

U.P. Urban Building Act (Act 13 of 1972)

Applicability Of CPC in PA suits
(Sec 34 read with Rule 22)

Section 34 U.P. Urban Building Act

34. Powers of various authorities and procedure to be followed by them -

(1) The District Magistrate, the prescribed authority or any 1 [appellate or revising authority] shall for the purposes of holding any inquiry or hearing 2[any appeal or revision] under this Act 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,

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) receiving evidence on affidavits;

(c) inspecting a building or its locality, or issuing commission for the examination of witnesses or documents or local investigation;

(d) requiring the discovery and production of documents;

(e) awarding, subject to any rules made in that behalf, costs or special costs to any party or requiring security for costs from any party;

(f) recording a lawful agreement, compromise or satisfaction and making an order in accordance therewith;

(g) any other matter which may be prescribed.

(2) The District Magistrate, the prescribed authority or 3[appellate or revising authority], while holding an inquiry or hearing 4[any appeal or revision] under this Act, shall be deemed to be a Civil Court within the meaning of 5[Sections 345 and 346 of Code of Criminal Procedure, 1973] and any proceeding before him or it to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (Act No. XLV of 1860).

(6) Affidavits to be filed in any proceeding under this Act shall be made in the same manner and conform to the same requirements as affidavits filed under the Code of Civil Procedure, 1908 (Act No. V of 1908), and may be verified by any officer or other person appointed by the High Court under clause (b) or by an officer appointed by any other court under clause (c) of Section 139 of the said Code.

(8) For the purposes of any proceedings under this Act and for purposes connected therewith the said authorities shall have such other powers and 3[shall follow such procedure, principles of proof, rules of limitation and guiding principles as may be prescribed].

Rule 22

- 22. Power under the Code of Civil Procedure, 1908 [Section 34(1) (g).- The District Magistrate , the Prescribed Authority or the Appellate 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 when trying a suit , in respect of the following matters, namely-
 - (a)The power to dismiss an application,appeal or revision for default and to restore it for sufficient cause;
 - (b)The power to proceed ex parte and to set aside, for sufficient cause ,an order passed ex parte
 - (c)The power to award costs and special costs to any successful party against unsuccessful party;
 - (d)The power to allow amendment of an application ,memorandum of appeal or revision ;
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 - (e) the power of consolidate two or more case of eviction by the same landlord against different tenants;"
 - (f)The power referred to in sections 151 and 152 of the code of civil procedure ,1908 to make any order for the ends of justice or to prevent the abuse of the process of the authority concerned.

Dinesh Kumar v. Kiran Suri

october 2022

- At the outset, it may be mentioned that from a reading of sec 34 of the act read with rule 22 that the prescribed authority has to follow the procedure prescribed u/s 34 of the Act as also rules framed.
- Thus, the court has a discretion to permit cross examination if necessary for the proper adjudication of the matter in dispute. If a party intends to cross examine he has to give necessary facts in the application as to why the cross examination is necessary.

Krishan Kumar Sharma v. Dr Narayan Dutt 2023

- A perusal of sec 34 of up 13 1972 reveals that it confers certain powers upon the prescribed authority which are available to a civil court under cpc , including the power of summoning and enforcing the attendance of any person and examining him on oath and receiving evidence on affidavits. Thus the prescribed authority in an appropriate case can permit a party to cross examine the witness of the other party. However cross examination cannot be claimed as a matter of right.

THANK YOU