

S.B.Civil Writ Petition NO.2138/2005

Kamal Kumar vs. Shri Jain Swetambar Oswal Samaj & ors.

DATE OF ORDER : - 28.4.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. Manish Shishodia, for the petitioner.

Mr. Suresh Kumbhat, for caveator.

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order of the trial court dated 29.3.2005 by which the trial court rejected the petitioner's application filed under Section 10 CPC seeking stay of proceedings of Civil Appeal NO.19/2001 which has been filed by the petitioner against the judgment and decree of the trial court dated 2.5.1998.

The brief facts of the case are that one suit for eviction was filed against the petitioner by the plaintiff in the year 1987 (CO No.1/1987). The suit was decreed on 2.5.1998 against which appeal no.19/2001 is pending.

According to learned counsel for the petitioner, the plaintiff sought exemption from application of Rajasthan Premises (Control of

Rent and Eviction) Act, 1950 from the State Government and thereafter filed another suit for eviction of the petitioner tenant on the same ground of personal bonafide necessity which was the ground in the earlier filed suit in which the above decree was passed and the appeal is pending.

According to learned counsel for the petitioner, since the appeal has been filed subsequent to filing of new suit under Transfer of Property Act, after getting exemption from application of the Act of 1950 by the plaintiff, therefore, the proceedings of the appellate court should have been stayed by the first appellate court and, therefore, the order of the trial court rejecting the application of the petitioner is illegal.

I have considered the submissions of learned counsel for the petitioner and perused the impugned order.

It appears from the impugned order that the trial court proceeded on assumption that the premises of the two suits are different but it appears from the copies of the complaints submitted by the petitioner along with the writ petition that the premises in question appears to be one and the same but for the purpose of deciding this writ

petition, that will not be much material because in view of the provisions of Section 10 CPC, the proceedings of the subsequently filed suit can be stayed and not the earlier filed suit. The appeal is continuation of the suit and the relevant date for the purpose of staying the proceedings is the date when the suit was filed and not on the date when the appeal has been preferred against the judgment and decree passed in the suit.

The petitioner's prayer for staying the proceedings in appeal appears to be just contrary to the relief provided under Section 10 CPC.

In view of the above discussion, I do not find any merit in the writ petition and accordingly the same is hereby dismissed.

(Prakash Tatia), J.

s.phophaliya/-