

HIGH COURT OF DELHI

Bench: Hon'ble Ms. Justice Manmeet Pritam Singh Arora

Date of Decision: 21st November 2023

REGULAR SECOND APPEAL JURISDICTION

RSA NO. 216 OF 2023

CM APPL. 60008/2023, CM APPL. 60009/2023, & CM APPL. 60010/2023

RAJENDER BHARDWAJ APPELLANT(S)

VERSUS

SULOCHANA RESPONDENT(S)

Legislation:

Code of Civil Procedure (CPC)

Subject: Regular Second Appeal involving the eviction of the appellant from the property and recovery of arrears of rent and user charges.

Headnotes:

Property and Tenancy Dispute – Eviction and Recovery of Arrears – Appeal challenging judgment of Additional District Judge and Senior Civil Judge for eviction of Rajender Bhardwaj (Appellant) and recovery of arrears and user charges – Dismissal of Regular Civil Appeal by First Appellate Court and upholding Trial Court's order. [Paras 1, 4]

Legal Principles for Second Appeal – Limited scope of second appeal under CPC – Supreme Court's precedent in Nazir Mohamed v. J. Kamal outlining criteria for substantial question of law in second appeals – Appellant's arguments primarily factual, not raising substantial legal questions. [Paras 5-6, 29]

Undertaking and Extension of Time for Vacating Property – Appellant's undertaking to vacate property by 21.01.2024 – Conditional agreement to pay increased user charges in case of non-compliance – Extension granted for vacating property, subject to the fulfillment of undertakings. [Para 7]

Execution Stayed and Directions for Compliance – Stay on execution of decree until 21.01.2024 – Appellant directed to file affidavit of undertaking and appear before Executing Court for handing over possession. [Para 8]

Appeal Outcome – Disposal of appeal with upholding of judgments of First Appellate Court and Trial Court – Decree of possession affirmed. [Para 9]

Referred Cases:

Nazir Mohamed v. J. Kamal and others (2020) 19 SCC 57

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 60009-10/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

RSA 216/2023, CM APPL. 60008/2023

1. The present appeal has been filed impugning the judgment dated 19.08.2023 passed by the Additional District Judge – 04, South West District, Dwarka Courts, New Delhi in RCA No. 54/2022 titled as **Rajinder Bhardwaj v. Sulochana** ('First Appellate Court') whereby the First Appellate Court dismissed the Regular Civil Appeal filed by the Appellant and upheld the Judgment of Trial Court dated 08.10.2021 passed by the Senior Civil Judge, South-West District, Dwarka Courts, New Delhi in CS no. 196/2017 ('Trial Court'). Subsequently, the First Appellate Court granted two months' time to the Appellant to vacate the property i.e., House No.118, Baba Haridas Nagar, Gitanjali Enclave, Jharoda, South· West, Delhi - 110072 admeasuring 40 square yards ('suit property')

2. The Appellant is original defendant and the Respondent is the original plaintiff in the civil suit filed before the Trial Court.

3. The aforesaid suit was filed by the Respondent against the Appellant for recovery of possession of the suit property, for recovery of arrears of rent of Rs. 24,000/-, for payment of rent of Rs. 4,000/- per month along-with electricity charges from date of filing of petition till the handing over of vacant peaceful possession of suit property to the Respondent.

4. The Trial Court vide judgment dated 08.10.2021 decreed the aforesaid civil suit in favour of the plaintiff and against the defendant with the direction to the defendant to hand over vacant and peaceful possession of suit property along with user charges at Rs. 400/- payable to the Respondent herein per month from February 2017 and clearing the electricity charges till handing over the vacant peaceful possession of the suit property. The

to comply with the undertaking given to this Court, Appellant will become liable to pay use and occupation charges at Rs. 5,000 per month with effect from 01.11.2021, in view of the fact that the decree of possession already stands passed against the Appellant herein by the Trial Court vide judgment dated 08.10.2021. The Appellant will ensure that electricity charges up-to the date of possession are paid to the electricity company. The undertaking of the Appellant is accepted and he is bound down to the same.

8. In view of the undertaking given to this Court, the execution of the decree of possession dated 08.10.2021 is stayed until 21.01.2024. The Appellant is directed to file an affidavit of undertaking before the Executing Court in Ex. Civil No. 680/2021 within 10 (ten) days and thereafter appear before the Executing Court on or before 21.01.2024 for handing over the possession of the suit property.
9. With the aforesaid directions, the present appeal is disposed of and the judgment of the First Appellate Court dated 19.08.2023 and the decree of possession passed by the Trial Court dated 08.10.2021 is upheld.
10. Pending application, if any, stands disposed of.

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