

SUPREME COURT OF INDIA

Kishanlal Sahu

Vs.

Ramesh Chandra Agrawal

C.A.No.68 of 2009

(Tarun Chatterjee and H.L.Dattu JJ.)

09.01.2009

ORDER

1. Delay condoned.

2. Leave granted.

3. This is an appeal filed against the order of the High Court of Judicature at Allahabad in CMWP No. 30689 of 2004 by which a learned Judge of the High Court, by an interim order directed that the appellant who is a tenant in respect of a shop, shall pay Rs. 3000/- with effect from October, 2006 which includes water tax per month as the rent of the same to the respondent-landlord by 7th of each succeeding month until further orders with 10% notional increase after every five years and in default of payment of the enhanced rent, as noted above, the landlord can get the shop vacated with the help of police, if necessary, within a period of one month by giving notice in writing to vacate the same. In our view, the High Court had fallen in error in passing the impugned order at the time of the admission of the writ petition which has been filed against the order of rejection of the release application filed by the respondent-landlord. It is not in dispute that the initial rent of the shop in dispute was Rs. 50/- per month which was subsequently enhanced to Rs. 750/- by an order of the High Court passed on 20th of May, 2004. Considering the facts and circumstances of the present case and particularly the fact that the initial rent was Rs. 50/- per month enhanced to Rs. 750/- in May 2004 and further considering the fact that the release application of the landlord was rejected against which the writ petition was filed, we are of the view that it would be fit and proper if the appellant is directed to pay or deposit the rent at the rate of Rs. 1000/- per month instead of Rs. 3000/- as directed by the High Court in the impugned order till the disposal of the writ petition. So far as the direction to take possession of the shop in dispute for default of payment is concerned, we do not find any ground to sustain the said part of the impugned order as we feel that it would be open to the respondent-landlord to apply for delivery of possession in the event the said order is vacated for non payment of the rent, as directed by the Court. Since the writ petition is pending before the High Court, we request the High Court to decide the same within a period of three months from the date of

supply of a copy of this order. We make it clear that we have not gone into the merits of the disputes in question which shall be decided by the High Court.

4. For the aforesaid reasons the impugned order is set aside and the appeal is allowed to the extent indicated above. There will be no order as to costs.