

SUPREME COURT OF INDIA

Shiv Kumar

Vs.

Darshan Kumar

C.A.Nos.7259-7260 of 2008

(Tarun Chatterjee and V.S. Sirpurkar JJ.)

12.12.2008

ORDER

Tarun Chatterjee, J.

1. Delay of 166 days in filing these appeals is condoned as we find that the statements made in the application for condonation of delay constitute sufficient cause for condoning the delay in filing the same.

2. Leave granted.

3. These appeals are directed against a judgment and order dated 8th of January, 2007 passed by the High Court of Delhi at New Delhi in Civil Misc. Nos.142-143 of 2007 which arose out of Civil Misc. Main No. 429 of 2005, whereby the High Court had rejected the application for restoration filed by the landlord/appellant and thereby denying to restore the Civil Misc. Main No. 429 of 2005.

4. The appellant, being the landlord of Shop No. WZ-272, Jail Road, Nangal Raya, New Delhi - 46 (hereinafter referred to as "the disputed property") filed an eviction petition before the Rent Controller, New Delhi, which was decided in favour of the appellant and the Rent Controller, by the said order, passed an order of eviction against the respondent.

5. Feeling aggrieved, the respondent approached the Additional Rent Control Tribunal, New Delhi and by an order dated 20th of September, 2004, the Additional Rent Control Tribunal had set aside the order of the Rent Controller and rejected the eviction petition filed by the appellant. Against this order of the Additional Rent Control Tribunal, the appellant had approached the High Court of Delhi by way of a Civil Misc. Main Petition No. 429 of 2005 and the High Court entertained the said petition and issued notice to the respondent. The aforesaid petition, however, was dismissed in default on 4th of May, 2006. Accordingly, an application for restoration was filed by the appellant for the purpose of recalling the aforesaid order of dismissal for default. In the application for restoration, it was alleged that the appellant had fallen seriously ill and was admitted to Sir Ganga Ram Hospital, whereby he

was advised by the Doctors to take complete bed rest. By the impugned order, the application for restoration was rejected and feeling aggrieved, the appellant has come up before this Court by way of Special Leave Petitions, which on grant of leave, were heard in presence of the learned counsel for the parties.

6. Having heard the learned counsel for the parties and after going through the materials on record including the statements made in the application for restoration, we are satisfied that the application for restoration should be allowed subject to payment of Rs.10,000/- to the respondent in the High Court as costs. Accordingly, the impugned order is set aside and the original Civil Misc. Petition No.429 of 2005 is restored to its original file subject to payment or deposit of Rs.10,000/- as costs to the respondent in the High Court within a period of one month from this date. However, it was brought to our notice by the learned counsel for the tenant/respondent that subsequent to the rejection of the application for restoration, two other petitions for restoration were also rejected by the High Court. Therefore, the learned counsel for the respondent contended that the question of restoration of the Civil Misc. No. 429 of 2005 at this stage cannot arise as the appellant had failed to challenge the subsequent two orders as noted hereinabove.

7. Since the appellant has already challenged the first order of rejection of the restoration application, which is now before us and in the event this application for restoration is allowed and the Civil Misc. No. 429 of 2005 is restored to its original file, it is needless to say that the subsequent restoration applications, which were rejected, are also deemed to have been allowed.

8. Accordingly, the impugned order is set aside and the original Civil Misc. No. 429 of 2005 is restored to its original file. The High Court is requested to dispose of the case at an early date preferably within two months from the date of supply of a copy of this order to it. However, we make it clear that in the event, the appellant fails to deposit or pay the aforesaid amount of Rs.10,000/- to the respondent as costs in the High Court within one month from this date, the application for restoration shall stand rejected and these appeals shall stand dismissed and the order of the High Court shall stand affirmed.

9. Accordingly, the impugned order is set aside. The appeals are allowed to the extent indicated above. There will be no order of costs.