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25-11-2021

SAT 204 of 2017

Ct. 8

Tapas Kumar Saha
Versus
Pranab Kumar Jash @ Pranab Jash & Anr.

(Through Video Conference)

Mr. Kushal Chatterjee, Adv.
Ms. Shreya Trivedi, Adv.

...for the appellant

Mr. Syed Nurul Arefin, Adv.
Mr. Rahul Singh, Adv.

...for the respondents

In the second appeal the parties have agreed to settle their disputes and an affidavit of undertaking has been filed on behalf of the appellant.

The learned Counsel for the appellant submits on instruction that the appellant is willing to hand over the vacant and khas possession of the property to the decree-holder within 6 months. However, a prayer is made for return of the security deposit deposited at the time of creation of tenancy.

The appellant has filed an affidavit of undertaking to quit vacate and deliver khas possession within a reasonable time preferably more than 6 months from the day within which time the appellant shall make arrangement for suitable accommodation for his business. We have perused the order under appeal and we do not find any substantial question of law involved for which the appeal could be admitted. However, to put an end to the controversy the decree holder had agreed to grant extension of time to the appellant till 31st March, 2021 and not for a period

more than 6 months. The learned Counsel for the appellant on instruction has agreed to hand over possession of the property in question on or before 31st March, 2021 notwithstanding, the statement made by the appellant in paragraph 2 of the affidavit of undertaking.

Insofar as the return of the security deposit is concerned, taking into consideration that the security deposit was made in the year 1988 and also having regard to the fact that the appellant is entitled to the occupational charges post-decree by the learned Trial Court, to balance the equities, we direct the plaintiffs to pay a sum of Rs.5000/- to the appellant simultaneously with the handing over possession of the property to the decree-holder.

The appellate decree affirming the order of the learned Trial Court is modified to the aforesaid extent.

The appeal stands disposed of.

The affidavit of undertaking filed on behalf of the appellant is taken on record.

Urgent photostat certified copy of the this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)