

SUPREME COURT OF INDIA

Renuka Das

Vs.

Maya Ganguly

C.A.No.5074 of 2009

(Tarun Chatterjee and R.M.Lodha JJ.)

04.08.2009

JUDGMENT

Tarun Chatterjee, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 28th of March, 2008 passed by a learned Judge of the High Court at Calcutta in C.O.No.2736 of 2000 whereby the High Court had restored the ex parte decree for eviction passed against the appellant in respect of the suit premises which was filed, inter alia, on the ground of default in payment of rent, setting aside the order of the appellate court and restoring the suit for decision on merits. Since the appellant had not appeared when the suit was taken up for hearing, the same was heard ex parte on 11th of September, 1996 and the suit was decreed ex parte directing eviction of the appellant in respect of the suit premises. Subsequent to this, an application under Order 9 Rule 13 of the CPC was filed at the instance of the appellant and the said application under Order 9 Rule 13 of the Code was rejected by the trial court. Feeling aggrieved by this order of rejection of the application under Order 9 Rule 13 of the Code, an appeal was carried to the appellate court which had set aside the order of the trial court rejecting the application under Order 9 Rule 13 of the Code and restoring the suit for fresh decision on merits in accordance with law. Against this order of the appellate court, a revision was filed before the High Court and a learned Judge of the High Court exercising revisional power had set aside the order of the appellate court and restored the ex parte decree for eviction passed against the appellant. Feeling aggrieved by the order of the High Court, restoring the ex parte decree for eviction, this special leave petition was filed which, on grant of leave, was heard in presence of the learned counsel for the parties.

3. We have heard the learned counsel for the parties and examined the impugned order as well as the orders of the appellate court and the trial court. From a plain reading of the impugned order, it would be evident that the High Court in its revisional jurisdiction had interfered with the findings of fact arrived at by the appellate court restoring the suit for eviction. It is well settled that the High Court, in revision, is not entitled to interfere with the

findings of the appellate court, until and unless it is found that such findings are perverse and arbitrary. We have carefully examined the impugned order of the High Court as well as the order of the appellate court. From a reading of the order of the appellate court and the order of the High Court, we cannot come to this conclusion that it was open for the High Court to interfere with the order of the appellate court when no perversity or arbitrariness could be found in the findings of the appellate court. In view of the discussions made hereinabove, we are, therefore, of the view that the High Court was not justified in interfering with the findings of the appellate court restoring the suit in the exercise of its revisional power.

4. Accordingly, the impugned order is set aside. The trial court is directed to dispose of the suit as early as possible preferably within six months from the date of supply of a copy of this order to it without granting any unnecessary adjournments to either of the parties.

5. For the reasons aforesaid, the impugned order is set aside. The application under Order 9 Rule 13 of the CPC filed by the appellant stands allowed.

6. Accordingly, the appeal is allowed to the extent indicated above. There will be no order as to costs.