

**SUPREME COURT OF INDIA**

Ghaziabad Development Authority, Ghaziabad

Vs.

Jaimala

C.A.No.15611 of 1996

(K. Ramaswamy and G. T. Nanavati JJ.)

02.12.1996

**ORDER**

1. Leave granted.

2. We have learned counsel on both sides.

3. This appeal by special leave arises from the order of the High Court of Allahabad, made on May 10, 1996 in CR. No. 352 of 1995. It is not necessary to narrate all the facts relating to the controversy in execution. It is now not in dispute that against the decree of the trial Court, the appeal has been filed in the High Court. The appeal is now pending. When the respondent had taken out execution of the decree of the trial Court, the respondent had also filed another Revision No. 56/95 and the High Court has granted stay on May 15, 1995 of the execution of the decree. Thereafter without knowledge, the learned counsel appearing for the appellant, appears to have made a statement in the executing Court as well as in the High Court that no revision was filed against the order passed by the executing Court. As a consequence, a direction was given in the impugned order to enforce the decree and exemplary costs were awarded. However, the learned

counsel for the respondent has brought to our notice that the Court has stayed the execution of the decree and the appellant have under threat of contempt executed the sale deed in favour of the respondent. In view of the fact that sale deed has already been registered in favour of the respondent in execution of the decree, we decline to go into the question of the legality of the execution, in spite of the order of stay granted by the High Court in the aforesaid revision. However, whether the respondent requires to pay at the rate of Rs. 500/- per sq. yd. or at the rate of Rs. 800/- per sq.yd. is the subject matter of the dispute in the pending appeal. Under these circumstances, the execution of the sale deed will be subject to the result in the appeal. Accordingly the imposition of the exemplary costs by the High Court for a sum of Rs. 25,000/- is not warranted on the facts in this case and is accordingly set aside.

4. The appeal is accordingly allowed to the above extent. No costs.

Appeal allowed.