

In the court of Sri Sanjeev Kumar Singh ,ADJ-II Bihar Sharif

Title Eviction Appeal : 01/2023

29-07-2024

Order

1.The instant application under Order 41 Rule 5 CPC has been filed by the appellants praying to stay the execution of decree passed in Eviction Suit 03/2008. It is submitted by the appellants/petitioners that after execution of the decree this Appeal will be meaningless causing irreparable loss and injury.

2.It transpires from the record that a suit viz. Eviction Suit No.:03/2008 was filed by the Respondents/Plaintiffs/Landlords against the Appellants /Defendants/Tenants seeking relief to vacate their premises on certain grounds. After a full scale trial, the learned Munsif was pleased to decree the suit directing the defendants/appellants to vacate the suit land within sixty days otherwise possession will be handed over to decree holders by process of the Court. It is also evident that the Ld. Court below has recorded its findings in great length touching and elaborating all the factual and legal aspects of the matter. At this juncture, this court is not concerned with merits of the case rather the same shall be dealt with at the time of final hearing. At the moment this court is to take only this much into consideration as to whether the execution proceedings may be stayed pending this appeal?

3.The only submission of the appellants is that if execution proceedings was allowed to go on, they will suffer a huge loss and injury. In this regard, it would be feasible to rely upon the ratio laid down by Hon'ble Supreme Court in **Atma Ram Properties Vs. Federal Motors; (2005) 1 SCC 705**. In this judgment Supreme Court has held that while passing an order of stay to eviction decree, the Appellate Court does have jurisdiction to put the applicant on such reasonable terms as would be reasonable to compensate the decree holder for loss occasioned by delay in execution of decree by grant of stay order. Paragraph 19 of the said judgment will be fit and proper to reproduce, **“While passing an order of stay under Rule 5 of Order 41, CPC the appellate court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree holder for loss occasioned by delay in execution of decree by grant of stay order”**. The essence of this judgment is that if a tenant suffers a decree of eviction, Appellate court while granting stay to eviction decree , can put the tenant on reasonable terms, to compensate the decree holder for loss suffered by delay in execution of decree due to stay granted. The

Court held further that after passing of eviction decree, in Appeal if stay to eviction decree is sought, the tenant is liable to pay mesne profit or compensation for occupation of premises from the date of decree, at the same rate at which Landlord would have been able to let out the premises and earn rent if tenant had vacated.

4. Without going into every details of the case, this fact is abundantly evident that while decreeing the suit Ld. Court has recorded that defendants/ appellants failed to pay the rent on regular monthly basis and also the plaintiffs had bonafide personal necessity. It is also recorded that there was a rent agreement between father of the defendants and vendor of plaintiffs. All these issues will be examined and looked into at the time of final hearing. Learned counsel for appellants submits that plaintiffs/respondents are not turning up before this court to pursue their case but they are strongly pursuing the execution case and a competent officer has been appointed by the court to ensure the compliance of eviction order.

5. It transpires from record that a complex question regarding tenancy is involved in this case. Plaintiffs, on one hand claims tenancy was at the will of Landlord but defendants strongly repudiate this version by saying that tenancy was not at all at the will of Landlord rather it was based on a rent agreement performed between father of defendants and vendor of plaintiffs by which the premises was given for twenty(20) years at rent of Rs.600 a month. Many more complexities too are apparent on the face of record. So, in the given circumstances this court deems it fit to adjudicate upon these issues keeping the execution at abeyance for some time.

6. So, keeping into view the law laid down by Hon'ble Supreme Court in the case of **Atma Ram Properties(supra)** this court finds fit to pass following orders:

(A). The process of Eviction shall be kept at abeyance for three months, i.e. upto 31.10.2024 subject to the condition that appellants/judgment debtors shall deposit in the court Rs. 15,000/ per month, in addition to the contractual rent which may be directly paid to the respondents/decreed holders. Due or arrear of contractual rent, if any, may be cleared within fifteen(15) days from receiving the copy of this order.

(B). Parties shall make every endeavor to finish their arguments during aforesaid period paving the way to adjudicate it finally.

(Sanjeev Kumar Singh)

A.D.J.-II

Dated: 29-07-24