SUPREME COURT OF INDIA

Achal Mishra

Vs.

Rama Shankar Singh

C.A.No.3322 of 1998

(S.B. Sinha, Tarun Chatterjee and P.K. Balasubramanyan JJ.)

01.05.2006

ORDER

P.K. BALASUBRAMANYAN, J.

1. This application is filed by the respondents in the above appeal praying for a clarification of the order dated 11.4.2005. It is prayed that the order be clarified as regards the amount to be paid towards arrears of rent after taking note of the sums earlier paid by them. This Court, in the Judgment, had directed Respondent no.1 to pay a sum of Rs.3,50,000/- and Respondent no.2 to pay a sum of Rs.3,00,000/- as a condition for enabling them to pursue their writ petition in the High Court. This was taking note of the fact that for a period of 26 years or so, no rent had been tendered or paid by these respondents towards the portions of the building occupied by them on the basis of allotments by the rent controller. It is the case of the respondents in the appeal, the petitioners herein, that during the pendency of the appeal in this Court, they had made some payments and it was just and necessary to permit the deduction of those sums paid from the amounts ordered to be deposited. Respondent no.1 submits that he had paid a sum of Rs.1,75,032/- and hence the balance amount payable by him is only Rs.1,74,968/- and there may be such a clarification. Respondent no.2 had paid a sum of Rs.1,45,860/- and the said amount may be permitted to be deducted from the sum of Rs.3,00,000/-, thus reducing the amount to be deposited by him to Rs.1,54,140/-. The prayer is that the direction in the judgment may be clarified in the above manner.

2. It is seen that Respondent no.1 in the appeal, petitioner no.1 had tendered the entire amount of Rs.3,50,000/- as ordered by this Court and there was no argument on his behalf for making the adjustment as sought for by him. Therefore, we need not consider the case of petitioner no.1 in this application.

3. As far as Respondent no.2 in the appeal, petitioner no.2 herein, is concerned, the direction was to deposit a sum of Rs.3,00,000/-. In the appeal the landlord had filed IA no.4 of 2004, for issue of directions by this Court to the tenants, the petitioners herein, to pay the rent of the premises, accrued during the pendency of the litigation. The prayer in IA no. 5 of 2005 was for the issue of a direction to the respondents in the appeal, the petitioners herein, to vacate the premises. This Court had issued a direction on 5.4.2004, directing the occupants to pay the entire arrears of rent/damages within a period of two months from the date of the order and to continue to pay monthly rent/damages as and when it falls due. This Court also subsequently directed that whatever amount is tendered by the occupants may be received by the landlord without prejudice to her contentions. It is the case of

Respondent no.2 in the appeal, that he had tendered a sum of Rs.1,45,860/- on 5.7.2004and the sum had been received by the landlord and this payment had not been specifically taken note of in the Judgment though the fact that earlier the said amount tendered by way of a cheque was returned, has been noticed. Counsel, therefore submits that if this Court had noticed the subsequent acceptance by the landlord of this amount as paid, in the order dated 5.7.04 the amount to be deposited would not have been fixed at Rs.3,00,000/- but it would have been less than the amount ordered to be deposited. On behalf of the landlord it is submitted that no amount of rent had been paid for 26 years and it was in that context that this Court had directed Respondent no.2 in the appeal to deposit a sum of Rs.3,00,000/- and it was not as if this Court was not conscious of the fact that he had tendered a sum of Rs.1,45,860 on 5.7.2004. It is submitted that considering the importance of the locality, the nature of the building and the nature of the dispute, the order for deposit of Rs.3,00,000/- was just and there is no occasion for making a modification as claimed.

4. In the Judgment, while dealing with IA nos.4 and 5 of 2004 vis-`-vis respondent no.2 in the appeal, this Court in paragraph 17 stated:

"On 5.7.2004, respondent No.2-Raj Singh filed an affidavit-in-response stating that on 2.6.2004 he tendered a crossed cheque of Rs.1,45,860/- as rent for 26 years calculated on the basis of the annual value as stated in the assessment list of 1976, of the first floor of the premises in question which is Rs.5,100/-, water tax Rs.408/- and drainage tax Rs.102/- making a total of Rs.5,610/- per annum. However, the cheque was received back by respondent No.1 as addressee-landlord was not available at the address give by him."

Then it was noticed in paragraphs 19 and 20 thus: "According to the landlord, the property is a valuable property situated in a prime locality of Lucknow city. The landlord has got the property valued through Snow Fountain Consultants, Architects and Valuers. The valuation report dated 17.7.2004 has been filed in the court according to which the total rent of the property would come to Rs.28,496/- per month.

This litigation is more than 25 years old. To allow the tenants to contest the case without payment of arrears and occupation charges falling due month by month would be travesty of justice. There are two proceedings pending between the parties: one is the present proceedings and the other is a suit for recovery of rent filed by the landlord against tenants."

