

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ **RSA 136/2010**

Reserved on: 25.05.2016
Date of decision: 14.07.2016

SURESH CHANDER GOYAL & ORS Appellants
Through: Mr.Tarun Singla, Advocate.

versus

DAVINDER SINGH & ORS Respondents
Through: Mr.Prakash Chander, Advocate
for the respondent Nos.1 & 2.
Mr.Rakesh Mittal, Advocate for
the respondent No.5.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. The appellants/plaintiffs namely (i) Suresh Chandra Goyal having residence at B-45, Maharani Bagh, New Delhi, (ii) M/s Goyal Gases Private Limited having registered office at M-136, 2nd Floor, Connaught Circus, New Delhi and (iii) Ravi Chawla having residence at B-43, Maharani Bagh, New Delhi, lodged suit no.119/2006 against the three private respondents as well as Municipal Corporation of Delhi (for short 'MCD') and Delhi Development Authority (for short 'DDA') accompanied by an application under Section 91 of the CPC which, though, was not pressed before the Trial Court, with the following reliefs :

- i A decree of declaration that the defendant nos.1 to 3 have no right, title or interest with respect to plot nos. 7B/1 and 7B/2, Taimur Nagar and adjoining area falling within 80 ft. Wide road or any part thereof;
- ii a decree of injunction against the defendant nos.1 to 3 restraining them from encroaching upon the public road in any manner whatsoever on the western side of the plot nos.7B/1 and 7B/2 Taimur Nagar, New Delhi;
- iii a decree of injunction against the defendant nos.1 and 2 restraining them from carrying on construction of buildings on the plot nos.7B/1 and 7B/2, Taimur Nagar, New Delhi;
- iv a decree of permanent injunction against the defendant nos.1 and 2 restraining them, their servants, employees and agents from throwing debris of the demolished house and storing building materials on the public road in front of B-45, Maharani Bagh, New Delhi;
- v a decree of permanent injunction against the defendant no.3 restraining him from digging and/or excavating the place of land and making any construction thereat falling within 80 ft. wide public road in front of B-45, Maharani Bagh, New Delhi and further restraining him from throwing and/or spreading excavated soil over the said public road in front of B-45, Maharani Bagh, New Delhi;
- vi a decree of mandatory injunction directing the defendant no.4 and 5 to perform their duty to stop the defendant nos. 1 to 3 from doing and/or causing to do the aforesaid acts;

- vii a decree of mandatory injunction directing the defendants nos.1 to 3 to remove the excavated soil, debris and building materials from the said public road and in front of B-45, Maharani Bagh, New Delhi;
- viii a decree mandatory injunction against the defendant nos.1 to 3 to remove and/or demolish all the unauthorised and/or illegal constructions raised over the said plot nos.7B/1 and 7B/2 and the area adjoining the said two plots;
- ix a decree of mandatory injunction against the defendant nos.1 and 2 directing them to construct the building, if they have any right to do so, strictly in accordance with the sanctioned plan and not to put any door, windows, projections in the western side of the building under construction;
- x a decree of mandatory injunction against the defendant nos.1 and 2 directing them to raise a brick wall towards west of the plot nos.7B/1 and 7B/2 at the place where there was a brick wall demolished by the said defendants;
- xi any other reliefs; and
- xii costs.

2. Section 91 of the CPC deals with suits relating to public nuisances and other wrongful acts affecting the public, which reads as hereunder:

“91. Public nuisances.— (1) *in the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for*

such other relief as may be appropriate in the circumstances of the case, may be instituted,—

(a) by the Advocate General, or

(b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

(2) Nothing in this Section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.”

3. Sub-clause 2 of the Section 91 of the CPC clarifies that the right of the plaintiff to file a suit is not otherwise affected and such right can be exercised independently of the provisions of clause 1 of section 91 of the CPC.

