

**SUPREME COURT OF INDIA**

Kumud Kumar

Vs.

Central Bank of India

C.A.No.2724 of 1997

(V. N. Khare and S. N. Phukan, JJ.)

27.04.2000

**ORDER**

1. The appellant herein is the landlady. She filed a suit for possession, damages as well as mesne profit. The suit was decreed on 30th April, 1994 and the tenant was required to pay mesne profit @ Rs. 10,000/- per month. Thereafter the respondent preferred an appeal before the High Court of Judicature at Allahabad against the decree passed by the trial Court. During the pendency of the appeal the tenant deposited mesne profit with effect from 22nd January, 1991 @ Rs. 10,000/- per month. Subsequently, when the first appeal came up for hearing before the High Court, it was found that the landlady has not terminated the tenancy by giving notice under Section 106 of the Transfer of Property Act. On this short ground, the appeal was allowed and decree of the trial Court was set aside. It is against the said decision of the High Court, the landlady is in appeal before us.

2. After the judgment of the High Court, the landlady terminated the tenancy by giving notice under Section 106 of the Transfer of Property Act and thereafter filed a suit for possession and mesne profit. The trial Court decreed the suit and awarded mesne profit @ Rs. 5,000/- per month. The tenant on the basis of the said decree, handed over the possession of the premises and deposited the mesne profit @ Rs. 5,000/- per month, which was withdrawn by the landlady.

3. Learned counsel, appearing for the appellant, urged that in the present case no notice under Section 106 of Transfer of Property act was required to be given to the tenant, we are not inclined to entertain the argument of learned counsel for the appellant. If we permit the appellant to prosecute this appeal, it would amount to abuse of the process of the Court. It is almost settled that a litigant cannot be allowed to prosecute two remedies simultaneously. Moreover we find that the appellant has acquiesced to the order of the High Court by giving notice under Section 106 of the Transfer of Property Act and thereafter filing a suit for ejectment of the tenant. The only question that requires to be determined is at what rate the appellant is entitled to the rent deposited by the tenant. It is admitted by the Bank's counsel Mr. Avijit Bhattacharjee that the respondent-Bank had deposited the mesne profit in the second suit @ Rs. 5,000/-. We, therefore, permit the appellant to withdraw the rent @ Rs. 5,000/- out of the amount deposited by the respondent-tenant herein for the period of 22nd January, 1991 to 1st August, 1996. The respondent-Bank will also equally at liberty to withdraw the balance amount. Learned counsel for the parties are also in agreement with this order.

4. With these directions, the appeal is disposed of. There shall be no order as to costs.

Order accordingly.