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

DECIDED ON : 7th JULY, 2017

+ **FAO(OS) 73/2017**

SHASHI JAI KRISHNA & ORS Appellants
Through : Mr.Manish Kumar, Advocate with
Mr.Nakul Jain, Advocate.

versus

DESH RAJ GUPTA & ORS Respondents
Through : Mr.Sanjeev Sindwani, Sr.Advocate
with Mr.Manish Vashisht & Mr.Sameer Vashisht,
Advocates for R1.
Mr.Vikas Dhawan, Advocate for R2.
Ms.Atishree Sood, Advocate for R3.
Mr.P.S.Bindra, Advocate with Ms.Ashmita,
Advocate for R4.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE S.P.GARG

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The present appeal is directed against an order of learned Single Judge dated 08.02.2017 rejecting an application whereby the present appellants' (i.e. plaintiffs in a pending suit CS (OS) 106/2007), claim for interim mesne profits for a certain portion of the suit property i.e. 3, Amrita Sher Gil Marg, New Delhi, was declined.
2. The proceeding pending on the file of the learned Single Judge is a suit for partition and rendition of accounts instituted by the plaintiffs; the plaintiffs have impleaded their brothers as defendants. The proceedings in the suit have been expedited. The record discloses

that the plaintiffs' evidence was concluded in 2014 and that deposition on behalf of the defendants is being recorded.

3. The application (IA 12270/2015), claimed a direction for payment of the interim mesne profits. The applicants / appellants urged that since their share in the suit property has not been denied, a proportionate extent of rent ought to be paid by the defendants who are in occupation of that property. The learned Single Judge refused to exercise discretion having regard to the previous orders.

4. Mr. Manish Kumar, learned counsel appearing on behalf of the plaintiffs / appellants urges that learned Single Judge fell into error in refusing to exercise his discretion. He submitted firstly that the present appeal is maintainable and relied upon the judgment of the Supreme Court in *Shah Babulal Khimji vs. Jayaben D. Kania & Anr.*, AIR 1981 SC 1786. He submitted that since the rights of the parties to shares have not been denied and the appellant has been kept out of enjoyment of her rightful share in the property, during the pendency of the suit, she ought to be given the proportionate benefit of the rent that would be otherwise payable considering the defendants to be in exclusive possession and enjoyment of the property. It is urged that the denial of the relief claimed has serious or prejudicial repercussions since it results in hardship to the appellant who is of advanced age i.e. 80 years.

5. To say that such an interim mesne-profits claim is maintainable, learned counsel relied upon two decisions i.e. '*Shri Ravinder Pal Singh Vs. Shri Surender Pal Singh*' in IA No. 4385/2007 in Civil Suit (OS) No. 2115/1999 and '*Dhruv Goel vs. Anand Parkash Goyal Thr.*

LRs', 2010 (118) DRJ 298. It was submitted that in those two judgments the Court exercised discretion to award interim mesne profits in a partition suit having regard to exigencies of the facts and circumstances. It is urged in support of the appeal furthermore that since the plaintiffs are entitled to claim 1/7th share (of which 1/42nd share, has not been contested), and since some defendants are also urging pleas similar to the plaintiffs, and the contesting defendants are not denying the plaintiffs' right with respect to mesne profits (except the first defendant), the Single Judge committed an error in declining the relief.

6. This Court is of the opinion that exercise of discretion in this case by the impugned order did not lead to an order or a judgment that had any serious or prejudicial repercussions to the plaintiffs / appellants and thereafter it does not fall within the kind of cases where order can be appealed from, in line with the judgment in *Shah Babulal Khimji* (supra). Determination of mesne profits is to be undertaken after the rights of the parties are crystallized. The two judgments of this Court *Shri Ravinder Pal Singh* (supra) and *Dhruv Goel* (supra) recognize that there may be exceptional situations having regard to hardship etc. where interim mesne profits or orders as to ad-hoc payments can be made, awaiting final outcome of trial. In the present case, the appellants have, however, not established such exceptional need. The only ground urged in the application is that she is of advanced age and hence of a proportionate share of alleged monthly rental of ₹75 lacs (and arrears of such amount which she would be entitled to if the Court were to find her after trial) should be granted to

her at this stage. The record discloses that the plaintiff's application for a decree on the basis of admission with respect to her share was rejected on 01.05.2013. Furthermore the trial both as to the extent of the share as well as the amounts payable by way of mesne profits is pending. Furthermore, a similar application by one of the parties supporting plaintiff (IA No. 1679/2005) was rejected on 14.09.2016.

7. Having regard to all these circumstances, the Court is of the opinion that the appeal is not maintainable and in any event, no relief can be claimed, on the merits, having regard to the above facts. The appeal is dismissed.



**S. RAVINDRA BHAT
(JUDGE)**

**S.P.GARG
(JUDGE)**

JULY 07, 2017 / tr