

Laxmi Chaudhary vs Sahib Singh Chaudhary on 3 April, 2019

Equivalent citations: AIRONLINE 2019 SC 2640

Author: R. Banumathi

Bench: R. Subhash Reddy, R. Banumathi

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NON-REPORTED

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 3385 OF 2019
(Arising out of SLP(C) No(s).769 OF 2019)

LAXMI CHAUDHARY

Appellant(s)

VERSUS

SAHIB SINGH CHAUDHARY

Respondent(s)

J U D G M E N T

BANUMATHI, J.:

(1) Leave granted.

(2) This appeal arises out of an order dated 4 th December, 2018

passed by the High Court of Delhi at New Delhi in CM NO.50677 of 2018 in R.F.A. No.699 of 2018 in and by which the High Court has vacated the stay granted in favour of the appellant-tenant on the ground of non-compliance of the conditional order passed by the High Court.

(3) The facts of the case in a nutshell are as follows. The respondent-plaintiff-landlord filed a suit for eviction and recovery of damages and mesne profit against the appellant- defendant-tenant (in regard to the tenanted property comprising basement and the second floor in J-1/72 in Gupta Colony, New Delhi). The Trial court by its judgment dated 21st December, 2017 decreed the suit in favour of the respondent-landlord and ordered eviction. The Trial Court further awarded the damages payable to the respondent-landlord at the rate of Rs.20,000/- per month w.e.f. 17th

January, 2008 till the delivery of the possession of the property. The Trial Court also granted permanent injunction in favour of the respondent-plaintiff. (4) The appellant-defendant preferred appeal before the High Court. By order dated 27th August, 2018, the High Court admitted the appeal and granted stay of the order of the Trial court subject to the appellant's paying the damages for use and occupation at the rate of Rs.7,500/- per month from 17 th January, 2008 till 31st December, 2017 and thereafter at the rate of Rs.15,000/- w.e.f. 1st January, 2018, payable by 30th day of each calendar month. The High Court also directed that in case of delay of payment, interest at the rate of 6% per annum is payable by the appellant to the respondent. The appellant could not comply with the condition as ordered by the High Court and, therefore, by the impugned Order dated 4 th December, 2018, the High Court has vacated the stay granted in favour of the appellant-defendant. Being aggrieved, the appellant-defendant has preferred this appeal. (5) By Order dated 18th January, 2019, this Court has directed the appellant to pay the arrears of Rs.10,80,000/- and also to pay Rs.15,000/- from 1st January, 2018. By Order dated 8 th February, 2019, the said order was modified directing the appellant to deposit amount of Rs.15,000/- before the High Court. In compliance of the order of this Court dated 18th January, 2019, without prejudice to her contentions, the appellant has deposited Rs.10,80,000/- before the High Court. Likewise, the appellant-defendant has been depositing Rs.15,000/- as damages for use and occupation of premises viz., basement as well as the second floor and such deposit was without prejudice to her contentions in the eviction suit. (6) We have heard Mr. Rajan Kumar Chourasia, learned counsel appearing for the appellant-defendant-tenant and Mr. D.K. Sharma, learned counsel appearing for the respondent-plaintiff- landlord and also perused the impugned judgment and the materials on record.

(7) Learned counsel for the respondent-landlord submitted that during the interregnum period the respondent-landlord has filed the execution petition and had taken possession of the basement on 5th January, 2019, wherein the appellant was running a beauty parlour.

(8) Admittedly, now the appellant is in possession of the residential premises, namely, the second floor. Considering the submissions of the learned counsel for the parties and having regard to the facts and circumstances of the case that the appellant has deposited the amount of Rs.10,80,000/- and also deposited Rs.15,000/- per month, the impugned order of the High Court is set aside and the stay granted in favour of the appellant-defendant qua the second floor shall stand restored. (9) Since the amount of Rs.15,000/- was directed to be paid for both the premises – basement as well as the second floor and having regard to the fact that the respondent has now taken the possession of the basement by filing the execution petition, as an interim measure we direct the appellant-defendant to pay Rs.6000/- for use and occupation of the second floor until the disposal of the appeal pending before the High Court.

(10) The respondent-landlord is permitted to withdraw Rs.10,80,000/- and also the subsequent deposit of the amount at the rate of Rs.15,000/-p.m. by filing the necessary affidavit of undertaking before the High Court to the effect that the withdrawal of money will be subject to the final outcome of the appeal before the High Court. Without prejudice to her contentions in the appeal, the appellant shall pay the amount of Rs.6000/- as damages for use and occupation of the second floor of the premises on or before of every 10 th day of each calendar month through RTGS to the account

of the respondent- landlord.

(11) The appeal is allowed with the direction, as indicated above. No costs.

.....J. (R. BANUMATHI)J. (R. SUBHASH REDDY) NEW DELHI, APRIL
3, 2019.