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

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Date of Decision: 15.02.2017

+ CM(M) 34/2017 & CM No.117/2017

SANJAY KUMAR NAGPAL

..... Petitioner

Through Mr.Bhaskar Tiwari, Advocate and
Mr.Amit Negi and Mr.S.Jain, Advocates

versus

RAJENDER KUMAR & ANR

..... Respondent

Through Mr.Vishal Bhatnagar and Mr.Vineet
Gandhi, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 22.10.2016 by which the application filed by the respondent under Order 41 Rule 5 CPC was allowed and the decree dated 21.08.2015 was stayed subject to deposit of Rs.2,70,000/-.

2. The petitioner filed a suit for possession, recovery of rent and mesne profit against the respondents. The trial court by decree dated 17.7.2015 passed a decree of possession in favour of the petitioner. It also passed a decree for Rs.20,000/- as damages/mesne profits for the period 1.2.2008 till 15.10.2008. It also passed a decree for damages, mesne profit to the petitioner @ Rs.50,000/- per month from 17.10.2008 i.e. from the date of

filing of the suit with an increase of 10% every year till possession of the suit property is given by the respondent.

3. The respondents have filed an appeal before the appellate court alongwith the said application for interim stay. The appellate court has by the impugned order noted limited grounds granting of the interim orders. The relevant portion of the order reads as follows:-

“12. It is worth noting that pecuniary jurisdiction of Id.trial court i.e. Ld.Civil Judge was up to Rs.3 lacs. In the plaint, plaintiff valued the suit at Rs.30,000/- in respect of the relief of possession. Keeping in view these facts, operation of impugned judgment dated 17.07.2015 and impugned decree dated 21.08.2015 is stayed subject to deposit of Rs.2,70,000/- by applicant/appellant before Ld.Trial Court/Executing Court.”

4. Hence, the only ground on which stay of the decree of mesne profit/damages has been granted is that the jurisdiction stated in the plaint is Rs.30,000/- whereas the relief granted by the trial court is far more than the sum of Rs.3 lacs which is the pecuniary jurisdiction of the Civil Judge.

5. Learned counsel for the petitioner relies upon the judgment of the Supreme Court in ***Kanpur Jal Sansthan and Another vs. Bapu Constructions, (2015) 5 SCC 267*** to contend that ordinarily execution of a money decree is not stayed as satisfaction of a money decree does not amount to irreparable injury and in the event of appeal being allowed and the remedy of restitution is always available. He has also relied upon Full Bench judgment of the Calcutta High Court in ***BIdyadhar Bachar and Ors. vs. Manindra Nath Das and Ors., AIR 1925 Cal 1076*** and judgment of the Single Bench of Patna High Court in ***Babu Dinanath Sahai vs. Musammat Mayawati Kuer, Manu/BH/0288/1921.***

6. Learned counsel appearing for the respondent submits that various grounds have been taken by the respondents in the grounds of appeal including the fact that the present suit is hit by Delhi Rent Control Act. Hence, it is urged that these are the facts which would have weighed with the appellate court in passing the stay order.

7. In my opinion, there is no merit in the submission of learned counsel for respondent. The impugned order by which stay has been granted does not reflect any such reasoning. The only ground for stay stated is that the trial court did not have pecuniary jurisdiction to try the matter as relief beyond the sum of Rs.3 lacs which is the pecuniary jurisdiction of the civil judge has been granted.

8. The Supreme Court in *Mahadeo Savlaram Shelke and Others vs. Pune Municipal Corporation and Another*, (1995) 3 SCC 33 held as follows:-

“14Even otherwise the court while exercising its equity jurisdiction in granting injunction has also jurisdiction and power to grant adequate compensation to mitigate the damages caused to the defendant by grant of injunction restraining the defendant to proceed with the execution of the work etc., which is restrained by an order of injunction made by the court. The pecuniary award of damages is consequential to the adjudication of the dispute and the result therein is incidental to the determination of the case by the court. The pecuniary jurisdiction of the court of first instance should not impede nor be a bar to award damages beyond its pecuniary jurisdiction. In this behalf, the grant or refusal of damages is not founded upon the original cause of action but the /consequences of the adjudication by the conduct of the parties, the court gets inherent jurisdiction in doing ex debito justitiae mitigating the damage suffered by the defendant by the act of the court in granting injunction restraining the

defendant from proceeding with the action complained of in the suit. It is common knowledge that injunction is invariably sought for in laying the suit in a court of lowest pecuniary jurisdiction even when the claims are much larger than the pecuniary jurisdiction of the court of first instance, may be, for diverse reasons. Therefore, the pecuniary jurisdiction is not and should not stand an impediment for the court of first instance in determining damages as the part of the adjudication and pass a decree in that behalf without relegating the parties to a further suit for damages. This procedure would act as a check on abuse of the process of the court and adequately compensate the damages or injury suffered by the defendant by act of court at the behest of the plaintiff.”