4. A plain reading of section 91 makes it very clear that there are two modes of escape from the special restriction of section 91 namely proof of special damage and proof of invasion of the special rights of a limited class which will give an independent right of action. If the suit is treated to be in the individual capacity, what would be required of the plaintiffs would be the proof of the nuisance causing damages or violation of any personal or private rights.

5. Section 91 does not take away any independent right of the suit and it cannot over ride the provisions of Order 1 Rule 8 of the CPC. Since no effort was made by the appellants/plaintiffs to press the application seeking leave of the Court under Section 91 of the CPC, it would be regarded as a suit in the individual capacity of the appellants/plaintiffs.

6. The prayer in the plaint of the appellants/plaintiffs will perforce have to be tested on the touchstone of a private actionable wrong causing any damage to them or invading their private rights.

7. Be it noted that appellant/plaintiff no.2 M/s Goyal Gases Private Limited is a private limited company within the meaning of Companies Act, 1956 having its registered office in New Delhi whereas appellant/plaintiff no.1 is the Managing Director of the company. Mr.Ravi Chawla, appellant/plaintiff no.3 is a resident of B-43, Maharani Bagh, Delhi, who is also said to be concerned with the suit.

8. The Trial Court, basing its considerations over the fact that appellant/plaintiff no.1 had been duly authorised to institute the plaint on behalf of the appellant/plaintiff no.2 and appellant/plaintiff no.3, being a citizen of Maharani Bagh was also interested in peaceful enjoyment of the property namely houses in Maharani Bagh, did not advert to or allow the application under Section 91 of the CPC for the suit to be treated as a suit in representative capacity but affirmed the locus of the appellants/plaintiffs to prefer suit with the above-noted reliefs. The respondent/defendant nos.1 & 2 were restrained from encroaching upon the public road in any manner whatsoever on the western side of plot no. 7-B/1 and 7-B/2, Taimur Nagar, New Delhi. They were also restrained from throwing any debris of the demolished house and storing building materials on the public road in front of B-45, Maharani Bagh, New Delhi. Respondent/defendant No. 3 was prevented from digging or excavating land for any construction falling within 80 feet wide road; whereas respondent/defendant nos.4 & 5

were directed to ensure compliance from respondent/defendant nos. 1, 2 & 3. Respondent/defendant nos.1 & 2 were thereafter directed to construct the buildings strictly in accordance with the sanctioned plan and not to put any doors or windows on the western side of the building under construction. The suit was thus partly allowed.

9. The First Appellate Court disagreed with the findings of the Trial Court and taking into account the fact that neither the application under Section 91 seeking sanction of the Court, was ever moved nor appellant/plaintiff no.3 ever stepped into the witness box to affirm and vindicate his claim, held that the appellants/plaintiffs had no locus standi to prefer a suit seeking the mandatory and permanent injunction against the respondents/defendants.

10. Before proceeding further, it would be necessary to refer to the claim of the appellants/plaintiffs. The case set up by them is that respondent nos.1 to 3 had encroached upon plot no.7B/1 and 7B/2, Taimur Nagar, New Delhi, which actually belongs to DDA. The respondents/defendants are alleged to have demolished the boundary wall and proceeded ahead with unauthorised construction over the suit property by misrepresenting before the MCD. The further averment in the plaint is that 80 ft. wide public road abutting the houses of the appellants/plaintiffs was encroached upon by them and was used for stacking building materials and dumping of debris of the construction, thereby causing public nuisance. The 80 ft. wide road, said to be a public road, could be used for ingress and egress and for peaceful enjoyment of the people of the Maharani Bagh committee only and not by the outsiders. It was alleged in the plaint that

respondents/defendant nos.1 & 2 had encroached the public land, thereby constricting the width of the public road and were wrongly making provisions for opening of doors and windows on the public road.

11. It may be mentioned here that the DDA contested the suit by filing a written statement wherein a preliminary objection was recorded to the effect that land in dispute does not belong to DDA and hence the suit be dismissed as against the DDA. The respondent/defendant nos.1 & 2 contested the suit by making the preliminary objection of lack of locus on the part of the appellants/plaintiffs in preferring the suit and there being no instance of nuisance or any unreasonable interference with the rights of the people residing in Maharani Bagh. The basic plank of the contest by them was that the purpose of the suit was only to harass the respondent/defendants and preventing them from enjoying the property belonging to them.

