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

+ RSA 175/2016

MOHD ISLAM

..... Appellant

Through: Mr.S.K.Bhalla, Advocate with
appellant in person.

versus

NAFISA BEGUM (NOW DECEASED) THR HER LRS..... Respondent

Through: Mr.S.D.Ansari, Advocate with
Mr.I.Ahmed, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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16.11.2016

RSA 175/2016

1. The appellant, who was defendant in Civil Suit No.44/01/97, is aggrieved by the order dated June 07, 2016 whereby the First Appellate Court allowed RCA No.67/2012 by granting a decree of injunction as under:-

'37. The trial Court accordingly, has committed a grave mistake by not caring to go through the WS and appreciating the facts and the evidence in the light of the admission made in the WS itself.

38. Hence, in view of the above discussion, the Court has come to the conclusion that the defendant's Predecessor-in-interest i.e. his father Sh.Abdul Salam having relinquished his inherited 25% share in the tenancy right in favour of his brother Haji Allawalah who was the Predecessor-in-interest of the present petitioner-appellant, the defendant cannot claim any right as a Tenant even in the Suit premises itself.

39. In these circumstances, the Appeal stands allowed and petitioner-Appellants are hereby allowed the relief for permanent injunction as claimed by the petitioner-Appellants as the relief sought was confined to the relief of permanent injunction in terms of the order dated 06.05.2011.'

2. Since the First Appellate Court granted the relief of permanent injunction as claimed in the suit, it has become necessary to reproduce the nature of injunction sought for in the amended plaint filed in Civil Suit No.44/01/97 seeking relief of declaration and injunction, which reads as under:-

'12. That the plaintiffs are entitled to get the following relief(s) claimed:-

“That this Hon'ble Court may kindly be pleased to grant the permanent injunction in favour of the plaintiff and against the defendant restraining/decreeing the suit, the defendant, his associates, assigns and other intimates and companion be restrained not to interfere in the peaceful possession of the suit premises of the plaintiffs alongwith the possession of the shop of the fruits and vegetables business on the suit premises in any manner.

That the defendant, his assignees, associates either intimates and companions be restrained not to dispossess the plaintiffs from the business of fruits and vegetables selling on the suit premises and recovery of profit from the aforesaid business be restrained, declaring their partnership in the aforesaid business void ab-initio.

That the suit be decreed with costs”.'

3. The Trial Court proceedings dated May 06, 2011 record that both the parties made statement that the suit be decided on the basis of issues framed on April 07, 2007 and they will not press any fresh issues.

4. The issues settled on April 07, 2007 and pressed by the parties to decide the suit read as under:

‘(i) Whether the plaintiff is entitled for perpetual injunction as claimed in the plaint? OPP.

(ii) Relief.’

5. Thus, it is apparent from the record that no relief for declaration was pressed in the Civil Suit by the respondent/plaintiff.

6. Both the parties have made their submissions at length. The matter was also referred to Mediation but remained ‘non-settled’. However, after making submissions at length, the learned counsel for the parties, on instructions, expressed their desire to make a joint statement to resolve the issue.

7. Joint statement made by Mr.S.K.Bhalla, Advocate for the appellant and Mr.S.D.Ansari, Advocate for the respondent has been recorded separately.

8. With the consent of the parties, the judgment and decree dated July 27, 2012 passed by the learned Trial Court and the judgment and decree dated June 07, 2016 passed by the Appellate Court are set aside. Both the parties have agreed that without prejudice to their rights and contentions, the appellant will not dispossess the respondent from the suit premises No.3686 situated at Dargah Hazrat Sayed Shah Saberi Ali Chisti Sabri, Darya Ganj, Delhi and the business except with due process of law. It has been further agreed by the parties that the appellant shall avail his remedy to enforce his rights as per law.

9. RSA No.175/2016 is disposed of in terms of the joint statement made by learned counsel for the parties without prejudice to their respective rights

and contentions.

10. No costs.

11. Trial Court Record as well as Appellate Court Record be sent back alongwith copy of this order.

12. As prayed, copy of the order be given dasti to learned counsel for the parties under the signature of Court Master.

CM No.24716/2016

Dismissed as infructuous.

PRATIBHA RANI, J.

NOVEMBER 16, 2016

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RSA 175/2016

Joint statement of Mr.S.K.Bhalla, Advocate for the appellant and
Mr.S.D.Ansari, Advocate for the respondent without oath.

Civil Suit No.44/01/97 may be disposed of recording that the judgment and decree dated July 27, 2012 passed by the learned Trial Court and the judgment and decree dated June 07, 2016 passed by the Appellate Court may be set aside. Without prejudice to the rights and contentions of the parties, the appellant will not dispossess the respondent from the suit premises No.3686 situated at Dargah Hazrat Sayed Shah Saberi Ali Chisti Sabri, Darya Ganj, Delhi and the business except without due process of law. The appellant shall avail his remedy to enforce his rights as per law.

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PRATIBHA RANI, J.

NOVEMBER 16, 2016

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