

CASE NO.:
Appeal (civil) 2379 of 2006

PETITIONER:
RAJ SINGH

RESPONDENT:
ACHAL MISHRA AND OTHERS

DATE OF JUDGMENT: 01/05/2006

BENCH:
S.B. SINHA, TARUN CHATTERJEE & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T
(Arising out of SLP(C) No.1161 of 2006)
WITH
CIVIL APPEAL NO. 2380 OF 2006
Arising out of SLP(C) No.2491 of 2006)
ACHAL MISHRA
Versus
RAJ SINGH

\005\005 APPELLANT

\005\005RESPONDENT

P.K. BALASUBRAMANYAN, J.

1. Leave granted.

2. In civil appeal arising out of SLP) No.1161 of 2006 the order of the High Court passed in Writ Petition No.803(R/c) of 1979 is challenged, by which the High Court dismissed the writ petition in so far as it related to the appellant herein, on the ground of non-compliance with the directions issued by this Court in Civil Appeal No.3322 of 1998. In that appeal, while remitting the writ petition to the High Court, this Court had directed the appellant to deposit a sum of Rs.3,00,000/- towards the arrears of rent and to pay the rent @ Rs.1,000/- in future without prejudice to the contentions of the parties, but as a condition precedent for enabling him to pursue his writ petition in the High Court filed along with respondent no.1 in the civil appeal. Since the sum of Rs.3,00,000/- was not paid within the time fixed by this Court, the High Court, in the light of the clear provision in that behalf in the judgment of this Court, dismissed the writ petition, thus, depriving the appellant of an opportunity to argue his writ petition on merits. The challenge in this appeal by the appellant is essentially based on the plea that he had filed IA no.7 of 2005 for modification of the judgment of this Court in Civil Appeal No.3322 of 1998 insofar as it related to the amount to be deposited by him in the light of the fact that a sum of Rs.1,45,860/- paid by him to the respondent herein, during the pendency of Civil Appeal No.3322 of 1998, was omitted to be taken note of and if it had been taken note of, the direction would have been only to pay a sum of Rs.1,54,140/- instead of Rs.3,00,000/-.

3. Civil Appeal arising out of SLP(C) No.2491 of 2006 is filed by the owner of the building challenging the order of the High Court in Writ Petition No.6050(M/s) of 2005 staying the order passed by the Additional City Magistrate (Fifth)/J.D. and Eviction Officer, Lucknow

directing the occupant to put the landlord in possession of the building in exercise of the power conferred on him under Section 18(3) of the U.P. Rent Control Act. The order was passed by the Eviction Officer on the basis that the order for release of the building in favour of the appellant had become final in the light of the failure of the respondent, occupant, to make the payment as directed by this Court in Civil Appeal No.3322 of 1998 and in view of the dismissal of the writ petition filed by him in the High Court insofar as it related to him. It is contended on behalf of the appellant that the learned Judge of the High Court entertained the writ petition when the concerned jurisdiction was not assigned to him but was assigned to some other learned Judge and the order staying the eviction was passed without application of judicial mind and for extraneous reasons. The order for release or eviction became enforceable essentially in view of the failure of the occupant to make the deposit of Rs.3,00,000/- as directed by this Court in Civil Appeal No.3322 of 1998. The order of the Eviction Officer suffered from no infirmity and the High Court was wrong in staying the implementation of the order.

4. Since we have entertained Interlocutory Application no.7 of 2005 in Civil Appeal No.3322 of 1998 and have modified the sum to be paid by the respondent herein and have extended the time to make or make up the reduced amount, it is not necessary to go into the procedural propriety or otherwise of the order passed by the High Court. But we would like to observe that the court should endeavour to ensure that room for such complaints is not given.

6. In view of our order of even date in I.A. No.7 of 2005 in Civil Appeal No.3322 of 1998 all that is necessary to do in these appeals is to set aside the orders challenged in both the appeals and direct that if the occupant does not comply with the modified direction of this Court issued therein, the writ petition filed by him in the High Court, namely, Civil Writ Petition No.803/(R/c) of 1979 would stand dismissed insofar as it relates to him and the interim order passed in Writ Petition No.6050(M/s) of 2005 will stand vacated and with a further direction to the Eviction Officer to deliver that part of the building in occupation of Raj Singh to the owner thereof forthwith. If, on the other hand, the occupant, Raj Singh complies with our order in I.A. No.7 of 2005 in C.A. 3322 of 1998 and deposits the sum ordered or makes up the deposit of the sum as ordered, the Civil Writ Petition No.803(R/c) of 1979 would be heard and disposed of on merits expeditiously by the High Court and the order for delivery now passed by the Eviction Officer will stand set aside leaving the parties to work out their remedies in accordance with law as per the directions therein. In other words, if the contentions of the occupant Raj Singh are rejected by the High Court, it will be open to him to pursue the remedies available to him under law and it will be open to the owner of the building to approach the Eviction Officer seeking prompt delivery of the portion occupied by Raj Singh and then it will be for the Eviction Officer to deliver that portion of the building forthwith to the owner by dispossessing Raj Singh. If the writ petition were to be allowed, it would of course, be open to the owner to pursue the remedies available in law.

7. The appeals are thus allowed and disposed of in the above manner.

JUDIS