12. Based on the pleadings of the parties, 10 issues were framed by the Trial Court, which are reproduced as hereunder:”

- i “Whether plaintiff no.1 is a duly authorized and competent person to sign and institute the plaint on behalf of plaintiff no.2 as required under Section 91 of CPC? OPP.*
- ii Whether defendants no.1 and 2 are the owners and in possession of property no.7-B/1 and 7-B/2, Taimur Nagar New Delhi? OPD1 and 2*
- iii Whether the plaintiffs are entitled as a lawful occupier of their premises adjoining to the said 80 feet wide road and have right of peaceful enjoyment of their respective premises and defendants have no right to interfere and*

cause to interfere with the rights of the plaintiffs? OPP.

iv Whether defendants no.1 and 2 have illegally started construction of building on the said plot no. 7-B/1 and 7-B/2, Taimur Nagar New Delhi adjoining to the eastern side of the said 80 feet wide road. If so, its effect? OPP.

v Whether the suit is not maintainable as against defendant no.5? OPD-5.

vi Whether the plaintiffs have no locus-standi to file the present suit? OPD-1 and 2.

vii Whether the plaintiffs are also entitled for a decree of declaration as prayed? OPP.

viii Whether the plaintiffs are also entitled for a decree of injunction, as prayed in prayer clause 2 to 5? OPP.

ix Whether the plaintiffs are also entitled for a decree of mandatory injunction, as prayed in clause 6 to 10 in the payer clause? OPP.

x Relief.

13. The appellant/plaintiffs, in order to prove their case of nuisance at the hands of the respondent nos.1 & 2, examined three witnesses namely Sh.P K Gupta, (PW.1); Sh.Vijay Kumar, Draftsman, (PW.2); and Sh.Nagesh Babu, Record Keeper, MCD, (PW.3). The defendants offered themselves as DW.1 and DW.2. Based upon the evidence adduced on behalf of the parties, the Trial Court was of the view that the appellants/plaintiffs had the locus standi to prefer a case in the representative capacity but further clarified that the suit would be maintainable in the individual capacity also as the averments do make out a case of nuisance which offend and breach the private rights of the parties. Thus the issues viz (a) whether appellants/plaintiff no.1 was duly registered and competent to sign and institute the plaint as

required under Section 91 of the CPC as well as whether they have the locus to file the present suit, were decided in the affirmative.

14. The First Appellate Court, on the other hand, taking note of the fact as stated above, that the application seeking sanction of the court not having been moved or pressed for many years during the prosecution of the Trial and the appellant/plaintiff no.3 not having given his evidence with regard to the nuisance, held that the appellants/plaintiffs did not have any locus to file the suit.

15. Clause 2 of Section 91 of the CPC makes it very clear that the requirement of Section 91 CPC does not limit the individual rights of the parties to approach the court for any actionable wrong.

16. In that view of the matter, this Court is of the opinion that the suit as preferred by the appellants was maintainable.

17. Defendant nos.1 & 2 claimed themselves to be the owners of the property bearing no.7B/1 and 7B/2, Taimur Nagar, which they had inherited from their late father, Avtar Singh who had purchased it from one Pt. Inder Raj. They have furnished photocopy of the sale deed (Ex.D1). The stand of the respondent/defendant is that the land was acquired but the acquisition was challenged and ultimately the land belonging to the father of the respondent/defendant was denotified. After the death of the father, the property was divided between two respondent/defendants over which constructions have been carried out as per the sanctioned plan of the MCD. With respect to the encroachment of 80 ft. wide public road in front of the property of the appellants/plaintiffs, there was complete denial and whatever rubble was put on the road was temporary, which have now been

