

# SUPREME COURT OF INDIA

Satya Pal Sikka

Vs.

Amar Nath

(G Ray and G Pattanaik JJ.)

20.10.1997

## ORDER

1. Leave granted. Heard learned counsel for the parties. The order impugned in this appeal is the direction of the High Court dated 1-11-1996 given in CMWP No. 15061 of 1996. The Allahabad High Court by the said impugned order remanded the appeal to the lower appellate court for reconsideration after allowing the parties to lead further evidence. It may be stated that previously the said eviction suit had travelled up to the High Court and an order of remand was made by the High Court to the lower appellate court by directing the lower appellate court to consider the questions framed by the High Court on the basis of the materials on record by judgment dated 22-8-1988. Such questions had been considered by the lower appellate court after remand and on considering the materials on record, the lower appellate court had answered in favour of the landlord by indicating that the landlord would suffer greater hardship if the premises in question was not vacated and the possession of the same was not given to the landlord. It may also be stated here that before the lower appellate court, the appellant-tenant made an application for taking into consideration the subsequent events. Such application had also been considered and rejected by the lower appellate court. Against such order of rejection, the High Court was moved. It is stated by the learned counsel for the appellant that the High Court directed that the said application would be considered at the time of disposal of the proceedings challenging the order of lower appellate court. It appears to us that by the impugned order, the High Court has proceeded erroneously on the footing that the earlier order of remand did not mean that the appeal was to be disposed of (sic not) only on the basis of the materials already on record but such appeal was to be disposed of on the basis of the materials which were already on record along with the fresh materials which would come on the record on the basis of further evidence of the parties. Such interpretation of the earlier order of remand is clearly erroneous. The High Court was not entitled to sit in appeal over the earlier order of remand made by it. As the lower appellate court has come to specific findings in

favour of the landlord on considering the materials on record, there was no occasion for the High Court to interfere with the same particularly on an erroneous premise that the lower appellate court had failed to appreciate the scope and import of the earlier order of remand which envisaged that the parties could lead further evidence.

2. We, therefore, allow this appeal and set aside the impugned order passed by the High Court, and affirm the judgment of the lower appellate court. There will be no order as to costs.

3. On the prayer of the learned counsel for the respondent, we, however, grant time to vacate the disputed premises and shift to the first floor room which the appellant-landlord had offered to the tenant-respondent within 31-12-1997 on filing the usual undertaking before this Court within a period of four weeks from today. The tenant-respondent will give notice to the appellant-landlord at least two weeks in advance of the proposed date when the tenant would occupy the first floor room so that the landlord would keep such room vacant and hand over the key to the tenant vacating the disputed premises and handing over the possession of such premises to the landlord-appellant.