

## **Shyamal Kanti Danda vs Chunilal Choudhary on 3 September, 1984**

**Equivalent citations: AIR1984SC1732, 1984(2)SCALE271, (1984)4SCC345, 1985(17)UJ17(SC), AIR 1984 SUPREME COURT 1732, 1984 (4) SCC 345**

**Author: D.A. Desai**

**Bench: D.A. Desai, Ranganath Misra**

ORDER

D.A. Desai, J.

1. We heard Mr. Gobind Mukhoty, learned Counsel for the petitioner and Mr. F.S. Nariman, learned Counsel for the respondent.

2. The respondent filed T.S. No. 470 of 1975 against the petitioner for his eviction from the premises occupied by him. The petitioner contested the suit as per his written statement. Only one contention is worth-noting. It was contended on behalf of the petitioner that he is a permanent licensee of the premises without any obligation to pay rent. After evidence on either side was recorded and closed, the learned Munsif set down the suit for hearing oral arguments on June 26, 1981 on which date the respondent was present but the petitioner and his advocate were absent. The learned Munsif proceeded to deliver the judgment on merits and application for setting aside what was styled and ex-parte decree under Order 9 Rule 13 CPC was moved on behalf of the petitioner which came to be dismissed as not maintainable. After an unsuccessful appeal, the petitioner filed an appeal against what was styled as ex-parte decree in the Court of the District Judge, Alipore. He filed an application praying for condonation of delay of 386 days in preferring the appeal on the ground that he was prosecuting under legal advice a remedy in another civil court, to be precise for setting aside the ex-parte decree under Order 9 Rule 13 CPC, but as that court was unable to grant relief, the time spent bonafide in prosecuting this remedy must be excluded in computing the period of limitation. The learned Judge declined to condone the delay and after an unsuccessful revision petition in the High Court, the petitioner has approached this Court under Article 136 of the Constitution.

3. On a notice of the petition being served upon the respondent, Mr. F.S. Nariman, learned Counsel appeared for the respondent.

4. Having regard to the circumstances of this case, we are of the opinion that the matter should be disposed of at the special leave petition stage.

5. We direct that the petitioner shall deposit Rs. 27,000/- (Rupees twenty seven thousand) as use and occupation charges for all these years in the trial court within a period of three months from today and shall continue to deposit the use and occupation charges at the rate of Rs. 225/- p.m. from month to month before the 10th of every succeeding month commencing from July 1, 1984 till the suit is finally disposed of by the trial court.

6. On the petitioner fully complying with the condition herein prescribed directing him to deposit the amount hereinabove mentioned within the time granted by this Court, his application praying for condoning the delay in preferring the appeal in the District Court shall stand allowed and the appeal shall also stand admitted to file and the same shall be allowed thereby setting aside the judgment of the learned Munsif disposing of the suit on merits. The petitioner will be permitted to participate in the proceedings before the learned Munsif and the case shall proceed from the stage where it was disposed of in the absence of the petitioner. In other words, the learned Munsif shall hear oral submissions on the evidence already recorded on behalf of both the sides and dispose of the suit on merits within a period of three months from the date of the making of the deposit of Rs. 27,000/-

7. It is hereby clarified that no fresh opportunity is to be given to either of the parties to lead evidence before the learned Munsif as the learned Munsif had closed the evidence after giving full opportunity to both the sides.

8. If the deposit of arrears of use and occupation charges as herein directed is not made within the stipulated time, the special leave petition will stand dismissed and the decree passed against the petitioner will stand confirmed.

9. The petitioner shall file an undertaking to deposit the arrears of use and occupation charges within the time granted to him within a period of four weeks from today.

10. With these directions the special leave petition is dismissed.