

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).19940/2005

(From the judgement and order dated 10/08/2005 in CRP No. 9/2005 & CRP No. 117/2005 of The HIGH COURT OF RAJASTHAN AT JODHPUR)

SURESH CHANDRA

Petitioner(s)

VERSUS

FAULAL

Respondent(s)

(With appln(s) for exemption from filing O.T.,c/delay in filing counter affidavit,permission to file additional documents and prayer for interim relief and office report)

Date: 15/01/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE C.K. THAKKER

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s)

Mr. Anoop Kr. Srivastava, Adv.

Mr. Rameshwar Prasad Goyal,Adv.

For Respondent(s)

Mrs.K. Sarada Devi,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal stands disposed of.

(J.S. Rawat)

(Khushi Ram)

AR-cum-PS

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 222 OF 2007
(Arising out of SLP(C) No. 19940 of 2005)

Suresh Chandra

Appellant(s)

Versus

Faulal

Respondent(s)

O R D E R

Leave granted.

The appellant-landlord filed a suit being OS No. 27/2001 against

the tenant-respondent for arrears of rent and eviction. The trial court

decreed the Suit on 30th September, 2003.

The order of the trial court was affirmed by the first appellate

Court. The appellant armed with the order of the trial court got the eviction

decree executed and evicted the respondent-tenant on 13th May, 2005 and

got the possession, against which Second Appeal being SA No. 117/2005 was filed by the respondent-tenant in the High Court. The High Court by its order dated 21st of July, 2005 dismissed the Second Appeal of the respondent-tenant. While dismissing the appeal, the High Court granted time to the respondent-tenant till 31st of December, 2006 for vacating the premises in question. This said order was passed by the High Court ex parte. The appellant-landlord, being aggrieved by the ex parte order, filed a review/recall petition, which was dismissed by the impugned order.

Aggrieved against the dismissal of his review petition by the High Court and upholding the time granted to the tenant-respondent for vacating till 31st December, 2006, the appellant-landlord has filed the present appeal.

Heard the learned counsel on both sides.

The High Court has dismissed the review / recall application summarily by observing that no sufficient ground was made out to review the earlier order. Since the order granting time for vacating the premises in question was passed ex parte and in view of the fact that the possession of the premises had already been taken by the appellant on 13th May, 2005 i.e. before the ex parte order extending the time by the High Court on 21st of July, 2005, in our view a case for review/recall of the order dated 21st July, 2005 was made out and the High Court has committed an error in rejecting the review/recall application filed by the appellant. Accordingly, the order under appeal is set aside.

We are not remanding the case to the High Court. Since the

appellant had already taken possession in execution of the decree prior to passing of the ex parte order granting stay of eviction till 31st of December, 2006, the order dated 21st of July, 2005 cannot be sustained. The same is also set aside. No further orders need be passed in this matter.

The appeal stands disposed of accordingly.

.....J.
(ASHOK BHAN)

.....J.
(C.K. THAKKER)

New Delhi;
January 15, 2007.

.....J.
(B. SUDERSHAN REDDY)