

CASE NO.:
Writ Petition (civil) 1606 of 2008

PETITIONER:
Jaswant Kumar Vyas

RESPONDENT:
Krishna Dev Sharma

DATE OF JUDGMENT: 22/02/2008

BENCH:
TARUN CHATTERJEE & HARJIT SINGH BEDI

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO 1606 OF 2008
(Arising out of SLP (C) No 5140 of 2008 CC 2618 of 2008)

1. Delay condoned.
2. Leave granted.
3. This appeal is filed by way of a special leave petition against the final judgment and order of the High Court of Andhra Pradesh at Hyderabad dated 25th of October, 2007 in Second Appeal No. 539 of 2006 whereby a learned Judge of the High Court had dismissed the second appeal filed by the appellant and affirmed the orders of the courts below.
4. A suit for eviction of the appellant from the suit premises was instituted by the plaintiff/respondent which was decreed by the trial court and the decision of the trial court was affirmed by the first appellate court and finally, the second appeal of the appellant was dismissed. Before the High court in the second appeal, the only question that was raised was whether in the present case, notice under Section 106 of the Transfer of Property Act should be restricted to 6 months or 1 month. All the three courts below held that tenancy was from month to month and accordingly, the second appeal was dismissed and the orders of the courts below were affirmed. This special leave petition has now been filed against the aforesaid judgment in second appeal affirming the judgments of the courts below in respect of which leave has already been granted.
5. Mr. A. Subba Rao, the learned counsel appearing for the appellant restricted his arguments to the order passed by the learned single Judge, which is as follows: -

"Having regard to the facts and circumstances of the case, the appellant is granted time up to the end of May 2008, on condition that he furnishes an undertaking before the trial court, within four weeks from today, to the effect that he will put the respondent herein in vacant possession and continues to pay the rents regularly. In default, apart from being liable to be evicted, the appellant shall be liable to pay the damages at the rate of Rs. 10,000/- per month beyond 31.05.2008."

6. According to Mr. Rao, the High Court was in error to direct the appellant to pay damages at the rate of Rs.10,000/- per month if the appellant continues to remain in possession of the suit premises after 31st of May, 2008 which was granted by the High Court in the impugned judgment. Mr. Nikilesh Ramachandran, learned counsel

appearing for the respondent, conceded that this direction of the High Court was in fact not justified. Considering the fact that proceedings for mesne profit under Order 20 Rule 12 of the Code of Civil Procedure shall be proceeded with in accordance with law and in view of the concession of learned counsel for the respondent, direction to pay damages at the rate of Rs.10,000/- per month, if the appellant continues to remain in possession after 31st of May, 2008 must be set aside. Therefore, we set aside the portion to the effect that the appellant shall be liable to pay damages at the rate of Rs.10,000/- per month if he continues to remain in possession of the suit premises after 31st of May, 2008.

7. For the reasons aforesaid the appeal is disposed of by deleting the portion as quoted hereinabove. However, the appellant is granted nine months time from today to vacate the suit premises on payment of Rs.2,000/- per month subject to filing of usual undertaking in this Court within a period of four weeks from this date.