

**SUPREME COURT OF INDIA**

Jai Prakash

Vs.

Gulab Singh Rathore

C.A.No.2061 of 2002

(B.N. Agrawal and G.S. Singhvi JJ.)

19.03.2009

**ORDER**

Heard learned counsel for the parties.

1. The Trial Court passed an ex-parte decree for eviction and directed the defendant to pay a sum of Rs.29,700/- as arrears of rent and damages at the rate of Rs.27.50 per day from the date of filing of the eviction petition till the date the possession is delivered to the landlord. The appellant filed a petition under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, which was rejected by the Trial Court and the said order has been confirmed by the High Court in revision.

2. Hence, this appeal by special leave.

3. It is not in dispute that after the passing of the ex-parte decree, possession of the premises in question was delivered to the landlord who let out the same to another person on 5th March, 2002. In view of this development, we are not inclined to interfere with the decree for eviction and arrears of rent for Rs.29,700/-. However, we do not find any justification for the decree of damages at the rate of Rs.27.50 per day from the date of filing of the eviction petition till the date the possession is delivered to the landlord.

4. Accordingly, the award of damages at the rate of Rs.27.50 per day from the date of filing of the eviction petition till the date the vacant possession is delivered to the landlord is hereby set aside.

The civil appeal is, accordingly, disposed of.