

RCT ARCT No. 9/2022

M/s A N & Company

Vs.

Sarvesh Chand Gupta through LR Savita Gupta

07.05.2024

Present : Ms. Tanya Sharma, proxy counsel for appellant
through video conferencing.

Shri Targun Agarwal, learned counsel for
respondents along with respondent no. 2 Ms.
Anubha Sharma.

This is an order on application under Section 151 CPC moved on behalf of the appellant to clarify that during the pendency of the present appeal stay on the execution of the impugned judgment dated 05.01.2018 granted vide orders dated 26.02.2018, 26.04.2018 and subsequent orders is continuing and subsisting.

2. I have already heard the learned counsel for the appellant and the learned counsel for the respondent. File perused.

3. Learned counsel for the appellant has argued that the respondent has filed an execution petition for execution of the impugned judgment alleging that there is no stay to the execution of the impugned judgment despite the fact that there is already stay on the execution of the impugned judgment which was granted vide order dated 26.02.2018 and is still subsisting.

On the other hand, learned counsel for the respondent has argued that appellant has filed frivolous

application only to harass the respondent. No order of stay was ever passed by this court at any point of time and it was only statement of the respondent which was extended and that too till the next date of hearing. The court has not passed any specific stay order whereby accepting the statement made by the party. It is also submitted that without prejudice to the right and contention of the respondent, if the appellant is pressing to clarify that there is stay still subsisting in their favour in that event, the appellant is liable to pay market prevalent rate of rent/use and occupation charges to the respondents for enjoying their property free of cost since long. It is prayed that the application be dismissed as it is without any merit.

4. In the light of arguments of the learned counsels and the facts and circumstances of the case, it is relevant herein to mention the order dated 26.02.2018 which is as follows :

“Respondent filed an application under Section 151 CPC praying that the appellant be directed to pay Rs.Seven Lacs per month with respect to use and occupation charges of the suit premises from the date of filing of the petition before the Ld. Trial court i.e. w.e.f. 09.09.2005. Copy supplied.

Ld. Counsel for the appellant requests for time to file reply of the aforesaid application.

Reply be filed with advance copy to the opposite side.

Ld. Counsel for the appellant presses appellant’s application u/O XLI rule 5 r/w Section 151 CPC for stay of execution of the impugned order of eviction.

Heard.

Ld. Counsel for the appellant submits that in case, the execution of the impugned order is not stayed, this appeal shall be rendered infructuous.

Ld. Counsel for the respondent states that the respondent shall not execute the impugned order till next date of hearing.

In view of the above undertaking on behalf of the respondent, let the impugned order be not executed till the next date of hearing.

Application u/O XLI rule 5 r/w Section 151 CPC is disposed of accordingly.

To come up for arguments on the respondent's application under Section 151 CPC on 26.04.2018.”

5. From the aforesaid order, it is evident that the court has passed the order to the effect that impugned order be not executed till the next date of hearing on the statement of the learned counsel for the respondent that the respondent shall not execute the impugned order till the next date of hearing. Accordingly, application under Order XLI Rule 5 read with Section 151 CPC is disposed of.

This interim protection continued vide orders dated 26.04.2018, 13.07.2018, 16.10.2018. As there is no specific order of the court showing that this interim protection has been discontinued or vacated, so it can be held that the interim protection as granted by the court vide order dated 26.02.2018 is continuing till further orders of the court. Accordingly, the application of the appellant under Section 151 CPC is disposed of.

6. Put up for arguments on the applications with connected appeals on 20.07.2024.

(RAJNEESH KUMAR GUPTA)
Principal District & Sessions Judge
South East District, Saket Courts
New Delhi : 07.05.2024