

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

+ **RFA No. 17/2018**

% **Reserved on: 8th January, 2018**
Pronounced on: 11th January, 2018

NARENDER KUMAR NAYYAR & ANR. Appellants
Through: Mr. Sudhir K. Saneja,
Advocate.

versus

DEEPAK ARORA Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

CM No. 474/2018 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

RFA No. 17/2018 and CM No. 473/2018 (stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit impugning the judgment of the trial court dated 26.9.2017 by which the trial court has decreed the suit filed by the respondent/plaintiff for a sum of Rs.1,85,000 with interest. The suit was filed seeking

recovery of moneys on account of damage caused by seepage in the property of the respondent/plaintiff. Respondent/plaintiff also claimed charges towards the replacement of water tanks of the appellants/defendants by the respondent/plaintiff as also adding of two additional water tanks. The suit was filed seeking recovery of Rs. 6,85,000/- on account of damages by seepage and replacement of water tanks and by the suit respondent/plaintiff also claimed damages towards defamation. The suit so far as the relief prayed for damages of Rs. 5 lacs for defamation has been dismissed by the trial court and suit has only been decreed for a sum of Rs.1,85,000/- along with interest at 9% per annum with respect to charges incurred by the respondent/plaintiff for repairs to his property on account of damages caused by the seepage as also for payment made by the respondent/plaintiff for installing of three water tanks for the appellants/defendants. Out of the sum of Rs.1,85,000/- a sum of Rs.85,000/- was claimed towards fixing of the three water tanks for the appellants/defendants and a sum of Rs.1,00,000/- was prayed towards the repairs done in the property of the respondent/plaintiff in

which damages were caused on account of seepage from the pipes and water tanks of the appellants/defendants.

2. The facts of the case are that the respondent/plaintiff filed the subject suit pleading that he was the owner of the entire property bearing no. 15A/3, East Patel Nagar, New Delhi. The first floor of this property was sold by the respondent/plaintiff to the appellant no.2/defendant no.2. Appellants/defendants are husband and wife. In the plaint it was pleaded that due to callous attitude and mismanagement of the appellants/defendants the water pipes from the water tanks supplying water to the premises of appellants/defendants at first floor, firstly got rusted/damaged, and thereafter finally burst in the second week of November, 2013. Appellants/defendants did not take the steps to resolve the leakage and seepage to the second floor of the property which was owned by the respondent/plaintiff and thus resulting in damage and destruction being caused to the property of the respondent/plaintiff. It was pleaded that on account of seepage and water retention, the property of the respondent/plaintiff developed cracks and plaster started coming out, and wooden cabinets and cupboards were damaged besides damages being caused to the

electrical appliances in the house of the respondent/plaintiff. Appellants/defendants did not pay any heed to the request of the respondent/plaintiff for replacement of the old pipes and the water tanks, and consequently the respondent/plaintiff was left with no option but to carry out the work on his own. Respondent/plaintiff changed the damaged pipes and got installed two new water tanks of 1000 lt. each in place of the damaged tanks of the appellants/defendants, but the appellants/defendants refused to pay the expenses incurred by the respondent/plaintiff, and therefore, the subject suit was filed. As already stated above, the suit was filed for a sum of Rs.6,85,000/- of which the sum of Rs.5,00,000/- was claimed towards damages/defamation and which claim has been dismissed by the trial court, and therefore the only issue which remains is of the decree for a sum of Rs.1,85,000/- along with interest at 9% being passed in favor of the respondent/plaintiff.

3. Appellants/defendants contested the suit by filing their written statement. They pleaded that the suit filed by the respondent/plaintiff was a counter blast to the suit no. 14/2014 filed by the appellant no.1/defendant no.1 and which is pending disposal in the

civil court. It was pleaded that the suit came to be filed by the appellant no.1/defendant no.1 on account of illegal construction having been made by the respondent/plaintiff in the first floor portion sold to the appellants/defendants and which was not in the knowledge of the appellants/defendants. It was denied that there was any bursting of the water pipes of the appellants/defendants or that there was seepage in the property of the respondent/plaintiff resulting in damages. It was denied that respondent/plaintiff had fixed water tanks for the appellants/defendants.

