

CASE NO.:
Appeal (civil) 760 of 2008

PETITIONER:
HARBANSH LAL

RESPONDENT:
BRIJ RANI

DATE OF JUDGMENT: 25/01/2008

BENCH:
TARUN CHATTERJEE & DALVEER BHANDARI

JUDGMENT:
JUDGMENT

O R D E R
(Arising out of S.L.P. (C) No. 10338 of 2007)

1. Leave granted.
2. Heard learned counsel for the parties.
3. A revision case bearing No. 135 of 2001 (Harbansh Lal vs. Brij Rani) was filed before the District Judge, Meerut, which, on transfer, was dismissed by a judgment and order dated 18th of October, 2002, in respect of which, a writ petition was filed before the High Court at Allahabad. The writ petition was entertained by the High Court and on 10th of December, 2002, the High Court of Judicature at Allahabad issued notice on the writ petition and further directed the following :-
\023The petitioner will not be evicted from the disputed accommodation till 28.2.2003 provided the petitioner deposit the entire decretal amount with rent/damages upto December, 2002 within a month from today and further, continues to deposit the rent/damages for the months of January, 2003 and onwards by 7th of the each succeeding months.\024

4. The aforesaid interim order passed on 10th December, 2002 was, according to the appellant, complied with and by virtue of compliance, he has deposited the rent of the disputed premises till January, 2003.

5. The original writ petition thereafter came up for hearing and on 7th of September, 2006, the High Court passed, inter alia, the following order :-

\023Having pragmatic approach, considering the facts and circumstances of the and location/area of the shop etc. it would be appropriate that the rent of the disputed accommodation now be increased to Rs. 2500/- per month from October, 2006. It is accordingly directed that the tenant shall pay a sum of Rs. 2500/- per month towards rent to the landlord till further order with 10% increases in the rent every 5 years which shall be payable to the landlord by the day of each succeeding month. In case of default in payment of the current rent as directed by this court the landlord can get the disputed accommodation vacated with the help of police within a period of one month by going notice in writing.

List for hearing after three months. In the mean time rejoinder affidavit may be filed.\024

6. It appears from the record that the said writ petition came up for hearing on 9th of October, 2006, when the High Court had passed the following order :-
"The case has been taken up in the revised list. None has appeared to press the writ petition. The writ petition is dismissed for want of prosecution. Interim order, if any, stands vacated."

7. When the petitioner appellant herein came to know that the writ petition itself was dismissed for default, an application for restoration of the writ petition was filed by him with an application for condonation of delay, which was rejected by the High Court on 13th of March, 2007. Feeling aggrieved by the aforesaid rejection order, the present appeal by Special Leave has been filed.

8. Having heard the learned counsel for the parties and after going through the impugned order as well as other materials on record, we are of the view that the writ petition, which was dismissed in default, should be restored. It is an admitted position that the appellant had complied with the interim order passed by the High Court at Allahabad during the pendency of the writ petition. While issuing notice on the writ application, this Court passed the following order :-
"Issue notice."

In the meantime, there shall be stay of dispossession of the petitioner from the premises in question on the condition that the petitioner shall have to comply with the High Court's order dated 7.9.2006 within a month from the date of communication of this order, in default of which stay order now granted shall automatically stand vacated."

9. Considering the aforesaid orders having been complied with by the appellant and considering the reasons for not appearing at the time the writ petition was dismissed for default, we are of the view that the impugned order should be set aside and the writ petition should be restored for hearing.

10. Accordingly, we set aside the order of the High Court rejecting the application for restoration and allow the same. Consequently, the writ petition is restored to its original file. The High Court is now requested to dispose of the writ application positively within three months from the date of supply of a copy of this order to it after giving hearing to the parties and after passing a reasoned order in accordance with law.

11. Accordingly, the appeal is allowed to the extent indicated above. There will be no order as to costs.