

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3835 OF 2010  
(arising out of S.L.P.(C)No.11642 of 2010)

C.M. ABU MOHAMMED (DEAD) BY L.Rs.  
AND OTHERS

...Appellant(s)

VERSUS

V. RAJKUMAR

...Respondent(s)

O R D E R

Issue notice. Mr. V. Lakshmi Narayan, appearing for Dr. Sushil Balwada, Advocate-on-record, accepts notice on behalf of the respondent-caveator.

With the consent of the learned counsel for the parties, the arguments have been heard on the merits of the case.

Leave granted.

This appeal is directed against order dated 26.3.2010 passed by the learned Single Judge of Karnataka High Court in Civil Miscellaneous No.3424 of 2010 in R.F.A. No.728 of 2009 whereby the respondent herein has been directed to pay a sum of Rs.25,000/- per month by way of damages from the date of decree i.e., 30.6.2009 and continue to pay that amount till the final disposal of the first appeal.

We have heard learned counsel for the parties and carefully perused the record. In our view, the impugned order is liable to be set aside because while deciding the application filed by the petitioners herein, the High Court did not consider the law laid down by this Court in State of Maharashtra and another versus Super Max International Private Ltd. and others, reported in (2009) 9 SCC 772, and the documents produced by the parties and this omission has resulted in failure of justice.

For the reason stated above, the appeal is allowed, the impugned order is set aside and the matter is remitted to the High Court for fresh disposal of the Miscellaneous Application filed by the appellants. The High Court may, if so considered necessary, direct the District Judge to record evidence of the parties on the market rent of the properties in the area where the disputed property is situated and submit a report and then decide the matter. The parties shall be free to raise all legally permissible contentions before the High Court.

Since the matter relates to payment of damages for continued use and occupation of the premises by the respondent, we request the High Court to dispose of the application as early as possible but latest within six months.

.....J.  
(G.S. SINGHVI)

.....J.

(ASOK KUMAR GANGULY)

NEW DELHI,  
April 26, 2010.  
ITEM NO.32

COURT NO.11

SECTION IVA

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).11642/2010  
(From the judgement and order dated 26/03/2010 in MC No.3424/2010  
in RFA No.728/2009 of The HIGH COURT OF KARNATAKA AT BANGALORE)

C.M. ABU MOHAMMED (D) BY LRS & ORS.  
VERSUS

Petitioner(s)

V. RAJKUMAR

Respondent(s)

(With office report)

Date: 26/04/2010 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. S. Srivatsav, Sr.Adv.  
Mr. M.P. Raghunath, Adv.  
Mr. Balaji Srinivasan, Adv.  
Ms. Madhusmita, Adv.  
Mr. S. Srinivasan, Adv.

For Respondent(s) Mr. V. Lakshmi Narayan, Adv.  
For Dr. Sushil Balwada, A.O.R.

UPON hearing counsel the Court made the following

O R D E R

Issue notice. Mr. V. Lakshmi Narayan,  
appearing for Dr. Sushil Balwada, Advocate-on-record,  
accepts notice on behalf of the respondent-caveator.

With the consent of the learned counsel for the  
parties, the arguments have been heard on the merits of the  
case.

Leave granted.

The appeal is allowed in terms of signed

order.

(A.D. Sharma)  
Court Master

(Phoolan Wati Arora)  
Court Master

(Signed Order is placed on the file)