

Datu Mal and ors. Vs. Seth Madan Gopal and ors.

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Court : Rajasthan

Decided On : Jul-26-2007

Reported in : 2008(1)WLN464

Judge : N.K. Jain, J.

Appeal No. : S.B. Civil Misc. Stay Application No. 2937/2001

Appellant : Datu Mal and ors.

Respondent : Seth Madan Gopal and ors.

Advocate for Pet/Ap. : Mr. M.M. Ranjan

Judgement :

N.K. Jain, J.

1. Heard learned Counsel for both the parties on the stay application.
2. Learned Counsel for the defendant-appellants submits that the appeal has been admitted today and the impugned decree being a decree of eviction, the ex-parte interim stay order dt. 03.12.2001 passed by this Court may be confirmed till the last disposal of this second appeal.
3. Learned Counsel for the plaintiff-respondents contended that the First Appellate Court has considered the evidence in detail while deciding Issue Nos. 2 and 3 in

favour of the plaintiff-respondents and has rightly recorded a finding that the tenant-appellant has alternative accommodation and he is not residing in the rented premises, in dispute, therefore, rightly decreed the suit for eviction on the ground of availability of alternative accommodation as well as non-user of the rented premises and in view of the fact that he is not residing in the rented premises the interim stay order should be vacated.

4. In alternative Mr. M.M. Ranjan, learned Counsel for the plaintiff respondents contended that in case this Court confirms the stay order, then at least the plaintiff-respondent is entitled to get mesne profit, as per the prevalent market rate of the monthly rent of the rented premises from the date of decree of eviction passed by the First Appellate Court i.e. 05.09.2001. He further contended that the rented premises consist of seven rooms situated in 'Ghosi Mohalla' at Ajmer and at present the monthly market rate of rent of rented premises is not less than Rs. 7000/-, therefore, the mesne-profit of the rented premises may be awarded at the rate of Rs. 7000/- per month with effect from the date of decree passed by the First Appellate Court.

5. Learned Counsel for the defendant-appellants Mr. Karnani, contended that at present the appellant is paying Rs. 45/- per month of the rented premises, but he does not dispute that the rented premises consist of seven rooms, as per the description of property given in the plaint itself. However, his contention is that at present the market rate of monthly rent of the rented premises is approximately Rs. 1000/- per month, therefore, the mesne-profit can be fixed at the rate of Rs. 1000/- per month.

6. I have considered the submissions of learned Counsel for both the parties.

7. The appeal has been filed against decree of eviction passed against the appellant from the rented premises. Once an appeal is admitted then prima facie case is established in favour of the appellant and in case eviction decree is not stayed then appellant may suffer irreparable loss as he can be evicted from the rented premises. The balance of convenience is also in favour of the appellant. Therefore, I am of the view that stay should be granted in favour of appellant staying the operation of eviction decree and simultaneously the decree holder

should also be compensated by passing an order in his favour and directing the tenant-appellant to pay mesne-profit by way of compensation for retaining the possession of rented premises in spite of decree of eviction against him, as per prevalent market rate of monthly rent of the rented property. The Appellate Court has jurisdiction to put the applicant under Order 41 Rule 5 of the C.P.C., on such reasonable terms as would, in its opinion, reasonably compensate the decree-holder for loss occasioned by delay in execution of the decree by grant of stay, while passing the stay order in his favour, in the event of the appeal being dismissed as held by the Hon'ble Apex Court in the case of Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. 2005 (1) WLC (5C) Civil 340 : : (2005)1SCC705 , Anderson Wright & Co. v. Amar Nath Roy 2005 (2) WLC (SC) Civil 174 : : 2005 DNJ (SC) 562, Achal Misra v. Rama Shanker Singh and Ors. 2005 (1) WLC (SC) Civil 686 : : (2005)5SCC531 and Crompton Greaves Limited v. State of Maharashtra (2005) 11 SCC 547.

8. The determination of amount of mesne-profit depends on facts and circumstances of each case. The size and number of accommodation, location, nature of premises whether it is commercial or residential, the place where property is situated whether it is Village or City or Metropolitan city etc., may be the guiding factors in an individual case for determining the mesne-profit.

9. So far as the amount of mesne-profit to be fixed in the present case is concerned, I find that the statement of the defendant was recorded in the year, 1987, wherein he stated that he is tenant in the property, in dispute since last about 37 years on monthly rent @ 45/- per month, meaning thereby the amount of rent at the rate of 45/- per month was fixed in the year, 1950 and for last 57 years the appellant is paying rent at the rate of Rs. 45/- per month only. There is no dispute in between both the parties that the rented premises consist of seven rooms and 'Verandah' etc., as mentioned in the plaint and the property situated at 'Ghosi Mohalla' at Ajmer. In these circumstances, I think it fit and proper to award the mesne-profit of the rented premises at the rate of Rs. 1000/- per month with effect from 05.09.2001 i.e. the date of decree of eviction passed by the First Appellate Court till 31.07.2007 and at the rate of Rs. 4000/- per month with effect from 01.08.2007 onwards

10. In view of above discussions and reasons, I find this case to be fit one to grant stay in favour of appellant against his eviction from the suit property subject to payment of mesne-profit. Consequently, it is directed that the operation of the impugned decree of eviction passed against appellant by the First Appellate Court shall remain stayed during the pendency of this second appeal on the following terms and conditions:

1. The defendant-appellants shall deposit the arrears of monthly mesne-profit for the period from 05.09.2001 i.e. the date of decree of eviction passed by the First Appellate Court till 31.07.2007 at the rate of Rs. 1000/- per month within a period of four months from today and will pay the future mesne-profit at the rate of Rs. 4000/- per month with effect from 01.08.2007 by 15th day of each succeeding month, during the pendency of this appeal.

2. The aforesaid amount will be deposited in the bank account of the respondent.

11. It is made clear that in case the arrears of mesne-profit/rent, as directed above are not deposited within a period of four months, as mentioned above and/or the appellant fails to make the payment of future mesne-profit with effect from 01.08.2007, as directed above for consecutive two months, then it will be open for the plaintiff-respondents to get the decree of eviction passed in their favour by the First Appellate Court, executed even during the pendency of this second appeal.

With the aforesaid terms, conditions and directions, the stay application stands allowed.