

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER

IN

S.B. Civil Second Appeal No.117/2006

Prem Chand S/o Ganesh Das Punjabi
...defendant-appellant

Versus

Moorti Mandir Shri Gopalji Maharaj
installed in Kherli Ganj (minor) through Pujari
...plaintiff-respondent

AND

Tulsi & Others
...defendant-proforma-respondents

Date of Order ::: 04.10.2006

Present

Hon'ble Mr. Justice Narendra Kumar Jain

Shri B.L. Mandhana, Counsel for defendant-appellant
Dr. P.C. Jain, Counsel for plaintiff-respondent

####

By the Court:-

Heard learned counsel for the parties.

Following substantial question of law is
involved in this second appeal:-

Whether in the facts and
circumstances of the case and
the pleadings made in the
plaint no ground under
Section 13 (i)(a) of the
Rajasthan Premises (Control
of Rent and Eviction) Act,
1950 is made out and the
eviction decree is not
sustainable?

Admit. Issue notice to the respondents. Dr. P.C. Jain, Advocate, accepts notice on behalf of the plaintiff-respondent no.1, therefore, notice needs not to be issued to plaintiff-respondent no.1. Issue notices to other respondents no.2 to 6.

ORDER ON INTERIM RELIEF

Heard learned counsel for the parties on the interim prayer for grant of interim stay during the pendency of the second appeal, under Order 41 Rule 5 read with Section 151 of the CPC.

Learned counsel for the defendant-appellant submits that the second appeal has already been admitted, therefore, the eviction-decree passed against the defendant-appellant, be stayed during the pendency of this second appeal. Whereas, the learned counsel for the plaintiff-respondent no.1 submits that both the courts below have passed a decree of eviction in favour of the plaintiff-respondent no.1 on the ground of default in making the payment of rent, therefore, even if the appeal is admitted, the interim stay should not be passed in favour of the defendant-appellant as the plaintiff-respondent no.1 will not be able to get the possession of the rented premises in spite of the decree of eviction in his favour by the two courts below. In alternative, the learned counsel

for the plaintiff-respondent no.1 submits that in case this court grants interim stay against eviction of the defendant-appellant, then at-least the mesne profit as per prevalent market rate of the monthly rent of the shop in dispute be granted. Learned counsel for the plaintiff-respondent no.1 further submits that in the reply to the stay application he has stated that the rent in the vicinity of the suit shop is not less than Rs.2500/- per month at present and is upto the extent of Rs.4000/- per month. He has also shown the photo-stat copies of the rent-note during the course of arguments, wherein the adjacent shop to the shop in dispute has been let out at the rate of Rs.2500/- per month.

Learned counsel for the defendant-appellant does not dispute that the rented shop was let out 40 years back and in the year 1973 the monthly rent of the shop, in dispute, was fixed at Rs.50/- and for the last 33 years the defendant-appellant is paying only Rs.50/- per month to the plaintiff-respondent no.1 as monthly rent.

The Hon'ble Supreme Court in the case of Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd., (2005) 1 SCC 705, considered the jurisdiction of the appellate Court while passing order of stay under Order 41 Rule 5 of the C.P.C., and held that the

appellate court has jurisdiction to put the applicant under Order 41 Rule 5 of the C.P.C., on such reasonable terms as would, in its opinion, reasonably compensate the decree-holder for loss occasioned by delay in execution of the decree by grant of stay, while passing the stay order in his favour, in the event of the appeal being dismissed. The Hon'ble Apex Court in the above referred case held as under :

“19. To sum up, our conclusions are:

1. While passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, 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 the grant of stay order, in the event of the appeal being dismissed and insofar as those proceedings are concerned. Such terms, needless to say, shall be reasonable.

2. In case of premises

governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (1) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree.

3. The doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in

the decree passed by the superior forum at a latter date".

The Hon'ble Supreme Court again in Anderson Wright & Company Vs. Amar Nath Roy, 2005 DNJ (SC) 562, while considering its earlier judgment in Atma Ram Properties (P) Limited's case (Supra) reiterated the same proposition of law.

This Court in Madan Bansal Vs. Ramnarayan Sharma, RLR 2006 (1) 733, considered the similar point and observed as under:

".... the criteria for admission of the appeal are altogether different than what adopted at the time of hearing of the appeal for final disposal. Even if the appeal is admitted by the First Appellate Court being a statutory appeal or second appeal as substantial question of law arises then it does not mean that it will be allowed finally. Once appeal is admitted, then it is commonly known, that it goes for hearing in Due Course and due to long list of pending old appeals, it takes quite considerable long time in its final disposal. In such circumstances a decree-holder is not only deprived of getting the possession of the rented premises, but also deprived of the monthly rent or the mesne profit or

compensation for use and occupation of the rented premises as per the market value of the shop or the prevalent rent of the premises. The order 41 Rule 5 of the CPC gives jurisdiction to the appellate court to pass interim stay staying the execution of the decree but the interim stay order is required to be passed reasonably and while doing so the interest of decree-holder is also required to be protected."

After considering all the facts and circumstances of the present case as well as the rival submissions of the learned counsel for both the parties, I am of the view that once the second appeal is admitted, the eviction-decree passed against the defendant-appellant should be stayed and accordingly I stay the decree of eviction passed against the defendant-appellant by both the court below, during the pendency of this second appeal, on the following terms and conditions:-

That the defendant-appellant shall deposit the arrears of monthly mesne profit till 30th of September, 2006, as per direction of the courts below, within a period of one month and shall further

continue to pay/deposit the monthly mesne profit at the rate of Rs.1500/- per month (Rupees one thousand and five hundred only), with effect from 1st October, 2006, by 15th day of each succeeding month, in the bank account of the plaintiff-respondent no.1, the details of which will be furnished by the plaintiff-respondent no.1 within a period of two weeks to the defendant-appellant or his counsel. In case the details of the bank account are not furnished, then the defendant-appellant may deposit the amount, in question, in the lower court itself.

It is made clear that in case all the arrears of mesne profit/rent, as per the direction of the court below, are not deposited within a period of one month and the future mesne profit/rent, as directed above, is not deposited with effect from 1.10.2006, for consecutive two months, then it will be open for the plaintiff-respondent no.1 to get the decree, passed in his favour by both the courts below, executed even during the pendency of this second

appeal.

The prayer of interim stay order is allowed in the manner as indicated above.

(Narendra Kumar Jain) J.

//Jaiman//