

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.5019 OF 2008
(Arising out of S.L.P. (C) No.8678 of 2004)

Rajaram Prasad Gupta and Anr.

...Appellant(s)

Versus

Ramchandra Prasad and Ors.

...Respondent(s)

O R D E R

Heard learned counsel for the parties.

Leave granted.

The Trial Court decreed the suit for declaration of title and recovery of possession. Against the said decree, when the appeal was preferred before the High Court, prayer for stay of further proceeding in the execution case was refused. Hence, this appeal by special leave.

Undisputedly, the suit property is a residential house in which the appellants are residing. It is well settled that in cases where the subject of suit is residential premises and the judgement-debtor is residing in it, prayer for stay is ordinarily granted. Of course, for special reasons, it may be refused. In the present case, no special reason has been assigned by the High Court for declining the appellants' prayer for stay. This being the position, we are of the view that the High Court was not justified in refusing to grant stay.

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Accordingly, the appeal is allowed, impugned order refusing the prayer for stay is set aside and it is directed that, pending disposal of the appeal before the High Court, further proceeding in the execution case shall remain stayed on appellants' depositing in the Executing Court a sum of Rs.1,000/- per month by way of use and occupation of the suit premises beginning from the month of December, 2002, till the month of July, 2008, within three months from today. This is so because on filing of appeal against the judgment and decree of the Trial Court, the learned Registrar of the Patna High Court passed interim order on 2nd December, 2002, which was subsequently vacated and application for stay, bearing No.I.A. No.4340 of 2003, filed by the appellants was dismissed by the High Court. The appellants are further directed to deposit a sum of Rupees one thousand per month for use and occupation of the premises from the month of August, 2008, by the fifteenth day of the following month, i.e., the amount from the month of August, 2008, should be deposited by 15th of September, 2008, and likewise for subsequent months. All the deposits shall be made in the Executing Court. It would be open to the decree-holder to withdraw the aforesaid amount, upon furnishing security to the satisfaction of the Executing Court, which need not necessarily be in cash or in the form of bank guarantee.

[B.N. AGRAWAL]

.....J.

[G.S. SINGHVI]

.....J.

New Delhi,
August 13, 2008.