4. After pleadings were completed issues were framed in the suit as under:-

- “1. Whether the plaintiff is entitled for damages of Rs.6,85,000/- including expenses incurred by the plaintiff to repair his property? OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed in prayer no.B and C of the suit? OPP
3. Relief.”

5. Respondent/plaintiff led evidence and proved documents and which is noted in para 6 of the impugned judgment as under:-

- “6. The plaintiff has examined himself as PW1 and in his evidence by way of affidavit, he has reiterated and reaffirmed the stand as taken by the plaintiff in the plaint. He has filed on record his evidence by way of affidavit as Ex. PW1/1, the original electricity bills dated 11.03.2011, 22.09.2011, 24.11.2011, 23.05.2012, 22.11.2012, 09.03.2013 and 26.11.2013 collectively as Ex. PW1/A, the photographs showing the

damage to the property in question collectively as Ex. PW1/B, the invoice dated 08.01.2014 as Ex. PW1/C, the invoice dated 09.01.2014 as Ex. PW1/D, the invoice dated 12.01.2014 as Ex. PW1/E, the visiting card of the supplier as Ex. PW1/F, the bill of the plumber as Ex. PW1/G, the copy of the complaint dated 08.02.2014 vide DD no. 19A dated 04.03.2014 as Ex. PW1/H, the photographs showing the name plate of the defendants, the parking of the car by the defendants, showing the damage of the ground floor due to seepage of the first floor collectively as Ex. PW1/I and the advertisement by the defendants for the PG/Girls Hostel as Ex. PW1/J.” (underlining added)

6. Appellants/defendants also led evidence and proved documents, and which is recorded in para 16 of the impugned judgment which reads as under:-

“16. The defendants have examined the defendant no. 1 as DW1 and in his evidence by way of affidavit Ex. DW1/A on record, he has reiterated and reaffirmed the stand as taken by the defendants in the written statement. He has filed on record the six photographs as Ex. DW1/1 to Ex. DW1/6, the copy of the complaint to SHO PS Patel Nagar as Ex. DW1/7, the complaint dated 25.11.2013 to the MCD as Ex. DW1/8, the letter dated 12.12.2013 to the LG as Ex. DW1/9, postal receipt thereof as Ex. DW1/10, the copy of the complaint dated 13.03.2016 to the SHO PS Patel Nagar as Ex. DW1/11 and the copy of the plaint as Ex. DW1/12.”

7. Trial court has decided the issues with respect to entitlement of the respondent/plaintiff for a sum of Rs.1,00,000/- plus Rs.85,000/- in favour of the respondent/plaintiff by observing that admittedly the appellants/defendants were running a Guest House in their premises and therefore for the running of the Guest House more water was required. Trial court also notes that respondent/plaintiff has proved the damages caused to his property in terms of photographs

which have been proved and exhibited as Ex.PW1/B (colly). This is recorded in para 36 of the impugned judgment and which reads as under:-

“36. From the photographs Ex. PW1/B on record and from the cross-examination of DW1, I am of the opinion that the plaintiff has been able to bring home the point that the seepage and leakage was done to the second floor of the property in question by the acts and omissions of the defendants. DW1 in the cross-examination has categorically admitted that the defendants are running the facility of paying guest at the first floor and they have put the advertisements for the same. DW1 has admitted that he is in the business of running the paying guests facility. No evidence has been led at all by the defendants to prove that the plaintiff is also running the facility of paying guests. It is a matter of common knowledge that more the number of the persons, the more the consumption of the water. DW1 has admitted in his cross-examination that at a time, there are 5-6 paying guests at his first floor.”