removed. On the contrary, it was asserted by the respondents/defendants that the suit was primarily lodged for grabbing the public park abutting the public road which was being unauthorisedly put to private use by the appellants/plaintiffs. The Trial Court held that the respondents/ defendants failed to prove the ownership over the property and therefore any construction over the said property was unauthorized. Even the opening of doors and windows by demolishing the boundary walls was not permissible in accordance with the sanctioned plan of the MCD as it did not provide for any entrance from the rear side. The First Appellate Court, however, did not concur with the findings of the Trial Court and held that the sale deeds on record, (English translation provided), proved the ownership of the plots in question namely 7-B/1 and 7-B/2, Taimur Nagar, in favour of the respondents/defendants. This view was further strengthened by the fact that even MCD has not raised any objections. Thus, the ownership of the houses over plots no.7B/1 and 7B/2 of the respondent/defendants were found to have been established. The sale deeds which are on record do prove the fact that the respondents/defendants were the owners of the property and therefore any construction made by them cannot be said to have been an act of nuisance for the appellants/ plaintiffs to bring a suit. The averments of the appellants/plaintiffs and the evidence brought on their behalf viz. Ex.PW.1/3 which is a show cause notice to the respondent/defendants for cancellation of the sanctioned plan (Ex.DW.1/P-1 and P-2) do not lead this court anywhere as it is not known as to what happened thereafter. Rather the defendant no.1, brought on record, certified copy

of the order of the MCD (Ex.D11) which shows that show-cause notice issued by the MCD was withdrawn. There is no evidence on record, then, to prove that the construction raised by the respondents/defendants over their plot of land was contrary to the sanctioned plan. What amuses this Court is that the appellants/plaintiffs are not the immediate neighbours of the respondents/defendant nos.1 & 2. The houses of the respondents/defendants are across the road which is 80 ft. wide and is further separated by a piece of land which is used as a public park. Taimur Nagar is located exactly opposite the boundary of the Maharani Bagh and the houses of the respondent/defendant are in the area falling under Taimur Nagar. Thus any construction having been carried out by the respondents/defendants could not and should not have caused any nuisance to the appellant/plaintiffs for them to maintain the suit. That apart, the suit prima facie was in the individual capacity and not in the representative capacity. With regard to the encroachment of the road, there is no evidence whatsoever for any court of law to decide and allow the claim of the appellants/plaintiffs.

18. When the DDA and the MCD, both Government agencies, have not staked their claim over the space between the boundary wall of Taimur Nagar and the end of the 80 ft. wide road, there could be no objection of the appellants/plaintiffs if any door or window was made in the boundary wall by the respondents/defendants overlooking the park. Even if the sanctioned plan may not be admitting of any rear entrance, that by itself would not mean that any windows or doors could not be opened in the house or on a boundary wall if it does not

impinge or encroach upon the rights of the others. That apart, Section 2 sub-clause 3 of the Delhi Municipal Corporation Act (for short 'DMC Act') does not include boundary wall within the definition of building. The By-laws of DMC Act further clarifies that no permission is required for opening doors and windows which do not open in anybody's property. The doors and windows which are said to have been opened by the respondents/defendants are facing the open space and by no stretch of imagination can it be said to be an interference or obstruction in the enjoyment of the rights of the appellants/plaintiffs in their respective properties. The report of the Local Commissioner (Ex.PW.1/D2) and the photographs (Ex.PW.1/D3 to D12) placed on record, make it very clear that the respondents/defendants have not done anything for them to be subjected to this suit for injunction. The appellants/plaintiffs have not disputed the genuineness of the report of the local commissioners and the photographs referred to above.

19. The First Appellate Court therefore was absolutely justified in holding that the appellants/plaintiffs were, in fact, making attempts or aiming at keeping the open space by the 80 ft. wide road for their use which cannot be said to be an authorized use of the open space.

