

## **Anderson Wright And Co. vs Amar Nath Roy And Ors. on 19 April, 2005**

**Equivalent citations: AIR2005SC2457, 2005(3)ALT33(SC), (SCSUPPL)2005(3)CHN133, JT2005(11)SC300, (2005)141PLR666, RLW2005(3)SC425, AIR 2005 SUPREME COURT 2457, 2005 (6) SCC 489, 2005 AIR SCW 2402, (2005) 4 ALLMR 939 (SC), (2005) 1 CLR 646 (SC), 2005 (6) SRJ 199, 2006 (1) LANDLR 642, 2005 (4) SCALE 207.2, 2005 SCFBRC 334.2, 2005 (3) SLT 702, 2005 (2) ALL CJ 1446, (2005) 29 ALLINDCAS 8 (SC), 2005 (4) ALL MR 939, 2005 (1) CLR 646, (2005) 1 CPR 109, (2005) 2 ALL WC 4(58), (2005) 2 LANDLR 642, (2005) 3 ICC 502, (2005) 4 SCALE 207(2), (2005) 2 WLC(SC)CVL 174, (2005) 3 MAD LW 56, (2005) 3 PUN LR 666, (2005) 2 RENTLR 152, (2005) 3 SCJ 436, (2005) 3 SUPREME 417, (2005) 2 RECCIVR 831, (2005) 59 ALL LR 606, (2005) 3 CAL HN 133, (2006) 1 CURLJ(CCR) 130, (2005) 3 ANDH LT 33, (2005) 2 CIVILCOURTC 318, (2005) 1 RENCRC 624, (2005) 1 RENCJ 98, (2005) 2 CPJ 70, (2006) 1 LANDLR 642**

**Author: R.C. Lahoti**

**Bench: R.C. Lahoti, G.P. Mathur**

### **JUDGMENT**

**R.C. Lahoti, C.J.**

1. This order disposes of I.A. No. 4 of 2004 filed by the respondents seeking direction to appellants to pay or deposit, month by month, a fixed amount by way of mesne profits, as a condition precedent to the order staying execution of decree for eviction of appellants.

2. The suit property is situated in a prime locality of Kolkata. There are Governor House, High Court, Assembly, G.P.O., Reserve Bank of India, Income-tax office, Writer's building, Telephone Bhawan etc., situated in the same area and some only at a walking distance from the suit property. Admittedly, the respondents are owner-cum-landlords of that part of the property which is held on tenancy by the appellants. The area in possession of the appellants is situated on the third floor and admeasures 6000 sq. ft. according to the respondents but is 5678 sq.ft. according to the appellants. The tenancy was created in the year 1939 at a monthly rent of Rs. 853.87p. per month.

3. The respondents initiated proceedings for the eviction of the appellants on the ground of the premises having been sublet or parted with possession by the appellants. The eviction was denied by the trial court. The appeal preferred by the respondents has been allowed by the High Court and the appellants have been directed to be evicted. The High Court has found that the tenancy premises were sublet or parted with possession by the appellants in favour of four companies, the alleged sub-tenants, who were carrying on business in the suit premises. Out of these four companies, three were still carrying on business while the fourth had stopped business by the time the case came to be decided.

4. On 23.4.2004, leave to appeal was granted by this Court to the appellants and the judgment and decree for eviction passed by the High Court has been directed to remain stayed. I.A. No. 4 of 2004 has been filed by the respondents, seeking direction to the appellants to pay an amount of Rs. 1,80,000/- per month to the respondents during the hearing of the appeal. It is submitted that the suit premises can fetch a rent @ Rs. 30/- per sq. ft. The property tax payable by the respondents to the local authority is Rs. 2,32,000/- per annum, while the appellants are paying a meager amount of Rs. 837.87p. per month to the respondents.

5. As held by this Court in *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*, once a decree for eviction has been passed, in the event of execution of decree for eviction being stayed, the appellants can be put on such reasonable terms, as would in the opinion of the appellate court reasonably compensate the decree holder for loss occasioned by delay in execution of the decree by the grant of stay in the event of the appeal being dismissed. It has also been held that with effect from the date of decree of eviction, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises on being vacated by the tenant. While determining the quantum of the amount so receivable by the landlord, the landlord is not bound by the contractual rate of rent which was prevalent prior to the date of decree.

6. The learned counsel for the appellants submitted that the appellants cannot be held liable to pay anything more than the standard rent of the premises, in spite of the decree for eviction having been passed as the same is subjudice. This submission needs a summary dismissal in view of the Judgment of this Court in *Atma Ram Properties (P) Ltd.'s* case (supra). Both the parties have filed affidavit and counter affidavit, placing on record material giving the Court an idea of the rate of rent generally prevalent in the locality where the suit property is situated. Canara Bank on the first floor of this building is paying rent @ Rs. 25/- per sq. ft. other than maintenance and municipal taxes. One Rumpa Ghosh entered as the tenant in the year 2002 is paying rent @ Rs. 32/- per sq. ft. Taking an overall view of the material made available by the parties, we think that the appellants should, from the date of the decree of the eviction, pay mesne profits/compensation for use and occupation @ Rs. 15/- per sq. ft. subject to final determination of the same by a competent forum.

7. The application is disposed of in terms of the following directions:

(1) With effect from 12.3.2004, the date of the decree passed by the High Court, the appellants shall be liable to pay, or deposit for payment, to the respondent -

landlords, an amount calculated @ Rs. 15/- per sq. ft. for an area of 5,678 sq. ft., the area which according to the appellants is in their possession.

(2) The first such deposit shall be made on or before 30th June, 2005 consisting of the amount calculated upto that date. The appellants may adjust, by way of deduction, the amount, if any, paid by them to the respondents for this period.

(3) With effect from 1st July, 2005 the appellants shall continue to pay or deposit for payment to the respondents - landlords, an amount calculated at the same rate month by month and by the 15th day of that month.

(4) The respondents are permitted to move an application under Order XX Rule 12 of the Code of Civil Procedure or to pursue such remedy as may be available to them under the law for determination and recovery of the mesne profits which they would be entitled to recover from the appellants for the period between the date of institution of suit till the date of recovery of possession in the event of the appeal being dismissed.

(5) The respondents shall file an undertaking on affidavit, making a statement that the amount recovered by the respondents in terms of this order shall be refunded or remain available for adjustment in terms of any directions which this Court may make at the end. If any amount becomes liable to be refunded consistently with the decision of this Court in the appeal, the respondents shall refund the same, within the time appointed by the Court for the purpose and the amount shall remain a charge on the suit property.

(6) Non-compliance with any of the terms stated in para (1) to (4) above shall result in the order of stay passed by this Court being vacated and the respondents shall be free to execute the decree and recover possession from the appellants. Similarly, non-compliance by the respondents with the condition No. (5) stated hereinabove would disentitle them to receive the amount and the amount liable to be paid by the appellants shall be deposited in the Court and invested in fixed deposit from time to time.

8. We make it clear that the amount quantified by this Court in this order is only a tentative opinion formed by the Court on the basis of the material made available by the parties and is neither a determination of the actual amount for which the appellants may be held liable for payment to the respondents in duly constituted proceeding for the purpose nor is intended to be a reflection on the merits of the case.