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(2008) 01 SC CK 0072

In the Supreme Court Of India

Case No : Civil Appeal No. 56 of 2008 (Arising out of S.L.P. (C) No. 8437 of 2007)

Sharma Kapoor and Co. APPELLANT

Vs

Damayanti Mishra and Others RESPONDENT

Date of Decision : 07-01-2008

Acts Referred:

Citation : (2008) 01 SC CK 0072

Hon'ble Judges : Tarun Chatterjee, J;Dalveer Bhandari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted.

2. This appeal is directed against an interim order passed by a learned Judge of the High Court at Calcutta in CA No. 2437 of 2006, which arose out of a pending second appeal being SAT No. 1168 of 2006, by which the interim application was disposed of by granting stay of operation of the judgment and decree for eviction inter alia on the conditions that the appellant shall go on depositing a sum of Rs. 20,000/- per month as occupational charges/compensation, the first of such deposit shall be made by 15th of February, 2007 and the appellant shall also go on depositing at the rate of Rs. 20,000/- every month thereafter by 15th of each succeeding month. It was also directed that the appellant shall also pay and/or deposit the arrear- cum-occupational charges/compensation upto December, 2006 at the rate of Rs. 20,000/- per month by ten equal installments and in default of deposit, the order of stay granted shall automatically be vacated and the decree holder shall be entitled to execute the decree at once.

3. Having heard the learned Counsel for the parties and considering the fact that the respondents themselves have prayed for mense profits at the rate of Rs. 30 per day i.e. Rs. 900/- per month and considering the fact that this Court, while issuing notice on the Special Leave Petition, has directed Rs. 900/- per month to

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be deposited by the appellant and also considering the fact that the son of the appellant has inducted a tenant in a premises, which is adjacent to the tenanted premises, at a rental of Rs. 20,000/- per month, we are of the view that in the facts and circumstances of the present case, instead of directing Rs. 20,000/- per month to be deposited by the appellant, they may be directed to deposit Rs.5,000/- per month from January, 2008. Accordingly, we modify the impugned order in the following manner:

i) The appellant shall go on paying and/or depositing occupational charges/ compensation at the rate of Rs. 5,000/- every month and the first of such deposit shall be made by 15th of February, 2008, during the pendency of the second appeal.

ii) In default of two consecutive deposits in the manner indicated above, the interim order granted by the High Court and modified by this Court by this order shall automatically stand vacated.

iii) In the event, this order is complied with by the appellant, the interim order granted shall continue during the pendency of the second appeal before the High Court.

4. Considering the facts and circumstances of the case, we request the High Court to dispose of the pending second appeal at an early date but not later than one year from the date of communication of this order. The appeal is thus disposed of with no order as to costs.

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