

CASE NO.:
Appeal (civil) 7964 of 2001

PETITIONER:
Imamuddin & Anr.

RESPONDENT:
Mond. Ismail & Anr.

DATE OF JUDGMENT: 14/02/2008

BENCH:
A.K.MATHUR & AFTAB ALAM

JUDGMENT:
JUDGMENT
O R D E R

Heard learned counsel for the parties.

This appeal by special leave is directed against the judgment and order dated 25.04.2001 passed by a learned Single Judge of the High Court of Judicature at Rajasthan, Jaipur Bench in Respondents' Civil Revision Petition No. 521/2001 whereby the learned Single Judge has reversed the order dated 17.3.2001 of the Addl. District Judge No. 2, Jaipur City, Jaipur by which order the learned Addl. District Judge has dismissed the appeal filed by the respondents herein against the order of Trial Court which had determined interim rent as per provisions of Section 13(3) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (hereinafter for short the "Act").

We need not go into the chequered history of the matter. Suffice it to say that the appellants herein have purchased the suit properties being two shops by two separate registered sale deeds and the same were duly registered with the Sub-Registrar, Jaipur on 16.5.1994.

Thereafter, the appellants demanded rent from the respondents and on their refusal to pay rent, they filed a suit for eviction of the respondents herein. In the said suit, the Trial Court determined the interim rent payable by the respondents, which was affirmed by the First Appellate Court. Against the said fixation of interim rent by the Trial Court, which was affirmed by the First Appellate Court, the respondents herein moved a Revision Petition before the High Court. Since, the revision petition was not maintainable before the High Court, the appellants have moved this Court by the present appeal.

A suit for specific performance was filed by the respondents herein on the ground that they had entered into an agreement to sale and therefore they are not likely to be evicted from the suit shops. The said suit was contested by the parties hereto and the same has been dismissed by the Trial Court and a decree of specific performance has not been granted. However, the Trial Court directed the respondents herein to refund the amount of Rs.1,29,000/- with interest. Against that order the appellants, as also the respondents,

herein filed two separate appeals before the High Court. The said appeals are pending.

Learned counsel for the appellants submitted that in terms of proviso to Section 115 of the Code Of Civil Procedure, the High Court ought not to have entertained the revision petition filed by the respondents as the order of fixation of rent was purely an interlocutory order. Be that as it may, we need not go into this question at this stage as in order to put the present controversy to an end, we think it just and proper that the respondents shall continue to deposit in Court the rent month by month and it will be open for the appellants to withdraw the same amount on furnishing bank guarantee till the amount of rent reaches Rs.1,29,000/-. In case the appeals are not disposed of by the High Court and the deposit of rent exceeds the amount of Rs.1,29,000/- the respondents will continue to deposit the rent but then it will be open for the appellants to withdraw the amount without furnishing any bank guarantee.

We make it clear that the abovesaid arrangement has been made by us in order to

decide the equities between the parties, as in the present case, the parties are seriously contesting the appeals against the order of refusal to grant a decree of specific performance and the refund of Rs.1,29,000/-to the appellants herein. We have not expressed any opinion on the merits of the matter but mentioned the facts only to decide the controversy at hand.

The appeal stands disposed of in the above terms. No order as to costs.

JUDIS