

SUPREME COURT OF INDIA

Kamla

Vs.

Gaurav Kumar Gupta

C.A.No.2875 of 2009

(Tarun Chatterjee J.)

28.04.2009

JUDGEMENT

Tarun Chatterjee J:-

1. Leave granted.

2. This appeal arises out of a Judgment and decree dated 7th of August, 2007 passed by a learned Judge of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in SB Civil Second Appeal No. 229 of 2007 affirming the Judgment and decree passed by Addl. Civil Judge (Sr. Div.) and Addl. Chief Judicial Magistrate, Jaipur and Addl. District Judge, Jaipur, Rajasthan.

3. We have heard the learned counsel for the parties and examined the impugned Judgment and other materials on record. On a perusal of the impugned Judgment of the High Court, it appears to us that the Second Appeal was dismissed by the High Court practically on the ground that the appellants had failed to pay off all the arrears of rent, as directed to be deposited by the interim order of the High Court dated 17th of April, 2007, although a finding was made by the High Court that in Second Appeal, the concurrent findings of fact on the ground of bonafide necessity, nuisance, default in making the payment of rent and material alteration could not be disturbed.

4. While issuing notice, this Court, by an order dated 10th of September, 2007, granted interim order in the following manner:-

“Issue notice.

In the meantime, without prejudice to the rights and contentions of the parties, there will be stay of dispossession from the premises in question, on the conditions that the petitioner shall go on depositing the rent at the rate of Rs. 600/- p.m. within 15th of each succeeding month, the first of such deposit shall be paid or deposited on or before 15th September, 2007.

The petitioner shall also deposit all arrears of rent, if not already paid, within two months from this date. In default of any of the above conditions, the interim order shall stand automatically vacated.”

5. The learned counsel appearing for the appellant submitted on instructions that in compliance with the aforesaid interim order of this Court dated 10th of September, 2007, the rent at the rate of Rs. 600/- per month and also the arrears of rent at the said rate have already been deposited by the appellant. This fact could not be disputed by the learned counsel for the respondents.

“After hearing the learned counsel for the parties, we feel it appropriate that in view of the findings of the Appellate Court as well as of the trial Court, the rate of rent ought to have been directed to be deposited at Rs. 1600/- per month and not Rs. 600/- per month.”

6. Therefore, we modify the interim order by directing that the appellant shall go on depositing rent at the rate of Rs. 1600/- per month till the disposal of the Second Appeal and in view of the aforesaid, the arrears of rent, as noted herein earlier in our interim order dated 10th of September, 2007, shall be calculated not at the rate of Rs. 600/- per month but at the rate of Rs. 1600/- per month, which shall be deposited or paid by the appellant within three months from the date of receiving a copy of this order.

7. Since the appeal was practically decided on the aforesaid ground of non-compliance of the interim order of the High Court, we feel it appropriate to direct that the appeal should be decided on merits, provided the appellant deposits arrears of rent at the rate of Rs. 1600 per month instead of Rs. 600 per month as indicated above and also shall go on depositing at the rate of Rs. 1600/- per month till the disposal of the Second Appeal.

8. Accordingly, we set aside the Judgment and decree of the High Court and request the High Court to decide the appeal after formulating substantial questions of law in compliance with Section 100 of the Code of Civil Procedure and thereafter, decide such questions of law after giving hearing to the parties and after passing a reasoned Judgment within a period of six months from the date of compliance of the order, as indicated hereinabove and in case, the appellant fails to comply with the aforesaid direction, this appeal shall stand dismissed automatically but if the direction is complied with, the High Court shall decide the second appeal on merits in the manner indicated above.

9. For the reasons aforesaid, the impugned Judgment of the High Court is set aside subject to directions made hereinabove and the appeal is remitted back to the High Court for decision in the light of the observations and directions made hereinabove.

10. The appeal is thus allowed to the extent indicated above. There will be no order as to costs.