5. In the context of these, this Court issued the following directions regarding Respondent no.2, petitioner no.2 herein:

"Within a period of two months from today respondent No.2- Raj Singh, in occupation of the first floor, shall tender an amount of Rs.3,00,000/- by way of demand draft drawn on a schedule bank in the name of the landlord and hand over the same to the counsel for the landlord. With effect from 1.5.2005, month by month, on or before the 15th day of that month, Raj Singh-respondent No.2 shall pay an amount of Rs.1,000/- per month, plus the amount of water tax and drainage tax through bank draft drawn in the name of the landlord and tendered either to the landlord or to her counsel.

This amount shall be treated as a provisional payment but a condition precedent to their entitlement to contest the present proceedings. The amount so paid shall be liable to be adjusted consistently with the decree that may be passed by the competent Court for the recovery of the rent.

Any respondent who does not comply with the above-said order, shall not be entitled to contest in the proceedings and shall not be entitled to be heard."

This Court also noticed the decision in Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd. (2005 (1) SCC 705) and clarified that the occupants would be liable to pay the rent equivalent to mesne profits with effect from the date from which they are found to have ceased to be entitled to retain possession of the premises as tenants and for such period the landlord's entitlement cannot be pegged down to the standard rent. The claim of Petitioner no.2 in this application has to be considered in the context of what has been stated in the Judgment.

6. It is true that there is no specific mention in the Judgment of the fact, or the noticing of the fact, that on 5.7.2004, a sum of Rs.1,45,860/- was tendered and received without prejudice, by the landlord, as directed by this Court in IA nos.4 and 5 of 2004. The same was the position as can be seen from this petition, as regards Respondent no.1 in the appeal. But still, considering the aspects noticed in the Judgment and the circumstances obtaining, respondent no.1 in the appeal, tendered the entire amount of Rs.3,50,000/- without prejudice to his contentions in the pending writ petition or in the matter of rent/damages for use and occupation payable by him. Though this conduct on the part of respondent no.1 in the appeal is not binding on respondent no.2 in the appeal, or can affect his rights, or influence the decision in the present application by respondent no.2, this conduct, does show, that under the circumstances the direction made by this Court was not unduly harsh or unjust.

7. A substantial building in an important part of the town was being held by respondent no.2 in the appeal, petitioner no.2 herein, all these years as a tenant without paying or tendering the rent that was payable. The landlord, of course, has a case that the order of allotment to petitioner no.2 which was made as a special allotment, itself stood cancelled on his transfer to another town as a judicial officer and on his occupying another accommodation in that town. In the Judgment it has been noticed that the building would have fetched a substantial rent considering its nature and location. The fact that no rent had been tendered for a period of 26 years had also been noticed. The further fact that the landlord was not pegged down to the standard rent which itself remained to be fixed, was also noticed. As indicated, the only peg on which petitioner no.2 seeks to hang his case, is the fact that in the order, the tendering and acceptance of the sum on 5.7.2004 has not been specifically noticed. Strictly speaking, this is not a case where a clarification should automatically follow merely for the reason that the factum of payment of the sum in question was not specifically referred to in the judgment of this court.

8. At the same time, the amount has been directed to be deposited as a condition precedent for petitioner no.2 to get a hearing in his writ petition. Taking notice of that fact, we think it proper to give some concession to respondent no.2 in the appeal, petitioner no.2 herein, in respect of the amount to be deposited towards the rent/damages that may become ultimately payable. According to petitioner no.2, the amount to be tendered to make up the sum of Rs.3,00,000/- is only Rs.1,54,140/- . In the circumstances, taking stock of the situation as a whole, we think that it would be appropriate to modify the direction for payment by respondent no.2 in the appeal, petitioner no.2 herein, by fixing a sum of Rs.2,00,000/- in the place of Rs.3,00,000/-. We, therefore, modify the judgment dated 11th April, 2005 by directing that the amount payable by Raj Singh, respondent no.2, in the appeal, would be Rs.2,00,000/- and not Rs.3,00,000/- as originally fixed.

9. Now that we have modified the amount to be paid by respondent no.2 by fixing it at Rs.2,00,000/- after taking note of what he had paid earlier on 5.7.2004, we, direct that the amount of

Rs.2,00,000/- should be paid by respondent no.2, petitioner no.2 herein within a period of one month from today, failing which he would lose the right to pursue the writ petition he has already filed in the High Court, as indicated in the original Judgment. If he had made any payment after the date of the judgment, towards the sum directed to be paid, the sum paid would be given credit to and respondent no.2 will be liable to pay only the balance within the time fixed, to make up the sum of rupees two lakhs.

10. It is brought to our notice that in spite of the hope expressed by this Court that the writ petition should be disposed of expeditiously and preferably within six months of the receipt of a copy of the Judgment by this Court, the same has not been heard. We feel that it would be proper for the High Court to hear the writ petition without delay so as to ensure that the image of the institution is not dented. We expect the High Court at least now to dispose of the writ petition expeditiously.

11. The application is disposed of with the above modification and observation.