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

+ RSA 32/2013

% **05.03.2014**

GOVT OF NCT OF DELHI Appellant
Through Mr. V.K. Tandon, Mr. Kartik Jindal,
Advocates

versus

SANTOSH RANI & ANR. Respondents
Through Ms. Isha Khanna, Advocate for
respondent no. 1.
Mrs. Abha Malhotra, Advocate for respondent no.
2/UOI.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This regular second appeal under Section 100 CPC impugns the judgment of the first appellate court dated 17.7.2012. First appellate court set aside the judgment of the trial court dated 17.5.2010 dismissing the suit of the respondent/plaintiff filed for recovery of moneys claimed on the ground that respondent/plaintiff was a displaced person on accounts of terrorist activities in Punjab. First appellate court has decreed the suit and

granted subsistence allowance of Rs.1000/- per month from 18.12.1990 to 16.12.1995 and from 16.8.1996 to 31.3.1997.

2. The first appellate court notes that the respondent/plaintiff was granted compensation/subsistence allowance on the basis of letter from Punjab Government dated 29.11.1990 but it was immediately thereafter stopped from 18.12.1990 and no compensation/subsistence allowance was paid till 16.12.1995. The first appellate court however notes that the respondent/plaintiff has proved as Ex. PW-1/3 an order passed by the competent authority in the Govt. of NCT of Delhi, which is dated 29.11.1996 and which had restored the payment to the respondent/plaintiff. Thereafter suddenly, once again the payment to the respondent/plaintiff was stopped without following the principles of natural justice, and therefore, the subject suit was filed for claiming compensation/subsistence allowance for the period from 18.12.1990 to 16.12.1995 as also from 16.8.1996 to the date of filing of the suit on 1.4.1997 till policy of payment was revoked. No further payment is to be made from 1.4.1997 because now the Govt. of India had withdrawn its policy for payment of compensation/subsistence allowance to persons displaced from Punjab.

3. The impugned judgment of the first appellate court shows that the

original payment order number was 3/92 and payment was made from March 1990 till 17.12.1990. The subsistence allowance was withheld from 18.12.1990 on account of an order dated 18.12.1990, and therefore, no compensation/subsistence allowance was paid from 18.12.1990. The claim of the respondent/plaintiff was again found to be genuine in terms of letter dated 29.11.1996 (Ex.PW1/3) of the Joint Director Sh. U.R. Kapur and payment to her was restored. The appellant relied upon an unproved document dated 5.3.1997 ordering payment of compensation/subsistence allowance to the respondent/plaintiff being stopped. Besides the fact that this document dated 5.3.1997 was not proved, the principles of natural justice including issuing of show cause notice were not observed before withdrawing the civil rights granted to the respondent/plaintiff/widow. The relevant observations of the first appellate court are contained in paras 17 and 18 of the impugned judgment which read as under :

“17. This is a case where certain benefits were given to the plaintiff and were subsequently withdrawn and again restored and again stopped but without communicating any reasons there for. As regards the findings of the Ld. Trial Court on issue No. 3, in my considered view Ld. Trial Court has without adverting to the fact that the concerned record has not been proved by the defendants as per law, rejected the claim of the plaintiff. It is noted that the respondent No. 2/defendant No. 2 has not produced any document in support of the averments to the effect that on the basis of the letter from Punjab Government dated

29.11.1990 the payment was stopped to the plaintiff from 18.12.1990 to 16.11.1995 nor the contents of the letter dated 20.03.1996 from Punjab Government has adduced on record. Ld. Trial Court Record referred to the document dated 05.03.1997 vide which the competent authority ordered to stop the AMR being paid to the plaintiff, however, this letter has not been proved. No averments is there in the WS of the defendant/respondent that any notice was given to the appellant/plaintiff on the complaint received against her or she was afforded any personal hearing on the inquiry conducted on the complaint against her. No speaking order was passed for stopping the AMR. It has been submitted in the WS that the plaintiff had forcibly dispossessed Ms. Poonam, however, letter Mark P-D3 dated 24.04.2001 reflects that she herself left the tent No. 2 and informed this fact to the DC (Relief) Tis Hazari. Moreover, it has not been clarified if grant of AMR was to be there only when the tent is allotted to the beneficiary by the competent authority. In this case vide Ex. PW1/3 dated 29.11.1996 the plaintiff has been referred as Punjab migrant. So on what ground she has been removed from this category, has not been communicated to the appellant/plaintiff. All these aspects were not considered by the Ld. Trial Court and great prejudice has been caused to the appellant. Defendant No. 2 has failed to place on record the clear policy of Central Government in the matter.

18. In its defence, defendant No. 1 has examined DW 1 Sh. K.B. Singh who has tendered his affidavit in evidence as Ex. DW1/A wherein it has simply been stated that there is no such scheme of the Ministry of Home Affairs under which flat may be allotted in place of Jhuggi as requested by petitioner and as such issue raised by her did not relate to the Ministry. No other averments is there as to the policy of the Central Government as to the exclusive domain of the Central Government in directing the defendant No. 2/respondent No. 2 to release payment, as such it does not lie in the mouth of defendant No. 2/respondent No. 2 to aver now that there is no privity of contract that it was only complying with the directions of the Central Government. No evidence has been led by the defendant No. 2/respondent No.

2 in the Trial Court. In the affidavit filed by the plaintiff, she has referred to her being as a migrant from Punjab. In the affidavit filed in September 2007 it is stated that by that time her husband had expired. She also referred to the kidnapping of her son by the terrorists, however, there is no cross examination on this aspect. She has led the relevant evidence with regard to her living in Jalandhar before migrating to Delhi. She having been not extended any opportunity to rebut the documentary evidence considered by the inquiry officer on the basis of which AMR was stopped, it is a case where she should be given the benefit and she is entitled to the AMR @ Rs. 1,000/- from the period from 18.12.1990 to 16.11.1995 and from 16.08.1996 to 31.03.1997. Issue No. 3 is decided in favour of appellant and against respondents. The judgment and decree of lower court of Ms. Vrinda Kumar, Ld. Civil Judge, Central-03 is set aside. The appeal is allowed to the extent that appellant/plaintiff is held entitled to Rs. 1,000/- per month from 18/12/1990 to 16/11/1995 and from 16/08/1996 to 31/03/1997. However, in the given facts and circumstances, she is held not entitled to any interest. Appeal stands allowed and suit is accordingly decreed in favour of the appellant and against both the respondents jointly and severally. Decree sheet be prepared accordingly. Trial Court Record be sent back along with the copy of the judgment. Appeal file be consigned to Record Room.”

4. A reading of the impugned judgment therefore makes it clear that neither the order of the withdrawal of compensation/subsistence allowance dated 5.3.1997 was proved on record, and nor was the same passed after following the principles of natural justice. In the present case I am informed that issue is only of a sum of Rs. 67,000/- and which is already lying deposited with this Court.

5. Considering the facts of this case, in my opinion, no substantial

question of law arises for this appeal to be maintainable under Section 100 CPC not only because the order dated 5.3.1997 has not been proved but also because principles of natural justice had not been followed before passing of the order dated 5.3.1997.

6. In view of the above, this regular second appeal is dismissed leaving the parties to bear their own costs. The amount deposited in this Court by the appellant be paid to the respondent along with accrued interest, if any, within a period of four weeks from today.

VALMIKI J. MEHTA, J

MARCH 05, 2014
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