

RAJASTHAN HIGH COURT

Geeta Devi

Vs.

District Judge, Bikaner

SB Civil W.P. No. 2204 of 2008

(Dinesh Maheshwari, J.)

03.04.2008

ORDER

Dinesh Maheshwari, J.

1. Having heard learned counsel for the petitioners and having perused the material placed on record, this Court is unable to find any Illegality in the order dated 25-3-2008 (Annex.6) as passed by the learned First Appellate Court while dealing with the prayer for stay over execution of the decree dated 25-1-2008 (Annex. 3) as passed by the learned Trial Court in Civil Original Suit No. 42/2000 (21/1989).
2. It is noticed from the material placed on record that the suit for recovery of possession and damages for use and occupation of the property in question as filed by the plaintiff against the petitioners has been decreed by the learned Trial Court on 25-1-2008 directing delivery of possession of the suit property to the plaintiff; and the learned Trial Court has allowed manse profits during the pendency of the suit at Rs. 25,000/-and has further allowed the same @ Rs. 500/- per month till delivery of possession to the plaintiff. The defendants petitioners have taken appeal against the judgment and decree so passed by the learned Trial Court and the learned First Appellate Court, while dealing with the prayer for stay over execution of the decree, has directed the petitioners to deposit the said amount of Rs. 25,000/- with the learned Trial Court within 15 days from the date of passing of the order, i.e. 25-3-2008 and further to continue to deposit manse profits @ Rs. 500/- per month. The learned First Appellate Court has further ordered that if the respondent would make any application for payment of the amount so deposited by the appellants petitioners, the learned Trial Court would be free to allow payment of such amount after an undertaking that in case the appeal was decided against the respondent, he shall repay the entire amount with

interest @ 9% per annum. With these observations and directions, the decree for dispossession has been ordered to remain stayed. The order passed by the learned First Appellate Court remains unexceptionable and appears to have been made in proper exercise of its discretion and in the balance of equities.

3. Learned counsel for the petitioners has repeatedly referred to the statement of the plaintiff to the effect that the property would have fetched rent merely at Rs. 20-25/- per month at the time of filing of the suit and submitted that there had not been any basis for passing the decree for the amount of Rs. 25,000/- and further for payment of manse profits @ Rs. 500/- per month and such a decree could not have been forced upon the petitioners. Learned counsel has referred to the decisions of the Hon'ble Supreme Court in the case of *Anderson Wright and Co. v. Amar Nath Roy and Ors.*¹ and *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*²

4. Apart that the aforesaid decisions essentially deal with a decree for eviction in a suit involving relationship of landlord and tenant, on principles relating to exercise of discretion by the Appellate Court while considering the prayer for stay over execution of the decree, the order as made by the Appellate Court cannot be said to be running contrary to the aforesaid decisions. The fact further available on record is that the suit in question was filed way back in the year 1989. Even when the statement of plaintiff that the property was likely to fetch a rent at the time of filing of the suit at Rs. 20-25/- per month is taken into consideration, the learned Trial Court cannot *prima facie* be said to have erred in allowing an amount of Rs. 25,000/- towards manse profits.

5. It is a different matter that the judgment and decree passed by the learned Trial Court remains subject to the appeal and even the said decision on issue No.3 may also be considered by the Appellate Court in accordance with law but then, essentially the decree towards manse profits remains a money decree and there does not appear any reason to stay execution of the same. The learned Trial Court has of course allowed manse profits @ Rs. 500/- per month till delivery of possession but again, in view of the time spent in the litigation and the date of passing of decree, the amount allowed by the learned Trial Court cannot be said to be so excessive as to warrant reduction at this stage.

6. The learned First Appellate Court has passed the order dated 25-3-2008 with the directions aforesaid in the balance of equities and has put the respondent to specific term that he would receive the amount upon furnishing an undertaking for repayment with interest thereupon. The order so passed by the learned First Appellate Court

cannot be said to be suffering from any illegality nor leads to substantial failure of justice; and does not call for interference under Article 227 of the Constitution of India.

7. The writ petition falls and is, therefore, rejected.

Petition dismissed.

Cases Referred.

1. 2005 DNJ (SC) 562: (AIR 2005 SC 2457)
2. (2005) 1 SCC 705