9. This court in *Sona Dave and Ors. vs. Trans Asian Industries Expositions Pvt. Ltd.*, AIR 2016 Delhi 186 held as follows:-

“30. I have, speaking for the Division Bench of this Court in Santosh Arora Vs. M.L. Arora MANU/DE/1162/2014 observed that i) law permits a claim for future mesne profits i.e. for a relief, the cause of action wherefore has not accrued to the plaintiff on the date of the institution of the suit to be made; ii) Order 20 Rule 12 of the CPC requires the Court, in a suit for recovery of possession of immovable property and for rent or mesne profits, to, besides passing decree for possession, also pass a decree for mesne profits or direct an enquiry as to such mesne profits, for the period prior to the institution of the suit if claimed and if within limitation on the date of institution of the suit, and for the period, from the date of institution of the suit until delivery of possession; iii) with regard to future mesne profits, the plaintiff has no cause of action on the date of the institution of the suit, and it is not possible for him to plead this cause of action or to value it or to pay court-fees thereon at the time of the institution of the suit; iv) the limits of the pecuniary jurisdiction of the Court of first instance does not impede and is not a bar to award damages beyond its pecuniary jurisdiction. Reliance was

placed on Mahadeo Savlaram Shelke Vs. Puna Municipal Corporation MANU/SC/0673/1995 : (1995) 3 SCC 33.”

10. Full Bench of the Calcutta High Court in *Bidyadhar Bachar and Ors. vs. Manindra Nath Das and Ors. (supra)* held as follows:-

“27.....If the Munsif's jurisdiction to pass a decree is limited to the value of the suit he can entertain, he cannot pass any decree for mesne profits, the amount of which being added to the value of the property would exceed his pecuniary jurisdiction. Thus, where the property was valued at, say Rs. 1,000, the Munsif will not be able to pass a decree for mesne profits, for any further amount. I venture to think that it would not be a proper solution to hold that the Munsif could pass a decree for mesne profit for a further sum of Rs. 1,000, for although there must be two decrees in such a case, there is only one suit, and the Munsif would then have power to pass a decree of the value of Rs. 2,000, in the same suit. Moreover, if the amount of the mesne profits were taken into account in determining the value of the suit and the Munsif's jurisdiction, then, in the case I have stated, he should be considered to have no jurisdiction to entertain the suit or pass any decree, and therefore the decree for possession as well as the preliminary decree for mesne profits should be held to have been passed without jurisdiction. This result however cannot at all be contemplated. Nor can it be said that the Plaintiff must be considered to have abandoned a part of his claim by bringing his suit in a Court of limited jurisdiction.

.....

I am therefore of opinion that if a suit is rightly entertained by a Munsif he has the power to pass a decree for the proper relief even where the amount of the; decree exceeds the value of the suit and his pecuniary jurisdiction.”

11. Hence, the legal position that follows is that the court which would try a suit for possession would also try the relief for mesne profit and damages

in view of the specific provisions of Order XX Rule 12 CPC. The suit is not to be sent to another court for adjudication on the issue of mesne profit and damages on grounds of lack of pecuniary jurisdiction. As the stay order is passed based on the ground of pecuniary jurisdiction, the impugned order suffers from material and legal error.

12. I accordingly, quash the impugned order dated 22.10.2016. I remand the parties back to the appellate court who will consider the arguments afresh of the parties and pass appropriate orders in the application under Order 41 Rule 5 CPC. The respondent is at liberty to approach the appellate court by filing an appropriate application in this regard for early hearing.

13. Petition stands disposed of. All pending applications, if any, also stand disposed of accordingly.

14. Dasti.

JAYANT NATH, J

FEBRUARY 15, 2017

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