

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.433/2002**

% **8<sup>th</sup> November, 2011**

S.I. JAI BHAGWAN & ORS. .... Appellants  
Through: Ms.Zubeda Begum, Adv.

VERSUS

SMT. SUMAN DEVI & ANR. .... Respondents  
Through:

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

**VALMIKI J. MEHTA, J (ORAL)**

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure (CPC), 1908 is to the impugned judgment of the Trial Court dated 15.1.2002. By the impugned judgment, the Trial court has decreed the suit for recovery, which was filed by the respondents/plaintiffs for pecuniary damages for Rs.1,00,000/- and for trespass and battery for Rs.4,00,000/-, i.e. a total of Rs.5,00,000/- only for a sum of Rs.23,000/-.

2. The facts which were alleged by the respondents/plaintiffs

in the plaint are that the appellants, who are police officials, while endeavouring to evict the respondents/plaintiffs on the land belonging to one Ramjas Foundation used excessive force and thereby, caused them injuries. The respondents/plaintiffs claimed that the appellants/police officials trespassed into the house, dragged the plaintiff no.1/respondent no.1 outside and threw her on a stone whereby she started bleeding. It was also alleged that the defendant no.3/appellant no.2 gave a blow with an iron rod on the left leg. When the respondent no.2/plaintiff no.2 tried to save the plaintiff no.1/respondent no.1, the appellants threw her and thereby the plaintiff no.2 also received injuries on the head and started bleeding. There are further allegations of the plaintiffs/respondents being beaten and the police officials running away when the crowd gathered.

3. The appellants contested the suit and stated that they had proceeded to the spot on account of a DD entry No.9-B on 14.9.97 that the respondents were encroachers on the land of Ramjas Foundation and when they tried to ask the respondents/plaintiffs to stop construction they did not stop and started pelting stones as a result of which appellants/defendants suffered injuries. It was alleged that the suit was a counter blast to the case registered against the respondents/plaintiffs in the Police Station-Anand Parbat.

4. After the pleadings were completed, the Trial Court framed the following issues:-

“1. Whether the plaintiffs are entitled to a decree for Rs.5,00,000/- with interest from the defendants?

2. Whether the suit is not maintainable u/s 138 and 140 of Delhi Police Act?

3. Relief?”

5. The Trial Court has referred to the MLCs with respect to the plaintiffs/respondents as PW2/3 and PW2/4. The notice issued on behalf of the plaintiffs was proved as PW4/1. The expenditure documents with respect to the medical care of the respondents/plaintiffs were produced as Ex.PW7/1 to PW7/16.

6. The Trial Court has exhaustively examined the respective contentions of both the parties and has found that there were certain injuries but the same were not so grave as was pleaded by the respondents/plaintiffs. On the other hand, the Trial Court has found that the appellants/police officials used unnecessary force, i.e. force more than which was necessary and which did result in injuries to the persons of the respondents/plaintiffs. The Trial Court also found that both the parties have exaggerated their respective cases. The relevant observations of the Trial Court are contained in paras 8 to 10 and 14 to 16, which read as under:

“8. The MLCs Ex.PW2/3 and Pw2/4 establish beyond doubt that on 14.09.97 both plaintiffs had sustained injuries. A lacerated wound measuring 5” X 1” was observed on the forehead of Chandramma Devi besides haematoma on the frontal region. Suman Devi had haematoma over the scalp on right side and abrasion on her left leg and right forearm. The evidence also

shown that defendants no. 1-4 were present at the spot when the two plaintiffs received injuries. The defendants deny that the injuries were caused by them by them but they have not come out with any definite version in this regard. In the written statement, they merely say that the plaintiffs were chasing them and that stones were lying on the road. At the stage of evidence, DW2 Jai Bhagwan says that Chandramma Devi caught hold of his private parts as a result of which he fell upon her and then both fell on the stones. This statement is an improvement on pleadings. Moreover, a mere fall has suggested by DW2 Jai Bhagwan could not have caused a lacerated wound of the dimension observed in MLC Ex.PW2/3. Then it is also to be kept in mind that none of the defendants sustained any visible injury. This indicates that the defendants have not come out with the true version of the occurrence.