20. Since the respondents/defendants carried out construction over their respective plots only after obtaining sanction from the MCD, it cannot be said that they had occupied or encroached upon the road when for some temporary period, the building materials were stacked or debris or rubble of the construction was dumped. There is no evidence today as to whether the building materials are still stacked

and the rubble still lying over the road. Thus, the case of the appellants/plaintiffs failed miserably. The First Appellate Court is justified in upturning the restraint imposed by the Trial Court and this Court finds no justification to differ with impugned judgment of the First Appellate Court.

21. The First Appellate Court, for the fault of the appellants/plaintiffs in not coming out clean and placing wrong facts before the Trial Court, came down heavily on the appellants/plaintiffs and instead of directing for institution of a criminal case against them, decided to saddle them with compensatory cost of Rs.1 lac to be paid to the respondents/defendant nos.1 & 2.

22. Section 35, 35A and 35B of the CPC deal with costs, compensatory costs with respect to the false or vexatious claims or defences and costs for causing delay. The object of the Section 35A of the CPC is to provide compensatory costs.

23. Section 35A of the CPC reads as hereunder:

“35A. Compensatory costs in respect of false or vexatious claims or defenses— (1) *If any suit or other proceedings (including an execution proceedings) but [excluding an appeal or a revision] any party objects to the claim of defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court if it so thinks fit, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the object or by the party by whom such claim or defence has been put forward, of cost by way of compensation.*

(2) No Court shall make any such order for the payment of an amount exceeding [three thousand rupees] or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 (9 of 1887) or under a corresponding law in force in any part of India to which the said Act does not extend and not being a Court constituted under such Act or law, are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:

Provided, further, that the High Court may limit the amount or class of Courts is empowered to award as costs under this Section.

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.”

24. The section is an expansion to the general rule on which Section 35 is based i.e. the costs are only an indemnity and never more than indemnity. When sufficient compensation cannot be afforded under Section 35 of the Act, resort can be had to under Section 35A of the CPC. But for imposing cost under Section 35A, the Court has to be satisfied that the litigation was inspired by vexatious motive and it was all together groundless. The Court has also to mull over the entire set

of facts for taking deterrent action. The conditions which must exist for allowing compensatory costs under Section 35A are:

- a) Claims must be false or vexatious.
- b) Objections must have been taken by the respondents/defendants that the claim was false or vexatious and which was to the knowledge of the party raising it.
- c) Such claim should have been disallowed or withdrawn or abandoned in whole or in part.

25. While imposing costs, the conduct of the appellant/plaintiffs is required to be seen.

26. In ***Padmawati vs. Harijan Sewak Sangh & Ors., (2008) 154 DLT 411***, while dealing with a petition under Article 227 of the Constitution of India assailing the order of the First Appellate Court dismissing the petitioners appeal therein against the eviction order passed by the Additional Rent Controller, a bench of this Court observed as follows:

xxxxxx xxxxxxxx xxxxxxxx

9. Before parting with this case, I consider it necessary to pen down that one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be

sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts.”

27. The aforesaid judgment in Padmawati was challenged in the Supreme Court by way of Special Leave Petition which too was dismissed (*Padmawati & Ors. vs. Harijan Sewak Sangh, (2012) 6 SCC 460*).

28. Though many a times, it has been felt that civil litigation is used for the purposes of harassment and deprivation of the other party of the fruits of litigation, which tendencies are required to be checked and stopped; nonetheless one is to see whether the person approaching the Court had the intention of vindicating his claims or not. In all cases where the party approaching the Court loses, it would not be deemed to be a frivolous or uncalled-for litigation. True it is that the resources of the Courts are very scarce and if uncalled-for litigation is entertained, it only dents the valuable time of Court of law, thwarting such moves/attempts by litigants has to be done in a pragmatic and careful manner.

29. Thus, what is required is to see whether the claim of a party approaching the Court is false/vexatious and that the only purpose was to delay the conclusion of the litigation so as to prevent the other side from exercising his legal rights. If the Courts come to the conclusion that the purpose of launching the litigation was only to defeat the rightful claim of the other side, costs are required to be imposed. The Supreme Court has gone on to state that the costs need not be illusory but realistic and the limits which have been put by the statute regarding the quantum of cost may be overlooked.

