

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2380 OF 2009
(Arising out of SLP(C) No. 22584 of 2008)

M/s. Foodworld Super Markets Ltd. & Anr.Appellants

Versus

Shri H. Sujan Singh & Ors.Respondents

ORDER

Leave granted.

- 2) Since the issue involved in this appeal lie in a narrow compass, by consent of both the learned counsel, the matter is taken up for final hearing.
- 3) The appellant is the tenant of a business premises measuring 4000 Sq. fts. situated at No. 1133, HAL 2nd Stage, Corporation Ward No. 74, Bangalore. The appellant is the defendant before the trial court.

- 4) The respondents herein are the landlords. They have filed a Civil Suit O.S. No. 1894 of 2007 for ejectment of the defendants from the suit schedule premises.
- 5) After exchange of pleadings, the Suit was posted for evidence of the plaintiffs. The plaintiff (P.W.1) has filed his affidavit by way of his evidence. On the request made by learned counsel for the defendant, the matter had been adjourned twice for cross examination of plaintiff (P.W.1) and finally, it was posted on 28.2.2008. Since the learned counsel for the defendant was not present before the court, when the matter was called out, the learned trial Judge has closed the evidence of the plaintiff and has posted the matter for the evidence of the defendants, if any.
- 6) Subsequently, the defendants have filed application (I.A.No.2) for recalling the order dated 28.2.2008 and permit them to cross examine the plaintiff (P.W.1). In the affidavit filed along with the application, they have assigned the reasons for not being present before the court when the case was called out twice.
- 7) The learned trial Judge not impressed by the explanation offered by the defendants, has rejected the application (I.A. No. 2). Being aggrieved by the said order, the defendants had carried the matter

by filing a Writ Petition under Article 227 of the Constitution of India before the High Court to issue a writ in the nature of certiorari and direct the trial court to afford one more opportunity to the defendants to cross examine plaintiff (P.W.1).

- 8) The writ court has dismissed the writ petition. Hence, this appeal.
- 9) We have heard learned counsel for the parties to the lis. We have also carefully perused the affidavit filed with the application (I.A.No. 2) to recall the order dated 28.2.2008, discharging P.W.1 from cross examination. In our considered view, the explanation offered by the defendants appears to be not only satisfactory and also bonafide. This aspect of the matter is not properly appreciated both by the trial court and the High Court. In our view, the foreclosure of the defendants right to cross examine the plaintiff (P.W.1) has resulted in grave prejudice to the right of defence of the defendant/appellant herein. Therefore, we cannot sustain the impugned orders.
- 10) In view of the above discussion, we allow this appeal and set aside the impugned orders. Now a direction is issued to the trial court to recall the plaintiff's witness and permit the defendants/appellants to cross examine plaintiff's witness (P.W.1) in O.S. No. 1894 of

2007. Since the matter is pending from last two years, we direct the trial court to dispose of the suit as expeditiously as possible at any rate within an outer limit of six months from the date of receipt of this court's order. No order as to costs.

.....J.
[TARUN CHATTERJEE]

.....J.
[H.L. DATTU]

New Delhi,
April 13, 2009.