional condition for maintaining the appeal or as an impermissible step towards execution of the order under challenge. It is referable to, and flows from, the continuing operation of the statutory requirement contained in the proviso to Section 35(1).

22. No jurisdictional error or other infirmity has been demonstrated in the order impugned warranting interference in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution.

23. The petition is, accordingly, devoid of merit and is dismissed.

(Dr. Yogendra Kumar Srivastava,J.)

September 21, 2026

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