

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

+ **RSA No. 112/2017**

% **18th April, 2017**

MANJU TANEJA Appellant

Through: Ms. Suman Chauhan, Advocate.

versus

L.S. PAWAR & ORS. Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 13880/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

RSA 112/2017 and C.M. Appl. Nos. 13879/2017 (for condonation of delay of 130 days in filing the appeal) & 13878/2017 (for stay)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the concurrent judgments of the courts below; of the Trial Court dated 4.3.2015 and the First Appellant Court dated 14.7.2016; by which the courts below have decreed the suit for damages at Rs.10,000/- per month with effect

from 1.5.2006 with respect to the suit property being no. 1114/11, 2nd floor, right side, Govindpuri, Kalkaji, New Delhi-110019 comprising of two bed rooms, one drawing/dining room, two toilets/bathroom and one kitchen. I may note that no issue remains as regards the handing over of possession as per the decree passed by the trial court, inasmuch as, the appellant has accepted the decree for possession.

2. The first appellate court has given two salient reasons for agreeing with the trial court for decreeing of the suit for damages at Rs.10,000/- per month. The first reason given by the first appellate court is that the deposition evidence of the PW-1 with respect to rate of *mesne* profits/damages was not subject to cross-examination by the appellant/defendant. The second reason given is that the appellant/defendant led no evidence whatsoever.

3. A civil suit is decided on the balance of probabilities. A second appeal under Section 100 CPC is only entertained when there is a substantial question of law. Once two views are possible and one view is taken by the courts below and which is based on the two valid reasons stated above with respect to lack of cross-examination by the appellant/defendant on the evidence led by the respondent/plaintiff as regards the rate of damages and also that appellant/defendant led no

evidence whatsoever, in my opinion, the impugned judgments cannot be faulted with.

4. In view of the above, no substantial question of law arises and therefore this second appeal is dismissed, leaving the parties to bear their own costs.

APRIL 18, 2017

AK.

VALMIKI J. MEHTA, J

