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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA No.101/2011

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23rd August, 2011

KAVITA AGGARWAL

..... Appellant
Through: Mr. Praveen Kumar Jain,
Advocate with Mr. Mukesh
Kumar Gupta, Advocate.

VERSUS

GYAN DEEPAK AGGARWAL & ANR.

..... Respondents
Through: Mr. Sandeep Garg, Advocate for
respondent No.1.

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 Second Appeal is to the two concurrent judgments of the Courts below, the first dated 21.1.2011, and the second dated 25.5.2011, and by which judgments, the counter claim filed by the respondent No.1/husband was allowed directing the appellant/wife in the counter claim to hand over the

physical possession of the premises bearing No. A-6, Urja Vihar, Mandawali, Delhi to the counter claimant/husband/respondent No.1 inasmuch the counter claimant wanted to surrender back these premises to his employer/respondent No.2, and which employer had given these premises on licence to the counter claimant. The original suit was filed by the appellant/plaintiff claiming injunction against dispossession from the suit premises and which suit for injunction was dismissed. No appeal has been filed by the appellant against the judgment and decree dismissing her suit for injunction and therefore the same has become final. The only issue which requires consideration in this Regular Second Appeal is as to whether the husband/respondent No.1 can be forced to continue to be the licensee of premises which he has got from his employer/respondent No.2. Putting it differently, can the husband/respondent No.1 not surrender the premises which he has obtained from his employer and can the appellant/respondent in the counter claim continue to forcibly and exclusively occupy the suit premises thereby preventing the respondent No.1/counter claimant from surrendering the possession back to the employer/respondent No.2.

2. The respondent No.2/BSES has taken up a stand in the Courts below that since the possession of the licenced premises was given to the respondent No.1, it is the duty of the respondent No.1 to take possession

from the appellant and till such possession is obtained by the respondent No.1 from the appellant/wife and surrendered back to the employer/BSES/respondent No.2, respondent No.2 will continue to deduct the HRA from the respondent No.1.

3. There is no law which forces a husband to continue to remain a tenant in a rented premises. The entitlement of a wife is only towards maintenance from the husband. Admittedly, the decree for divorce on the ground of cruelty was passed against the appellant. The respondent No.1 remarried after passing of the decree of divorce. Though the appellant claims that an appeal was filed against the judgment granting divorce, the respondent No.1 states that till date no notice has ever been received by it from any Court with respect to the appeal filed against the decree of divorce. Learned counsel for the appellant states that though the appeal was filed against the decree of divorce, however, the appeal was dismissed for default, however, now the same has been restored. The position which emerges today is thus that though there is a decree of divorce in favour of the respondent No.1, an appeal probably appears to have been filed against the said judgment and decree.

4. It is trite that the legal entitlement of possession of a premises can only be of a licensee i.e. the husband in the facts such as the present. The appellant/wife stays in the premises by virtue of the

fact that there is an entitlement of the husband/respondent No.1 as the licensee to stay in the premises. This however cannot mean that if respondent No.1 wants to surrender the possession of the licenced premises, respondent No.1 can be forced to continue to keep the premises, more so in the facts of the present case where the respondent No.1 himself has been ousted from the possession of the premises and the appellant is staying in the premises.

5. Learned counsel for the respondent No.1 has brought to my notice an order which has been passed by a learned Single Judge of this Court dated 28.10.2010 passed in C.M.(M) No.993/2008, and which was a petition filed by the appellant against the order passed under Section 24 of the Hindu Marriage Act,1955 in the divorce proceedings. By the order dated 28.10.2010, the learned Single Judge of this Court dismissed the petition and the operative portion of which order reads as under:-

“6. Even assuming without admitting that if it is considered that the income of petitioner no.1(wife) was Rs.7000/- per month, the petitioner No.1 was receiving maintenance in the sum of Rs.3000/-, per month; she was residing at the accommodation, which was provided to the husband by the company in which he was employed and adding up the income of the wife as also a sum of Rs.3635/- towards rent which was being deducted from the salary of the husband, the wife would be having a total sum of Rs.13635/- per month, at her disposal. The parties have already parted ways and a decree of divorce has since been passed. In view of this, I find no infirmity in the order passed by the learned trial court. Accordingly, petition stands dismissed.”

The Single Judge while disposing of the C.M.(M) No.993/2008 on 28.10.2010 has noted that the appellant was working as a Lecturer in Pillani. Before this Court also the respondent No.1 states that the appellant in fact is having other sources of income. All these facts are however strenuously denied on behalf of the appellant and it is said that the appellant in fact as on date is working nowhere. It is also argued that the appellant has a minor child who has to be taken care of.

6. Considering therefore the overall facts and the conspectus of the case which shows that though the legal position is in favour of the respondent No.1 entitling respondent No.1 to surrender the licenced premises to his employer, however, in the facts and circumstances of the case, I deem it fit that respondent No.1 will pay a sum of Rs.6,000/- to the appellant for a maximum period of six months from today subject to any further order being sought by the appellant from the Appellate Court in which the appeal is said to be pending against the judgment granting divorce. I may note that the learned Single Judge while disposing of the C.M.(M) No.993/08 on 28.10.2010 had granted a sum of Rs.3,000/- per month considering all the facts and circumstances of the case including the residence of the appellant in the subject accommodation. I am therefore of the opinion that to balance the equities respondent No.1 is

held liable to pay a sum of Rs.6,000/- per month for a maximum period of six months subject to further orders being passed in the appeal against the judgment granting divorce. I may hasten to add that this figure of Rs.6,000/- is of no reflection on the quantum of maintenance which may be awarded in favour of the appellant by the Court hearing appeal against the decree of divorce. Learned counsel for the respondent No.1 was agreeable to make the payment of this amount per month to the appellant, however, the counsel for the appellant, on instructions from the appellant, has out-rightly rejected this offer. Respondent No.1/licencee is entitled to surrender back the licenced premises to his employer/respondent No.2, however, the same will not prejudice the right of the appellant to claim such amount of maintenance which she is legally entitled to in any appropriate proceedings, including in the appeal filed against the judgment by which divorce was granted. I direct that within a maximum period of six months from today, the appellant will be bound to comply with the impugned judgments and decrees by which possession of the suit premises has been granted to the respondent No.1 so that the premises are surrendered back to the employer/respondent No.2. Counsel for the respondent No.1/husband states that he undertakes to take joint possession of the premises with respondent No.2/employer and the actual physical possession of the suit premises

will be directly taken over by the respondent No.2/employer and not the respondent No.1/husband. I have granted a period of six months for vacating the premises and also payment for a period of six months so that the appellant can obtain an alternative accommodation and if she desires then also seek appropriate orders with respect to maintenance from the Court which is hearing appeal against the judgment and decree granting divorce.

7. Since no substantial question of law arises, the appeal stands dismissed subject to the aforesaid directions.

AUGUST 23, 2011
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VALMIKI J. MEHTA, J.