

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).6991/2006
(From the judgment and order dated 14/12/2005 in SBCSA No.342/2004
of The HIGH COURT OF RAJASTHAN AT JAIPUR BENCH, JAIPUR)

RAJESH SHARMA

Petitioner(s)

VERSUS

PRABHU LAL

Respondent(s)

(With office report)

Date: 04/09/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Petitioner(s)

Mr. S.K. Jain,Adv.

Mr. Mukesh Sharma,Adv.

Ms. Pratibha Jain,Adv.

Mr. Puneet Jain,Adv.

Mr. H.D. Thanvi,Adv.

Mr. Sarad Singhania,Adv.

For Respondent(s)

Mr. Shail Kumar Dwivedi,Adv.

Mr. G.V. Rao, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

Heard learned counsel for the parties.

The appeal is allowed, impugned orders are set
aside and suit for
eviction is decreed. The tenant-respondent is granted time till 30t

h June, 2007 to

vacate the premises in question upon filing usual undertaking w
ithin four weeks
from today.

No costs.

[Charanjeet Kaur]

Om Prakash]

Court Master

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3940 OF 2006

(Arising out SLP(C) No 6991 of 2006)

Rajesh Sharma

.. Appellant(s)

Versus

Prabhu Lal

.. Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the parties.

The appellant filed a suit for eviction on the ground that the

tenant made certain constructions in the suit premises without the

permission of landlord and thereby materially altered the premises

in question. The defence of the tenant was that permission was

granted by the landlord unequivocally under letter dated 23rd

February, 1994, Ex. A/1A. The trial Court dismissed the suit holding that the construction was made with the consent of the landlord relying upon the aforesaid letter. When the matter was taken in appeal, the lower appellate Court confirmed judgment and decree passed by the trial Court. Thereafter, the landlord took up the matter before the High Court

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in second appeal which dismissed the same on the ground that there was no substantial question of law. Hence, this appeal by special leave.

Learned counsel for the appellant-landlord submitted that on the basis of aforesaid letter- Ex.A/1A, it cannot be said that the landlord granted permission for making construction and thereby altering the premises in question, rather conditional permission was granted and as the conditions were not fulfilled, the defendant could not take any advantage therefrom and decree for eviction ought to have been passed on the grounds enumerated under Section 13 (1)(c) of the Rajasthan (Control of Rent and Eviction) Act, 1950.

Learned counsel appearing for the respondent-tenant on the other hand submitted that according to the aforesaid letter an

unconditional permission was granted to the tenant to make construction. To consider these submissions, it would be

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necessary to refer to relevant portions of the aforesaid letter which run thus :

"If you want to construct shops on platform of these cellars then you may do so at your own cost and responsibility. Please be kind enough to give the cellar of Shri Lal Chandra and the platform in front of it for me and my son in which some business may be established for my son."

.."Please be kind enough to give me the cellar of Shri Lal Chandra and the platform in its front only. Please consider these requests peacefully and sympathetically and in retrieving me from the financial crisis under humanism and live and let live you will do me a great favour."

From a bare perusal of the aforesaid two paragraphs in the letter, it would be clear that the landlord had granted permission with a condition that the tenant shall make construction upon the platform at his own cost and give the cellar of Shri Lal Chandra and the platform in front of the same to the landlord for carrying on business by his son. In our view the findings recorded by the trial Court as well as appellate Court were perverse and liable to be

set aside by the High Court in exercise of powers under Section 100
of the Code of Civil

..4/-

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Procedure as it is well-settled that second appellate Court is
empowered to interfere with the concurrent finding of fact recorded
by the two courts in case it finds that the same were perverse. For
the foregoing reasons, we are of the view that it is a fit case in which
impugned orders are fit to be set aside.

Accordingly, appeal is allowed, impugned orders are set
aside and suit for eviction is decreed. The tenant-respondent is
granted time till 30th June, 2007 to vacate the premises in question
upon filing usual undertaking within four weeks from today.

No costs.

.....J
[B.N. AGRAWAL]

.....J
[P.P. NAOLEKAR]

NEW DELHI,
SEPTEMBER 04, 2006.

