

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.5885 OF 2008
(arising out of SLP(C)No.5359/2006)

DIWAKAR UPADHYAY

... APPELLANT

VERSUS

P.N. KHANNA & ORS.

... RESPONDENTS

O R D E R

Leave granted.

2. This is a tenant's appeal. The case has a chequered history. The first respondent, as landlord, filed an application for release of the suit premises (residential tenement) in the year 1972. The Rent Control and Eviction Officer however rejected the release application on 10.1.1973 and allotted the premises to the appellant on 18.01.1973 without fixing any rent. Being aggrieved by the rejection of the release application and the order of allotment, the first respondent filed revision petitions. The Additional District Judge, Bareilly allowed the revision and remanded the matter to the Rent Control and Eviction Officer. By order dated 21.1.1975, the Rent Control and Eviction Officer released the premises in favour of first respondent by ordering eviction of the appellant. That order was challenged by the appellant in revision which was dismissed by the District Judge, Bareilly on 23.07.1975 granting six months time to the appellant to vacate the premises.

3. At that stage the appellant filed O.S. No.67 of 1976 contending that the

second respondent (B.K. Khanna) was the landlord and therefore the release in favour of first respondent (P.N. Khanna) was illegal, and he cannot therefore be evicted in pursuance of the release order in favour of first respondent. In the meanwhile, in pursuance of the order of the District Judge Form 'C' was served on the appellant for vacating the premises. That was challenged by the appellant in a writ petition (W.P.No.2065/1977) which was dismissed on 18.07.1978. Thereafter, Form 'D' was issued on 23.11.1978. That could not be executed in view of the temporary injunction granted in the aforesaid suit filed by the appellant. Ultimately the appellant's suit was dismissed on 07.01.1979 recording a finding that both respondents (P.N. Khanna and B.K. Khanna) were the landlords and that there was no infirmity in the release order in favour of one of them. The appellant challenged the judgment and decree of the trial court by filing a appeal before the District Judge and the appeal was dismissed on 18.02.1981. Thereafter, a second appeal was filed by the appellant which was also dismissed on 19.02.1982.

4. In this background, the landlords again filed an application for possession and issuance of fresh Form 'D' on 28.05.1983. The appellant filed objections to the said application that the release order only in favour of one of the landlords could not be enforced. He contended that as per the decree in a partition suit (O.S.No.305/1974) between first respondent and second respondent, a part of the suit premises was allotted to second respondent. The Rent Control and Eviction Officer by order dated 23.05.1984 upheld the objections and held that possession of the suit premises could not be delivered to first respondent. That was challenged by the landlords in revision which was rejected by the District Judge on 14.12.1992 on the

ground of maintainability. The order dated 23.5.1984 of the Rent Control and Eviction Officer and the order dated 14.12.1992 of the Revisional Court were challenged in W.P.No.5585/1993 by respondents 1 and 2. The impugned order dated 20.2.2006 was passed allowing the said writ petition of the landlords. The High Court held that respondents 1 and 2 were co-owners and there was no illegality in the release order.

5. The learned Single Judge after referring to the history of the case and the attempts of the landlord to secure possession in pursuance of the order of release granted as long back as 1975, set aside the orders dated 23.5.1984 and 14.12.1992. The learned Single Judge also noted the conduct of the appellant which virtually amounted to abusing the judicial process to avoid delivery of possession. It is in this background the learned Single Judge while directing delivery of possession, also held that the appellant tenant should pay rent/damages for use and occupation at the rate of at least Rs.1,000/- per month from 18.1.1973 (date of allotment in favour of appellant) till 20.2.2006 (date of the order of the High Court). The High Court further directed that from the date of its order (20.2.2006) to date of actual delivery of possession, the appellant shall pay Rs.100/- per day as damages.

6. This Court stayed recovery of damages by order dated 21.3.2006 but did not stay the order for delivery of possession. Learned counsel for the appellant informed us that the appellant has vacated and delivered the possession of the premises to the landlord on 11.06.2006.

7. The learned counsel for the appellant was not able to make out any error in the order of High Court directing appellant to deliver possession of the suit premises

to first respondent. He therefore restricted the challenge only to the issue as to whether the High Court was justified in directing payment of damages for use of the premises at the rates mentioned therein. The respondents though served have remained unrepresented.

8. Section 16(9) of the Uttar Pradesh Buildings(Regulation of Letting Rent and Eviction) Act,1972 provides that the District Magistrate while making an order of allotment under sub-section (1)(a) may also direct payment of one month's presumptive rent. It is not in dispute that when the premises was allotted no rent was fixed. The narration of the facts above will demonstrate that the landlords had challenged the allotment in favour of the appellant and there was an order of release in favour of the first respondent as long back on 21.1.1975 but the appellant had prevented the landlord from obtaining possession for more than three decades by a series of litigations. It is in these circumstances that the learned Single Judge thought fit to direct payment of damages, instead of driving the landlords to one more round of litigation to recover damages. As it is a just order we do not propose to go into the question whether such an order for damages could have been made in a writ petition arising from an application for possession filed before the Rent Control and Eviction Officer, or interfere with the direction for payment of damages.

9. But we feel that fixation of rate of damages fixed (at a uniform rate of Rs.1,000/- per month from 18.1.1973) requires modification. The appellant has produced documents to show that the rent paid by the previous tenant was Rs.23/- per month and the landlord had sought fixation of rent in 1979 indicating Rs.150/- per month was the prevailing rent. The occupation of the flat from 18.1.1973 to

21.7.1975 (that is date of expiry of six months from the date of release order dated 21.1.1975) was legal. Having regard to relevant circumstances like date of allotment, size and situation, age and other circumstances as borne out by records on the peculiar circumstances of the case, we direct the appellant to pay the rent/damages as follows :

- (i) Rs.75/- per month from 18.1.1973 to 31.7.1975.
- (ii)Rs.150/- per month from 1.8.1975 to 31.12.1980;
- (iii)Rs.250/- per month from 1.1.1981 to 31.12.1990;
- (iv)Rs.400/- per month from 1.1.1991 to 31.12.2000; and
- (v)Rs.500/- per month from 1.1.2001 till date of delivery.

Any payments already made by the appellant towards rents/damages shall be adjusted against the amounts payable as above. The appellant is granted two months time to pay the amount.

With the said modification this appeal is disposed of.

.....J.
(R.V. RAVEENDRAN)

.....J.
(LOKESHWAR SINGH PANTA)

NEW DELHI,
SEPTEMBER 26, 2008.