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Court : Rajasthan

Decided On : Aug-05-1987

Reported in : 1988WLN(UC)145

Judge : Dinker Lal Mehta, J.

Appeal No. : S.B. Civil Revision No 910 of 1986

Appellant : Kutubuddin

Respondent : Habib Khan

Disposition : Petition dismissed

Judgement :

Dinker Lal Mehta, J.

1. Heard learned Counsel for the parties and perused the order dt. 7 11-1985. Non-Petitioner Plaintiff was allowed to have the repairs of the damaged property on 22nd February 1986. Order granting temporary injunction has become final and the defendant petitioners were prohibited by that order not to disturb the plaintiff-non-petitioner from carrying out necessary repairs. Subsequently, it was brought to the notice of the court that the plaintiff is not allowing the defendant to carry-out necessary repairs which are necessary for the purpose of residence and enjoyment of the leased property. Initially the application was rejected and

subsequent application has been accepted vide impugned order.

2. It is the duty of the Court to see that the tenant enjoyed the property and carries out without any obstruction the necessary repairs which are necessary for the enjoyment and with this view in mind the court passed the temporary injunction on 22-2-1986. Granting of permission to the plaintiff non-petitioner to carry-out the necessary repairs implies that the defendant has been prohibited from interfering with the necessary repairs. The Court below was justified in granting permission to carry-out necessary repairs in light of the order dated 22-2-1986. If the police assistance has not been given the order dated 22-2-1986 will remain on paper and the plaintiff will get no remedy or no relief. In the facts and circumstances of the case, the Court can exercise powers under Section 151, CPC and the court has rightly exercised powers under Section 151. Mr. P.D. Mathur submits that the doctrine of res-judicata applies as earlier the application was rejected twice. Rejection of the application for police help is not a decision on merits of a case. In fact, grant of an application for police assistance is a step forward in the matter of implementation of the order dated 22-2-1986.

3. I do not find any force in the submissions made by the counsel for the petitioner. Revision petitions rejected. The plaintiff will carry-out the repairs in accordance with the order dated 22-2-1986 only as modified by the appellate court.