

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 11.01.2016

+ **FAO(OS) 629/2015**

VIJAY VERMA

... Appellant

versus

KRISHAN KUMAR VERMA & ORS

... Respondents

Advocates who appeared in this case:

For the Appellant	: Mr Sarfaraz Khan with Mr Amanullah
For the Respondent Nos. 1-5	: Mr Neeraj Malhotra with MR Ravinder Singh
For the Respondent No. 6	: Mr Vidit Gupta
For the Respondent No. 7	: Mr Niraj Jha
For the Respondent Nos. 8, 9 & 11	: Mr Sushil Jaswal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal is directed against the order dated 04.09.2015 passed by a learned Single Judge of this Court in Review Petition No. 414/2015
2. Earlier, the appellant, being the defendant No. 8 in the suit, had filed an appeal [FAO(OS) 434/2015], being aggrieved by the order dated 18.05.2015 passed by the learned Single Judge in IA 4717/2015. In that order, it had been mentioned that a similar prayer had been made in

IA 13652/2011, which had been declined. It was also stated in the order dated 18.05.2015 that the said application (IA 13652/2011) had been made by the appellant (defendant No.8). The learned counsel for the appellant had drawn the attention of this Court to the fact that IA 13652/2011 had not been filed by the appellant (defendant No.8). It is in those circumstances that this Court permitted the learned counsel for the appellant to withdraw this appeal with liberty to seek a review of the order dated 18.05.2015 pertaining to IA 4717/2015. It is obvious that this Court permitted the appellant to file a review before the learned Single Judge with the object of correcting the error in recording that IA 13652/2011 had been filed by the appellant (defendant No. 8). It is an admitted fact that IA 13652/2011 had not been filed by the appellant (defendant No.8) but had, in point of fact, been filed by the plaintiff.

3. Thereafter, the appellant (defendant No.8) filed the review petition (RP 414/2015) in pursuance of the liberty granted by this Court. The order passed in the review petition reads as under:-

“REVIEW PET. No.414/2015

The petitioner is seeking review of the order dated 18.05.2015. While disposing of I.A. No. 4717/2015 this Court had passed the following order:

“This is an application filed by defendant no.8 seeking deposit of rent in Court.

Notice of this application has been accepted by the learned counsel for the non-applicant.

Learned counsel for the non-applicant has drawn attention of this Court to the order dated 01.3.2013 where a similar prayer (in 1.A.No.13652/2011) had been declined. In that application also a prayer had been made by defendant no.8 that the rent be deposited in Court but the Court had noted that neither was it necessary to appoint a receiver and nor was it necessary to answer this prayer in favour of the defendant.

This application already having been answered has thus become infructuous and no further orders are called for.

Dismissed.”

Learned counsel for the petitioner submits that the earlier application (IA No. 13652/2011) had been disposed of on 01.03.2013 but a perusal of that order shows that the question about the deposit of rent had not been gone into. This Court notes that the order sought to be reviewed is permissible only if there is mistake or error apparent on the face of the record or due to an inadvertence or an omission and this was inspite of the exercise of due diligence.

The order dated 18.05.2015 is clear, the application seeking deposit of rent had been disposed of on merits; the Court in the presence of the parties had passed a speaking order noting that neither was it necessary to appoint a receiver and nor was it necessary to answer this prayer in favour of the defendant i.e. the prayer made by the applicant (IA No. 13652/2011) that the rent should be deposited with the Court. The Court while dismissing application (IA No. 4717/2015) had declined the prayer for deposit of rent.

This Court has also been informed that this order is the subject matter of an appeal.

No ground is made out for review.

Petition is dismissed.”

4. This is the order which is impugned before us. It is noticed that the learned Single Judge observed that the order sought to be reviewed is permissible only if there is mistake or error apparent on the face of the record or due to an inadvertence or an omission. This Court had already pointed out the error in the order dated 18.05.2015 which was sought to be reviewed inasmuch as the order was decided on the basis of a dismissal of an earlier application which was said to have been made by the appellant (defendant No.8) when, in fact, no such application had been made by the appellant (defendant No.8), but had been made by the plaintiff.

5. Furthermore, the prayer in IA 4717/2015, which was dismissed by the order dated 18.05.2015, was for deposit of the entire rent collected from the premises in question because the respondent Nos. 1-5 herein had failed to obey the order dated 01.03.2013 passed in IA 13652/2011. We may point out that on 01.03.2013, when IA 13652/2011 had been disposed of by the learned Single Judge, while refusing to appoint a receiver at that stage, the learned Single Judge had directed the defendant Nos. 1 and 9-12

to file quarterly accounts with respect to the suit properties in their control clearly indicating the leased rent as well as maintenance charges received by them. Copies of the lease deeds and maintenance agreements executed by defendants Nos.1 and 9 to 12 were also directed to be placed on record with an advance copy to learned counsel for plaintiff. The prayer in IA 4717/2015 had been made for deposit of rent because of the non-compliance of these directions contained in the order dated 01.03.2013 and particularly to demonstrate the conduct of the respondent Nos. 1-5 herein (the defendant Nos. 1 and 9-12 in the suit).

6. Therefore, we find that the ambit and amplitude of IA 13652/2011 and IA 4717/2015 were not identical. In this backdrop, the misconception on the part of the learned Single Judge in the order dated 18.05.2015 that IA 13652/2011 had also been filed by the defendant No.8 (the appellant herein), formed the basis of the decision for dismissing IA 4717/2015 without discussing the issues raised by the appellant (defendant No.8).

7. It is in these circumstances that we had permitted the appellant (defendant No.8) to withdraw the appeal with liberty to move a review petition before the learned Single Judge. Unfortunately, the learned Single

Judge has, without going into the issues raised in the review petition, dismissed the same despite the liberty given by this Court. Consequently, we set aside the impugned order dated 04.09.2015 and restore the review petition in the file of the learned Single Judge who shall examine the same on merits and dispose it in accordance with law. The matter shall be listed before the learned Single Judge, in the first instance, on 12.02.2016. We make it clear that we have not made any observation on the merits of the matter.

BADAR DURREZ AHMED, J

**JANUARY 11, 2016
SR**

SANJEEV SACHDEVA, J