

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 10076 OF 2018  
(Arising out of SLP(C)No.24645 of 2018)

P.S. AYUB

Appellant(s)

VERSUS

ASIF JAGIRDAR

Respondent(s)

J U D G M E N T

BANUMATHI, J.:

(1) Leave granted.

(2) The respondent has filed Civil Suit bearing O.S. NO.25571/2012 for eviction on the ground: (i) Future payment of rent; (ii) Termination of tenancy.

(3) In the said suit, the appellant herein did not appear and the suit was decreed ex-parte on 4<sup>th</sup> February, 2013. The appellant herein has filed an application, Misc. Petition No.25164/2013, under Order IX Rule 13 C.P.C. and the same was also dismissed vide order dated 24<sup>th</sup> November, 2016 on the ground that the appellant has not shown sufficient reason for his non-appearance.

(4) Being aggrieved, the appellant has approached the High Court and the High Court vide Order dated 28<sup>th</sup> November, 2017 has directed the appellant to deposit the arrears of rent,

namely, Rs.2,73,000/- (Rupees Two Lakhs Seventy Three Thousand) within a period of two weeks. The appellant could not deposit the same within the time stipulated by the High Court and the same was deposited on 26<sup>th</sup> March, 2018 with a delay. By subsequent order dated 19<sup>th</sup> June, 2018, the High Court dismissed the application, I.A.No.1/2018, thereby declining to condone the delay in depositing the said amount. It was submitted by the learned counsel for the respondent that on that date also the appellant did not appear before the High Court. Another application, I.A. NO.2 of 2018, filed by the appellant was also came to be dismissed by the High Court which is impugned in this appeal.

(5) When the matter came up for hearing before this Court on 25<sup>th</sup> September, 2018, we have asked Mr. Raghavendra S. Srivatsa, learned counsel for the respondent-landlord, to file calculation memo as to the arrears regarding subsequent rent payable. In compliance thereof, learned counsel for the respondent has filed calculation memo stating that Rs.2,77,000/- (Rupees Two Lakh Seventy Seven Thousand) on as on 31<sup>st</sup> August, 2018 is due towards the future rent after adjusting an amount of Rs.2,73,000/- (Rupees Two Lakhs Seventy Three Thousand) deposited by the appellant.

(6) Insofar as the future rent payable by the appellant is concerned, the same shall be deposited by the appellant as per the calculation memo. Without prejudice to his contention, the appellant shall deposit Rs.2,77,000/- (Rupees Two Lakh Seventy

Seven Thousand) before the concerned Trial Court within a period of eight weeks from today. On deposit of the said amount the suit for eviction filed by the respondent-landlord i.e. Suit No.25571 of 2012 shall stand restored and the Trial Court shall proceed with the trial in accordance with law. The respondent-landlord is permitted to withdraw an amount of Rs.2,73,000/- (Rupees Two Lakhs Seventy Three Thousand) already deposited. Additionally, the appellant-tenant shall continue to pay the agreed rent as per the terms of the contract between the parties. On failure to deposit the arrears of Rs.2,77,000/- (Rupees Two Lakh Seventy Seven Thousand) within the stipulated period, the ex-parte decree of eviction dated 4<sup>th</sup> February, 2013 shall stand revived.

(7) In the result, the impugned order is set aside and the appeal is allowed. The suit filed by the respondent-landlord, O.S. NO.25571/2012, shall be restored to file and the Trial Court shall afford sufficient opportunity to both the parties and proceed with the same in accordance with law.

.....J.  
(R. BANUMATHI)

.....J.  
(INDIRA BANERJEE)

NEW DELHI,  
SEPTEMBER 28, 2018.