

\$~1

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

+ RFA 1020/2016

MOHD SHAHZAD

..... Appellant

Through: Mr. Jayant Bhatt with
Ms. Jyoti Sharma, Advocates with appellant in
person.

versus

MANJU LUTHRA & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

%

22.02.2017

1. This order is in continuation of the orders dated 22.12.2016 and 09.2.2017.
2. The appellant/defendant is aggrieved by the judgment and decree dated 23.5.2016 passed by the learned trial court, allowing an application filed by the respondents/plaintiffs under Order XII Rule 6 CPC and holding that on the basis of admissions made by him in the written statement, the respondents/plaintiffs are entitled to a decree of possession in respect of the suit premises. For the remaining reliefs of damages, mesne profit towards the use and occupation charges of the suit premises, the suit is pending before the trial court.
3. On 22.12.2016, after addressing arguments for sometime, learned counsel for the appellant had stated that he did not wish to press the appeal

RFA 1020/2016

Page No.1 of 3

on merits. Instead, he had requested that the appellant may be granted a reasonable time of at least eight months to vacate the suit premises. At that stage, it was enquired from learned counsel for the appellant as to whether his client would be ready and willing to settle the entire dispute with the respondents by clearing the outstanding rent/use and occupation charges @ Rs.32,000/- per month, in terms of the lease deed. Counsel for the appellant had stated on instructions from his client, who was present in court, that the said amount if calculated with effect from August, 2015 till 31.12.2016, would come to Rs.5,12,000/-. He had explained that the appellant is not in a sound financial position to deposit the entire amount at one go, but to show his bonafides, he is ready and willing to deposit a sum of Rs.2 lakhs in the first instance, if granted a period of six weeks. The said request was acceded to.

4. The appeal was accordingly disposed of and a limited notice was issued to the respondent on the timeline for the appellant to vacate the suit premises and for the parties to negotiate a settlement in respect of the arrears of the use and occupation charges. The appellant was also granted protection subject to his depositing a sum of Rs.2 lakhs within six weeks reckoned from 22.12.2016. The period of six weeks for making the deposit had expired on 12.2.2017, but the appellant failed to deposit the said amount. When the matter came up on 09.2.2017, neither the counsel nor the appellant had appeared. On the said date, counsel for the respondents had pointed out that the appellant had failed to deposit a sum of Rs.2 lakhs as undertaken by him. In the interest of justice, the matter was re-notified for today.

5. Today, learned counsel for the appellant appears along with the appellant and concedes that his client is in default having failed to deposit a sum of Rs.2 lakhs as undertaken on 22.12.2016. He further states that the appellant is still not in a position to deposit any amount.

6. Counsel for the respondents/plaintiffs states that when the appellant has stated in so many words that he cannot pay any amount towards the use and occupation charges in respect of the suit premises, his clients cannot be expected to permit him to continue occupying the said premises for eight more months, without paying any amount. He submits that the execution petition is listed before the trial court tomorrow.

7. In the above facts and circumstances, this Court has no option, but to discharge the notice. The respondents shall be entitled to seek execution of the impugned judgment and decree in accordance with law.

HIMA KOHLI, J

FEBRUARY 22, 2017

ap/rkb