8. As regards the claim for expenses incurred for repair of water pipes and fixing of new tanks by the respondent/plaintiff for the appellants/defendants, this aspect has been held in favour of the respondent/plaintiff by the trial court by reference to the bills proved by the respondent/plaintiff as Ex.PW1/C to Ex.PW1/G and this is recorded in para 40 of the impugned judgment and which reads as under:-

“40. The plaintiff has placed on record the bills of the amount of Rs. 85,000/- in the form of Ex. PW1/C to Ex. PW1/G which includes the bill of the plumber for the amount of Rs. 26,400/-. As stated herein above, the sole ground which has been taken by the defendants in the cross-examination of DW1 is to the effect that either DW1 was not aware about the said bills or the said bills were not handed over to the defendants. To my mind, PW1 coupled with the testimony of PW2 has been able to prove

that he is entitled for the amount of Rs. 85,000/- on account of the bills Ex. PW1/C to Ex. PW1/G.”

9. A reading of the impugned judgment and especially paras 36 and 40 leave no manner of doubt that respondent/plaintiff had proved his case for damages and also that he had replaced water tanks for the appellants/defendants, and for which work done for the appellants/defendants, appellants/defendants had not repaid the respondent/plaintiff.

10. It is relevant at this stage to refer to certain crucial admissions made by the appellant no.1/defendant no.1 in his cross-examination and these admissions show that the appellants/defendants had installed a water pump for pumping of the water to the water tank of the appellants/defendants on their terrace and that no mechanism was installed to shut down the water pump in case of overflowing of the water tank. It is also admitted in the cross-examination of the appellant no.1/defendant no.1 that he is using his premises as a Paying Guest Accommodation for Girls. In the cross-examination it is also admitted by the appellant no.1/defendant no.1 that the plumber PW-2 Sh. Shambu Parihar had carried out plumbing work on the terrace of the subject building and never did the appellant no.1/defendant no.1

asked the plumber to stop the work of plumbing. It was also admitted by the appellant no.1/ defendant no.1 that the bills with respect to the damages and repair of water tanks since were not in the knowledge of the appellants/defendants and hence these were not paid to the respondent/plaintiff by the appellants/defendants. This relevant portion of the cross-examination of the appellant no.1/defendant no.1 conducted on 23.5.2017 reads as under:-

“Xxx by Sh. Rajesh Baweja, Ld. Counsel for the plaintiff.

I am doing business of footwear, however, at present, I am not doing the same for atleast last 2 years. I am not doing any other business. I am only doing house hold cores. Vol. My kids are earning and they are running the house. I bought the first floor of the premises bearing no. 15A/3, East Patel Nagar, New Delhi around 10th month of 1998.

Ques. Who constructed the house?

Ans. I bought the house from the plaintiff Mr. Deepak arora, however, I do not know who constructed this building.

I was provided with one water tank catering to my floor at the time of execution of the sale deed and my taking over of the possession. It is wrong to suggest that since June 2013, water tank and the pipes catering to my floor were leaking and were causing seepage. I have installed a water pump for pumping the water from the supply of Delhi Jal Board to the water tank on the terrace catering to my floor. I have not installed any machine in the water tank on the terrace catering to my floors which may shut down the water pump in case of over flowing of the tank. Vol. However, I have installed a pipe which flows in my floor, in case, there is over flowing of the over head water tank. I am residing on the first floor, therefore the damage caused at the second floor premises belonging to the plaintiff is not my responsibility since, the seepage and the leakage came from the terrace and not from my first floor.

Sh. Shambu Parihar, the plumber (PW2) has carried out plumbing work on the terrace of the building ie 15-A/3, East Patel Nagar, New Delhi in the first or second week of January 2014. I had objection to Shambu Parihar's doing plumbing job in the aforesaid premises. I could not stop aforesaid PW2 to do plumbing job since there is an iron gate on the second floor premises. I did not ask either PW2 or plaintiff in writing to stop such work of plumbing. I did not come to know about the bill of PW2 exhibited

as Ex. PW1/G for Rs. 24,600/-, therefore, I did not pay the same. Similarly, I did not come to know about the bills exhibited as Ex. PW1/C to Ex. PW1/E, therefore, I did not pay the same.