9. The story of the plaintiffs also does not sound very plausible. PW4 Suman Devi says that she was bleeding profusely from the head injury. The MLC Ex.PW2/4 does not indicate bleeding at all. There is substantial discrepancy between the testimony of PW4 Suman Devi and PW5 Chandramma Devi. According to Suman Devi, S.I. Jai Bhagwan demanded Rs.10,000/- from her and on her expressing inability to meet the demand he gagged her mouth with his cap and then she raised an alarm and Chandramma Devi came to the spot. This would mean that Chandramma Devi was not present when the alleged demand of Rs.10,000/- was made by defendant Jai Bhagwan. PW5 Chandramma Devi contradicts this story and claims that the defendant had demanded illegal gratification of Rs.10,000/- in her presence.

10. Thus, on consideration of evidence, I have a strong feeling that both parties have tried to distort truth. The fact, however, remains that both plaintiffs were injured and the defendants have failed to come out with any reasonable explanation for the injuries. Therefore, in the circumstances of the case, it can be safely presumed that the defendants had applied force to the person of the two plaintiffs. In order to establish the tort of battery, however, the plaintiffs must prove that the application of force was without lawful

justification. In an action for the tort of battery, the following defences are available to the defendants:-

1. Self-defence,
2. Use of reasonable degree of force in order to eject a trespass,
3. Use of reasonable force to prevent breach of peace.

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14. Coming to the quantum of damages, I find that the plaintiffs have adduced little reliable evidence to establish pecuniary damages. Ex.PW7 Kamal Pal has produced the papers Ex.PW7/1 to PW7/16 to show that expenses incurred on treatment. The total amount of these documents comes to Rs.379.65 only. PW4 Suman Devi and Pw5 Chandramma Devi have stated that they spent Rs.10,000/- each on diet. This claim of theirs is obviously exaggerated and it cannot be believed. Similarly, their claim of having spent Rs.5,000/- each on conveyance is also not believable. The evidence adduced by the plaintiffs does not entitle them to claim more than Rs.1,000/- as pecuniary damages.

15. Coming to non-pecuniary damages, there can be no standard method to measure such damages. The court is supposed to have regard to the circumstances of the case and then award a fair and reasonable amount. In the present case, defendants no.1-4 were all police officers. It was a part of their duty to remove encroachment from public land. They had gone to the spot on receiving information of encroachment. They were not totally wrong in taking action against the encroachers. The only thing is that they were over-zealous in performing their job and exceeded their powers. Considering all these circumstances as well as the nature of injuries sustained by the plaintiffs. I feel that it would just and fair to award an amount of Rs.15,000/- to plaintiff Chandramma Devi and an amount of Rs.7,000/- to plaintiff Suman Devi.

16. In view of the above discussion, I hold that the plaintiffs are entitled to recover an amount of Rs.23,000/- from the defendants on account of pecuniary and non-pecuniary damages. Issue is answered accordingly.” (underlining added)

7. In my opinion, the Trial Court was fully justified on a balance of probabilities to arrive at the findings of the appellants being guilty of using excessive force. However, the Trial Court was careful enough not to grant high damages of Rs.5,00,000/- claimed by the plaintiffs/respondents but only granted Rs.15,000/- to the plaintiff no.2 and Rs.7,000/- to the plaintiff no.1. I do not find any illegality or perversity in the finding of the Court below inasmuch as the incident in question has been proved, injuries have been proved, and certain amounts of treatment/expenses for the medical treatment have also been proved. Some legitimate amount of guess work is always called for in a suit for damages, and therefore, the Trial Court in passing a decree for Rs.23,000/- has committed no illegality.

8. Before commencement of hearing of the appeal, I had adjourned the case on 31.10.2011 at request on behalf of counsel for the appellants to take instructions by passing the following order:

“% 31.10.2011

Present: Ms.Zubeda Begum, Adv. for the appellants.  
None for the respondents.

**+ RFA No.433/2002**

1. Counsel for the appellants states that she would like to take instructions that if the appeal is withdrawn, observations can be made by the Court so as not to effect the services and the career record of the appellants.

2. List for arguments on 2<sup>nd</sup> November, 2011.”

Today counsel for the appellants, however, states that she has no instructions in spite of writing a letter to the relevant authority. I have therefore proceeded to hear and dispose of the appeal on merits.

9. In view of the above, the appeal, being without any merit, is therefore dismissed, leaving the parties to bear their own costs.

10. Trial Court record be sent back.

**NOVEMBER 08, 2011**  
**ak**

**VALMIKI J. MEHTA,J**