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

+ RSA 80/2017

SURAJ YADAV

..... Appellant

Through: Mr.Nasir Ahmed, Mohd.Muzahir
Husain & Mr.Zakir Hussain,
Advocates with appellant in person.

versus

NITIN GUPTA

..... Respondent

Through: Mr.Anil Sharma & Mr.Jaskaran
Singh, Advocates.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **17.03.2017**

RSA 80/2017

1. The instant appeal under Section 100 of Code of Civil Procedure has been filed by the appellant impugning the concurrent finding of the Courts below i.e. order dated 14th September, 2015 passed by learned Trial Court whereby decree of possession and recovery of damages has been passed against the appellant and order 15th February, 2017 whereby the First Appellate Court upheld the decision of the learned Trial Court.
2. On the last date of hearing i.e. 10th March, 2017 in view of the submissions made on behalf of the appellant, limited notice was ordered to be sent to the respondent. Order dated 10th March, 2017 reads as under:-

'1. Arguments part heard.

2. *At this stage, learned counsel for the appellant submits that the appellant is admittedly working as Chowkidar in the suit property on monthly salary of ₹6500/-. It is further submitted that the dispute regarding non-payment of wages is still pending before the Labour Court and due to his poor financial condition, he had not even been able to pay the cost of ₹5000/- imposed vide order dated 19.01.2015 passed by Sh.Anurag Sain, learned ADJ (East), Karkardooma Courts, Delhi whereby one opportunity was granted to the appellant/defendant (appellant herein) to cross examine the respondent/plaintiff and one opportunity was granted to lead defence evidence.*

3. *Learned counsel for the appellant further submits that in the peculiar facts and circumstances of the case as well as the poor financial condition and low economic status of the appellant, the appellant is ready to vacate the suit property within a reasonable time as directed by the Court but at the same time prays that to save his family from starvation, he may be relieved of the financial burden imposed on him by making him to pay ₹3000/- per month towards use and occupation charges in respect of a small area for which licence fee was only ₹500/-.*

4. *As prayed, limited notice to above extent be issued to the respondent as well the counsel representing him before the Courts below, returnable for 17th March, 2017.*

5. *Notice be given dasti.*

6. *In the meantime, LCR be requisitioned through Special Messenger.'*

3. Mr.Anil Sharma, Advocate submits that respondent Nitin Gupta has recently expired on 28th February, 2017 and he is appearing on behalf of legal heirs of respondent Nitin Gupta i.e. Ms.Aditi Gupta (wife), Smt.Shashi

Gupta (mother) and two minor children namely Mynah Gupta and Mahir Gupta.

4. Heard learned counsel for the parties.

5. It is admitted case of the parties that the appellant Suraj Yadav is working as Chowkidar in the suit property on monthly salary of ₹6500/- and is in occupation of one room measuring 12' X 10' situated on the third floor of the suit property i.e. 304 & 305, 34-35, Balaji Complex, Veer Savarkar Block, Shakarpur, Delhi.

6. The appellant is present in person alongwith his counsel. The appellant submits that he does not press this appeal and his only prayer is that he may be permitted to continue to reside in the suit property for two months without making any payment and he will vacate the suit premises within two months from today. He further submits that in view of his poor financial condition that he is working as Chowkidar and getting a salary of ₹6500/- per month and has a family to support, he may also be permitted to withdraw ₹97,000/- deposited by him before the learned Trial Court. The appellant further submits that if he violates the above condition and fails to vacate the suit premises within two months from today, he would be liable to pay in terms of the impugned judgment and decree.

7. Mr.Anil Sharma, Advocate, on instructions from the legal heirs of respondent Late Sh.Nitin Gupta, submits that in view of the above submissions made by the appellant, the proposal given by the appellant is acceptable to the legal heirs for the respondent Nitin Gupta if the appellant undertakes to vacate suit premises within two months from today and respondent/decreed holder through his legal heirs will not execute the decree and will also not claim the amount of ₹97000/- deposited by the

appellant/judgment debtor before the learned Trial Court towards damages. Endorsement to this effect has been made by Mr. Anil Sharma, Advocate on Notice of Motion.

8. Learned counsel for the appellant seeks passover to file undertaking to the above effect.

9. Let the matter be taken up after sometime.

PRATIBHA RANI, J.

MARCH 17, 2017/ 'st'

12.45 PM

Present : As above.

1. The appellant has filed his affidavit/undertaking and assures that he will vacate the suit premises within two months from today and that if he fails to vacate the suit premises within two months, he will pay the damages in terms of the impugned judgment and decree.

2. In view of the submissions made and undertaking given by the appellant, this appeal is dismissed as not pressed.

3. The appellant/defendant is granted time till 16th May, 2017 to vacate the suit property. After handing over the vacant and peaceful possession of the suit property by the appellant to the legal heirs of respondent, the appellant can withdraw the amount of ₹97,000/- deposited by him before the learned Trial Court.

4. Subject to the appellant handing over the vacant and peaceful possession of the suit property on or before 16th May, 2017, the claim towards damages shall be deemed to be waived by the legal heirs of respondents and they shall also not claim the amount of ₹97000/- deposited

by the appellant/judgment debtor before the learned Trial Court towards damages. However, on failure of the appellant/defendant to abide by the conditions mentioned in the affidavit filed today in the Court, the respondent through his legal heirs shall be at liberty to execute the decree as passed by the learned Trial Court and upheld by the First Appellate Court.

5. As prayed, copy of the order be given dasti to learned counsel for the parties.

6. TCR be sent back alongwith copy of this order.

CM No.9587/2017 (Stay)

Dismissed as infructuous.

PRATIBHA RANI, J.

MARCH 17, 2017/‘st’