I have given Advertisement in Quikr and OLX.in already exhibited as Ex. PW1/J for PG accommodation for girls. The giving room for PG accommodation for girls on rent is my side business. I have also got recorded my new address and phone numbers for providing PG Accommodation to the girls at Sangeet kedia Classes already exhibited as Ex. PW1/G(colly)." (underlining added)

11. In view of the aforesaid discussion in my opinion, the trial court was justified in decreeing the suit filed by the respondent/plaintiff against the appellants/defendants for a sum of Rs.1,00,000/- on account of damages caused to the property of the respondent/plaintiff by seepage from the water tanks and bursting of the water pipes of the appellants/defendants, and for a further sum of Rs.85,000/- towards replacement of the water pipes and tanks of the appellants/defendants.

12. Learned counsel for the appellants/defendants firstly argued that bills which have been proved by the respondent/plaintiff to claim replacement of water tanks totalled only to approximately a sum of Rs.48,000/-, and therefore it is argued that trial court could not have decreed the suit for a sum of Rs.85,000/-. In this regard, it is argued that the Bill Ex.PW1/C is for Rs.10,400/-, Bill Ex.PW1/D is for

Rs.1476, Bill Ex.PW1/E is for Rs.11,700/- and the Bill of the plumber Ex.PW1/G is for Rs.24,600/-. It is argued that all these amounts when totalled do not add up to Rs.85,000/- the amount which has been decreed towards repairs of pipes and replacement/fixing of water tanks.

13. In my opinion, the argument urged on behalf of the appellants/defendants of trial court having wrongly granted a sum of Rs.85,000/- is misconceived because the bills are only with respect to the materials for the pipes and the tanks and the bills do not include charges towards labourers, mason and civil works involved in fixing of the pipes and the water tanks. Therefore, I do not find any illegality in the trial court granting a total sum of Rs.85,000/- towards replacement of the water pipes and tanks of the appellants/defendants as also having fixed two additional water tanks. Once an expenditure of Rs.48,000/- is duly proved by the respondent/plaintiff under the head of replacement of water pipes and water tanks, surely the respondent/plaintiff has to be believed for a total expenditure of Rs.85,000/- under this head because the balance payment will be towards civil work as also charges paid to labourers and mason and

material for the civil work. This argument of the appellants/defendants is therefore rejected.

14. The second argument which is urged by the counsel for the appellants/defendants is that no tanks were fixed by the respondent/plaintiff, however, when asked to show any paragraph in the affidavit by way of evidence filed by the appellant no.1/defendant no.1 that respondent/plaintiff had not fixed the water tanks, nothing could be pointed out to this Court of any statement being made by the appellant no.1/defendant no.1 in his affidavit of examination-in-chief that respondent/plaintiff has not fixed the water tanks. This argument of the appellants/defendants is therefore rejected.

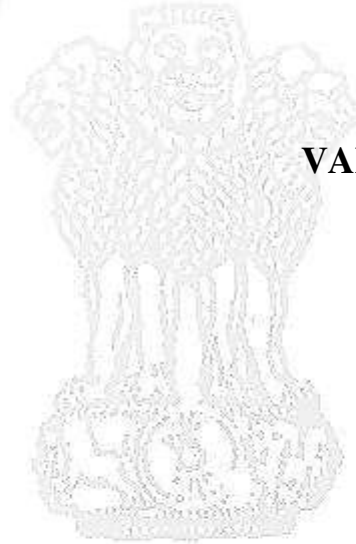
15. Learned counsel for the appellants/defendants finally argued that the damage towards seepages has not been proved, however, it is noted that the respondent/plaintiff has proved the damage through photographs which were proved and exhibited as Ex.PW1/B (Colly) and since a civil case is decided on balance of probabilities, taking the evidence and facts into consideration which have been stated above, trial court in my opinion has committed no illegality in decreeing an amount of Rs.1,00,000/- in favour of the

respondent/plaintiff as expenses incurred towards repair of his property on account of damage caused to the same by seepage on account of the bursting of the water pipes of the appellants/defendants as also overflowing water from the tanks belonging to the appellants/defendants.

16. In view of the above discussion, I do not find any merit in the appeal. Dismissed.

JANUARY 11, 2018
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VALMIKI J. MEHTA, J



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