

24.04.2023
KC(5)

S.A.T. 88 of 2022
Ram Prasad Kothari and Ors.
-versus-
Sarweshar Tewari
With
CAN 1 of 2023
With
CAN 2 of 2023

Mr. Debnath Ghosh,
Mr. Sarosij Dasgupta,
Mr. Ritesh Ganguli,
Mr. Steven S. Biswas.....For the appellants.

Mr. Debjit Mukherjee,
Ms. Runu Choudhuri,
Mr. Anirban Pal.....For the respondent.

This is an intended second appeal. It is against the judgment and decree of the first appellate court dated 6th April, 2022 affirming the decree of the learned trial court dated 18th May, 2006. By this decree the appellants/defendants have been directed to be evicted from the suit premises on the ground of non-payment of rent.

Mr. Debnath Ghosh, learned advocate appearing for the appellants contends that by the decree of the learned first court dated 18th May, 2006 the appellants had been directed to deposit a sum of Rs. 26,213/- in court within one month of its pronouncement on receipt of which the decree for eviction would stand revoked or recalled. This sum was duly deposited by his clients on 17th June, 2006. Learned counsel produces a photocopy of such receipt.

Mr. Debjit Mukherjee, learned advocate appearing for the respondent disputes the genuineness thereof, pending its proper verification and obtaining proper instructions from his client.

Mr. Ghosh contends that in spite of such deposit the learned first appellate court has held that the appellants are guilty of non-payment of rent and hence liable to be evicted. It affirmed the decree of the learned trial court.

On perusal of the records we do not find that this payment of Rs. 26,213/- was brought on record before the first appellate court. In fact in the impugned judgment and decree there is no reference by the learned judge to such deposit.

We are unable to accept this contention because the document must have been there in the records to enable the court to consider the same and come to a decision thereon.

However, if the appellants have in fact deposited the sum of Rs. 26,213/- within the stipulated date and for some reason the document could not be brought before the first appellate court, in our view they should not, even at this stage, be denied the opportunity to bring it on record and establish their case. This, in our view, is necessary for the ends of justice.

But the second appeal cannot be entertained on the basis of such undisclosed document.

In those circumstances, we make an order giving liberty to the appellants to take whatever steps that are available to them in law to establish the payment of Rs.26,213/- within the stipulated time before the first appellate court, within four weeks of communication of this order.

For a period of six weeks from date execution of the impugned judgment and decree is stayed. After expiry of six weeks the impugned judgment and decree and its execution would abide by any order to be passed by the learned court below, if approached, on the basis of the document showing deposit of Rs. 26,213/-.

Except what is observed or decided above all points are kept open.

The appeal (S.A.T. 88 of 2022) and the connected applications (CAN 1 of 2023 and CAN 2 of 2023) are disposed of.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

