

Kumud Lata Das

Vs

Indu Prasad

Civil Appeal No. 12729 of 1996

(K. Ramaswamy, Faizanuddin, G. B. Pattanaik JJ)

19.09.1996

ORDER

1. Leave granted.

2. This appeal by special leave arises from the order made on 16-4-1996 by the Delhi High Court in IA No. 8629 of 1995 in Suit No. 3781 of 1990. The suit was for possession of the property from the appellant. The plaintiff is the mother-in-law of the appellant. The appellant and her husband are not able to live amicably in matrimonial tie. The proceedings for divorce are pending. The appellant is in possession of the property and, therefore, the respondent-mother-in-law filed a suit for possession on the basis of her alleged title. The appellant was set ex parte and the application under Order 9 Rule 13 CPC is now pending before the High Court. The application for restoration of the decree has been disposed of with directions to deposit and to continue to deposit mesne profits at the rate of Rs 2000 per month from the date of ex parte decree. Hence, this appeal by special leave.

3. In view of the fact that the parties are closely related and the matter has been disposed of ex parte, we are of the view that it is not a fit case to impose costs or depositing mesne profits from the date of ex parte decree and to continue to deposit it as a condition to contest the application to set aside ex parte decree. Moreover, such onerous condition is not valid, though discretionary.

4. Under these circumstances, we think that the learned Single Judge was not right in imposing the condition of depositing the mesne profits as a condition precedent for execution of the ex parte decree. The impugned order of the High Court is accordingly set aside. There shall be stay of execution of the ex parte decree. The matter is remitted to the High Court for fresh consideration of the application for setting aside the decree on merits and in accordance with law.

5. The appeal is allowed. No costs.