

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5645 OF 2010
(Arising out of SLP(C)No.18170 OF 2008)

DAMODAR LAL

.....APPELLANT

VERSUS

SOHAN DEVI & ORS.

.....RESPONDENTS

O R D E R

Leave granted.

This appeal is directed against order dated 17.04.2008 passed by the learned Single Judge of Rajasthan High Court whereby he directed the respondents-tenants, who were defendants before the trial Court, to pay an amount of Rs.1040/- per month by way of mesne profit during the pendency of the second appeal preferred by them against the judgment of the lower appellate Court which had confirmed the decree of eviction passed by the trial Court.

The appellant (landlord) filed a suit for eviction against the respondents on the ground of material alteration in the suit premises. By judgment dated 21.12.1989, the trial Court decreed the suit. The appeal preferred by the respondents was dismissed by the lower appellate Court. The

second appeal filed by them was admitted by the learned Single Judge on 8.8.2005 and their eviction was stayed subject to the

condition that they shall either pay the entire amount due to the appellant or deposit the same in the trial Court within two weeks. The learned Single Judge also directed the respondents to continue to pay monthly rent by depositing the same in the trial Court or in the bank account of the appellant. After

some time, the appellant filed an application for recall of the stay order but the same was dismissed on 26.7.2007. Thereafter, he filed another application for fixing the mesne profits in the light of the judicial pronouncements of this Court. The learned Single Judge took cognizance of the fact that in the suit filed by the appellant, the appellate Court had fixed the standard rent of the disputed premises at Rs.1040 per month and directed the respondents to pay mesne profits at that rate w.e.f. 1.5.2008.

We have heard learned counsel for the parties and perused the record. In State of Maharashtra v. Super Max International (P) Ltd. (2009) 9 SCC 772, this Court considered the question whether in an appeal filed by the tenant against the decree of eviction, the appellate Court can direct payment of market rent to the landlord, referred to the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and judgments in Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd., (2005) 1 SCC 705, Niyas Ahmad Khan v. Mahmood Rahmat Ullah Khan, (2008) 7 SCC 539, Satyawati Sharma v. Union of India (2008) 5 SCC 287 and observed:

3

"71. We reaffirm the views expressed in Satyawati Sharma and emphasise the need for a more balanced and objective approach to the relationship between the landlord and tenant. This is not to say that the Court should lean in favour of the landlord but merely that there is no longer any room for the assumption that all tenants, as a class, are in dire circumstances and in desperate need of the Court's protection under all circumstances. (The case of the present appellant who is in occupation of an area of 9000 sq ft in a building situate at Fort, Mumbai on a rental of Rs 5236.58, plus water charges at the rate of Rs 515.35 per month more than amply highlights the point.)

72. With the perspective thus adjusted, all the submissions made by Mr Lalit on behalf of the appellant have a simple answer. The interim order of the High Court asking the appellant to deposit Rs 5,40,000 from the date of the decree as condition for stay of the execution of the decree of ejection has to be seen as one single package. The appellant may or may not accept the order as a whole. But it is not open to it to accept the order insofar as it stays the execution of the decree and to question the condition attached to it.

73. In an appeal or revision, stay of execution of the decree(s) passed by the court(s) below cannot be asked for as of right. While admitting the appeal or revision, it is perfectly open to the court, to decline to grant any stay or to grant stay subject to some reasonable condition. In case stay is not granted or in case the order of stay remains inoperative for failure to satisfy the condition subject to which it is granted, the tenant in revision will not have the protection of any of the provisions under the Rent Act relied upon by Mr Lalit and in all likelihood would be evicted before the revision is finally decided. In the event the revision is allowed later on, the tenant's remedy would be only by way of restitution."

The Court then analyzed the ratio of Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.(supra) and held as under:

4

"77. In the light of the discussions made above we hold that in an appeal or revision preferred by a tenant against an order or decree of an eviction passed under the Rent Act it is open to the appellate or the Revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent. Needless to say that in fixing the amount subject to payment of which the execution of the order/decree is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount.

78. In the case in hand, the High Court has fixed the amount of Rs 5,40,000 per month with reference to Stamp Duty Ready Reckoner and hence, its reasonableness cannot be doubted. In fairness to Mr Lalit he did not challenge the fixation of the amount on that ground.

79. Before concluding the decision one more question needs to be addressed: what would be the position if the tenant's appeal/revision is allowed and the eviction decree is set aside? In that event, naturally, the status quo ante would be restored and the tenant would be entitled to get back all the amounts that he was made to pay in excess of the contractual rent. That being the position, the amount fixed by the court over and above the contractual monthly rent, ordinarily, should not be directed to be paid to the landlord during the pendency of the appeal/revision. The deposited amount, along with the accrued interest, should only be paid after the final disposal to either side depending upon the result of the case."

Since the impugned order was passed by the learned Single Judge without having the benefit of the judgment of three-Judge Bench in State of Maharashtra v. Super Max International (P)

Ltd. (supra), we feel that it will be in the interest of justice to remit the matter to the High Court for fresh disposal of the application filed by the appellant.

5

In the result, the appeal is allowed, the impugned order is set aside and the matter is remitted to the High Court for fresh determination of the amount payable by the respondents by way of mesne profits in the light of the judgments of this Court in Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.(supra) and State of Maharashtra v. Super Max International (P) Ltd.(supra).

Since the second appeal preferred by the respondents is pending for last more than 5 years, we request the High Court to dispose of the application filed by the appellant as early as possible.

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

.....J.
(ASOK KUMAR GANGULY)

NEW DELHI;
JULY 16, 2010.

6

ITEM NO.42

COURT NO.11

SECTION XV

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).18170/2008

(From the judgement and order dated 17/04/2008 in SBCSA No. 109/2000 of The HIGH COURT OF RAJASTHAN AT JODHPUR)

DAMODAR LAL

Petitioner(s)

VERSUS

SOHAN DEVI & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 16/07/2010 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. Pallav Shishodia, Sr.Adv.
 Mr. H.D.Thanvi, Adv.
 Ms. Preeti Thanvi, Adv.
 Mr. Sarad Kumar Singhania,Adv.

For Respondent(s) Mr. S.C. Birla,Adv.
 Mr. Subrat Birla,Adv.
 Mr. Baldev Atreya,Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed order is placed on the file)