

KUMUD LATA DAS

A

v.

INDU PRASAD

SEPTEMBER 19, 1996

[K. RAMASWAMY, FAIZAN UDDIN AND G.B. PATTANAİK, JJ.]

B

*Code of Civil Procedure, 1908 :*

*Order IX Rule 13—Application for setting aside ex parte decree—Property in possession of daughter-in-law—She could not live amicably with her husband—Mother-in-law filing suit for possession on the basis of her alleged title—Appellant was set ex parte—Application for restoration of decree disposed of by the High Court by imposing condition of depositing mesne profits for the execution of the ex parte decree—Not justified—Matter remitted to High Court for fresh consideration of the application for setting aside the decree on merits and in accordance with law.*

C

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12729 of 1996.

From the Judgment and Order dated 16.4.96 of the Delhi High Court in I.A. No. 8629/95 in Suit No. 3781 of 1990.

E

M.N. Krishnamani and S.B. Upadhyay for the Appellant.

A.K. Ganguli, Manish Mishra for N.S. Bisht for the Respondent.

The following Order of the Court was delivered :

F

Leave granted.

This appeal by special leave arises from the order made on April 16, 1996 by the Delhi High Court in I.A. No. 8629/95 in Suit No. 3781/90. The suit was for possession of the property from the appellant. The plaintiff is the mother-in-law of the appellant. The appellant and her husband are not able to live amicably in matrimonial tie. The proceedings for divorce are pending. The appellant is in possession of the property and, therefore, the respondent-mother-in-law filed a suit for possession on the basis of her alleged title. The appellant was set *ex parte* and the application under

G

H

A Order 9, Rule 13 CPC is now pending before the High Court. The application for restoration of the decree has been disposed of with directions to deposit and to continue to deposit *mesne profits* at the rate of Rs. 2,000 per month from the date of *ex-parte* decree, Hence, this appeal by special leave.

B In view of the fact that the parties are closely related and the matter has been disposed of *ex-parte*, we are of the view that it is not a fit case to impose costs of depositing *mesne profits* from the date of *ex-parte* decree and to continue to deposit it as a condition to contest the application to set aside *ex-parte* decree. Moreover, such onerous condition is not valid, though discretionary.

C Under these circumstances, we think that the learned Single Judge was not right in imposing the condition of depositing the *mesne profits* as a condition precedent for execution of the *ex-parte* decree. The impugned order of the High court is accordingly set aside. There shall be stay of execution of the *ex-parte* decree. The matter is remitted to the High Court for fresh consideration of the application for setting aside the decree on merits and in accordance with law.

The appeal is allowed. No costs.

E G.N.

Appeal allowed.