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

+ RSA 251/2016

RAM KUMAR MALHOTRA

..... Appellant

Through: Mr.Amardeep Singh, Mr.Dinesh
Kumar & Mr.Ambuj Saraswat, Advs.

versus

MEENAKSHI TALUJA

..... Respondent

Through: Mr.Suresh Kumar, Advocate

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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06.12.2016

RSA 251/2016

1. This Regular Second Appeal has been preferred impugning the order dated 22nd July, 2016 of the First Appellate Court and order dated 8th October, 2015 of the learned trial Court whereby the suit filed by the respondent/plaintiff has been decreed. Mesne profit have also been awarded to the respondent/plaintiff as under:-

“Mesne profit is awarded @ ₹5,000/- per month from the date of filing of the suit till the entire year 2013, thereafter w.e.f. 01.01.2014 till 31.12.2014 mesne profits shall be ₹5,500/- per month and thereafter w.e.f 01.01.2015 till handing over of possession mesne profits shall be payable @Rs.6,000/- per month. The decree of mesne profits shall be executable upon filing of deficient Court fees.

27. The suit of the plaintiff is accordingly decreed in terms as indicated herein above. However, defendant is granted time till 31.12.2015 to vacate the premises on his own. Keeping in view the brevity of arguments advanced by learned defence counsel, there shall be no order as cost. Decree sheet be prepared accordingly.”

2. The First Appellate Court while dismissing the appeal No.49/15 was of the opinion that the learned trial Court has passed the impugned judgment by applying judicial mind thereby calling for no interference in the appeal.

3. On 28th November, 2016, learned counsel for the appellant sought time to explore the possibility of settlement between the parties seeking extension of time on humanitarian grounds. The purpose of seeking extension of time i.e. to vacate the suit property by April, 2017 is for the reason that son of the appellant is appearing in 12th Class Board Examination and any shifting during examinations will have adverse effect on his career. The appellant undertake to vacate by April 15, 2017 and pay electricity and water charges till that date.

4. Learned counsel for the respondent on instructions submits that taking into account the career prospects of the son of the appellant, who is appearing for his 12th Class Board Examination, respondent has no objection if appellant is granted time till 15th April, 2017 to vacate the suit property subject to the condition deemed fit by the Court.

5. To ensure the compliance of the undertaking, the appellant is directed to file an affidavit to the following effect:-

- (i) That he shall vacate the suit property and hand over the peaceful possession on or before 15th April, 2017;
- (ii) That the appellant shall continue paying electricity and water charges in respect of the suit property up to the date of possession;

(iii) The amount of ₹ 1,06,178/- deposited by the appellant before the First Appellate Court will be accepted by the respondent towards full and final settlement of mesne profit upto 15th April, 2017 but with the condition that in case appellant fail to comply with the undertaking to vacate the premises by 15th April, 2017, he shall pay mesne profit @ ₹15,000/- per month with effect from December, 2016 till the possession is handed over.

6. Learned counsel for the appellant on instructions from the appellant, who is present in Court along with his wife, undertake to abide by the terms and conditions.

7. Learned counsel for the respondent, on instructions, submits that subject to furnishing an undertaking to this effect by the appellant he has no objection if the instant RSA is disposed of in above terms.

8. Let the matter be passed over to enable the appellant to file an affidavit/undertaking to the above effect.

PRATIBHA RANI, J.

DECEMBER 06, 2016/‘pg’

At 1:00 PM

Present: Mr.Amardeep Singh, Mr.Dinesh Kumar & Mr.Ambuj Saraswat, Advocates for the Appellant.
Mr.Suresh Kumar, Advocate for the Respondent.

1. The matter is taken up again as affidavit has been filed by the appellant. In terms of the above settlement, learned counsel for the respondent has received the copy of the affidavit/undertaking and made endorsement on the affidavit itself to agree to the settlement/undertaking.

2. In view of the settlement entered into between the parties, RSA No.251/2016 stands disposed of directing the parties to abide by the terms

and conditions incorporated in the affidavit/undertaking furnished by the appellant and accepted by the respondent.

3. The respondent is at liberty to withdraw the amount of Rs.1,06,178/- from the First Appellate Court towards full and final settlement in respect of the suit property upto the period 15th April, 2017.

4. A copy of this order be given dasti to the learned counsel for the parties.

CM No.33039/2016 (Stay)

Dismissed as infructuous.

PRATIBHA RANI, J.

DECEMBER 06, 2016

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