30. Normally, the meaning of costs, which is not statutorily defined, is pecuniary allowance, made to a successful party (recoverable from the losing party) from his expense in prosecuting or defending the action or a distinct proceedings with an action. (refer Black's Law Dictionary)

31. The object of imposing cost has been crystallized in ***Vinod Seth vs. Devinder Bajaj & Anr., (2010) 8 SCC 1*** as hereunder:

“23. The provision for costs is intended to achieve the following goals :

(a) It should act as a deterrent to vexatious, frivolous and speculative litigations or defences. The spectre of being made liable to pay actual costs should be such, as to make every litigant think twice before putting forth a vexatious, frivolous or speculative claim or defence.

(b) Costs should ensure that the provisions of the Code, Evidence Act and other laws governing procedure are scrupulously and strictly complied with and that

parties do not adopt delaying tactics or mislead the court.

(c) Costs should provide adequate indemnity to the successful litigant for the expenditure incurred by him for the litigation. This necessitates the award of actual costs of litigation as contrasted from nominal or fixed or unrealistic costs.

xxxxx xxxxxxx xxxxxxx

(e) The provisions relating to costs should not however obstruct access to courts and justice. Under no circumstances the costs should be a deterrent, to a citizen with a genuine or bonafide claim, or to any person belonging to the weaker sections whose rights have been affected, from approaching the courts.....”

32. In the present case, the appellants had approached the Trial Court for vindication of their claim that the conduct of the respondents had caused/was causing public annoyance and that the building plans of the MCD were being flouted. The appellants had not sought any possession or demolition of the building over the plots of lands which were originally acquired by the respondents. All that was asserted was that the building laws were being violated and doors and windows were opened in a public park which were meant for the enjoyment of a particular section of the residents of a particular residential area. There is no evidence to completely deny or falsify the statement of the appellants/plaintiffs in the plaint that the debris of the house construction had been thrown on the public road and building materials were stacked. In normal circumstance, such stacking of building materials or dumping of the rubble of the construction

process, on a public road, does cause annoyance. However, conversely, there is no evidence that such stacking of building materials continued or the dumped rubble was not removed thereby creating any obstruction on the public road. No doubt, the respondents/defendants had their exclusive right of using the property which they have acquired but only within the parameters of law and any construction beyond the sanctioned plan can be seen as a breach of public law which could be agitated against by anybody. It is quite different that the Appellate Court came to the conclusion that Building By-laws have not been violated and would not be violated if doors and windows are constructed in the boundary walls, within an opening on the western side of the public road because a boundary wall does not come within a category of a house as defined under the Building By-laws. Thus if the claim of the appellants/plaintiffs has failed, it cannot *ipso facto* lead to the conclusion that the suit lodged by the appellants/plaintiffs was vexatious, malicious and for an oblique purpose of creating disturbance for the respondents. The litigation might have adversely impacted the respondents/defendants but this Court does not find that the basic intention of the appellants/plaintiffs was directed towards such unsavory purpose.

33. Section 35A, further, applies only to suits and not to appeals or revisions.

34. Thus, this Court does not countenance the cost which has been imposed by the First Appellate Court over the appellants/plaintiffs.

35. The same is set aside.

36. The judgment of the First Appellate Court though is affirmed but to the extent of setting aside the cost imposed as indicated above.

37. The cost which has been deposited by the appellants/plaintiffs in the Registry be returned to the appellants/plaintiffs on their applying before the Registrar General of the Delhi High Court.

38. If the amount so deposited had been put to any interest bearing FDR, the interest which accrued upon such amount shall also be released in favour of the appellants/plaintiffs.

39. The present second appeal, thus, is dismissed and disposed of with the observations as indicated above.

CM Appln.12238/2010

1. In view of the appeal having been partly allowed, the application has become infructuous.

2. The application is disposed of accordingly.

ASHUTOSH KUMAR, J

JULY 14, 2016/ab