

# SUPREME COURT OF INDIA

Pradeep Kumar

Vs.

Hajari Lal

(S.Sinha and H.S.Bedi, JJ.)

22.02.2008

## JUDGMENT

**Harjit Singh Bedi, J.**

1. Special Leave granted.

2. The order under challenge has been made on a stay application moved by the tenant whose second appeal is pending in the High Court. It is clear from the record that the plaintiff-respondent has succeeded in securing a decree for eviction from both the courts below and the second appeal stands admitted, as already mentioned above. While admitting the appeal, this Court by an interim order dated 7th July 2004 stayed the execution of the decree. By the present application moved by the respondent, a prayer has been made that the mesne profits of the property in dispute which had been let out at the rate of Rs. 600/- per month 18 years ago should be suitably enhanced and that the provisions of Order 41 Rule 5 of the CPC which visualized that reasonable terms which would compensate the decree-holder for loss occasioned for delay in execution of the decree in the event of the appeal being dismissed, should be kept in mind in the light of the judgment of this Court in *Atma Ram Properties Private Limited v. Federal Matters Private Ltd'*. The learned Single Judge accordingly by the impugned order directed that the interim order passed on 7th July 2004 be confirmed subject to the condition that the appellant deposits pays mesne profit of the property in dispute at the rate of Rs. 4,000/- per month by the 15th day of each succeeding month. It is this direction which is under challenge in this appeal.

3. The learned Counsel for the appellant has argued that there was no basis on which the High Court had reached its decision that the mesne profits be at the rate of Rs. 4,000/- per month and as the premises in question were only a few rooms, and in a decrepit state, the aforesaid amount was really excessive. The learned Counsel for the respondent-landlord has, however, pointed out that the value of the property had been evaluated by Shri Rajendra Arya who in his report had submitted that the annual rent of the property ought to be about 92,000/- and as such the award of Rs. 4,000/- was, in fact, inadequate. He has also referred us to the observations of the appellate court to contend that the appellant herein had managed to delay the proceedings over several years by resorting to all kinds of dilatory facts and as such his conduct must receive the censure of this Court. It has also been urged that the

appellant had in the meanwhile been posted from Alwar to a place 400 to 500 miles distant and as such the property, even otherwise, was not being utilized by him.

4. We have considered the arguments advanced by the learned Counsel for the parties. In the first place, it must be borne in mind that only an interim order is under challenge before us and ordinarily no interference should be made in such a proceeding under Article 136 of the Constitution. On merits too, we are of the opinion that in the light of the valuation report by Rajendra Arya and the fact that the rent of the premises was fixed at Rs. 600/- per month almost 18 years ago, interim mine profit at the rate of Rs. 4,000/- per month cannot be said to be excessive. We also see from a bare reading of the record that the appellant has managed to delay the eviction proceedings for more than 15 years by resorting to tactics which are clearly unacceptable. The submission of the learned Counsel for the appellant that though the appellant had indeed been transferred from Alwar, yet his wife and young son often used the premises is again unacceptable. We find it difficult to believe that a mere Clerk, such as the appellant, would be able to justify the maintenance of two houses, one at Alwar and the other at his place of posting 400 kms. Away.

5. We accordingly dismiss the appeal.

Judgment Referred.

<sup>1</sup> (2005) 1 SCC 0705