

SUPREME COURT OF INDIA

Puspa Mayee Dasi

Vs.

Smt. Jyotsna Daw

(B.N.Agarwal and P.P.Naolekar JJ.)

19.11.2007

ORDER

This special leave petition was placed for consideration on 24.09.2007 on which day we dismissed the same, but directed that reasons shall follow which are recorded hereunder. The respondents filed a suit in the City Civil Court, Calcutta, for eviction of the defendants-petitioners from the suit premises on the grounds that the defendants changed user of the suit premises from residential to commercial, caused material deterioration in condition of the premises and made construction on the open terrace in the second floor of the premises in question without consent of the landlord. The defendants entered appearance and filed written statement contesting the claim for ejection on all the grounds. During trial, the parties adduced evidence in support of their respective cases and upon conclusion of the same the trial court came to the conclusion that the plaintiff failed to prove the ground of change of user, but succeeded in proving the other two grounds and consequently passed a decree for eviction.

Against the order of eviction, the defendants preferred an appeal before the High Court which though reversed the finding of the trial court on the question of material deterioration in condition of the suit premises, but concurred with that of the trial court that the defendants made construction on the open terrace in the second floor of the premises in question without consent of the landlord and accordingly, the appeal was dismissed, against which order the present special leave petition was filed.

Having heard the parties and perused the records, we are of the opinion that the trial Court as well as the High Court were quite justified in recording the finding, that the defendants made construction on the open terrace in second floor of the suit premises without consent of the landlord, after taking into consideration the evidence adduced on behalf of the parties and no interference by this Court is called for. Special leave petition is accordingly dismissed. The petitioners are granted time till 30th June, 2008 to vacate the premises in question upon filing usual undertaking within six

weeks from today in this Court.