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

+ RFA 891/2017 & CM No.36499/2017 (stay)

PREETI KUMAR Appellant
Through Ms. Monica Kapoor, Adv.

versus

CHANDER KALA Respondent
Through Mr. R.K. Mishra and Mr. Subhash
Chander, Advs.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **13.12.2017**

1. On 13.10.2017 the following order was passed:-

“C.M. No.36500/2017 (under Order 44 Rule 1 CPC)

1. For the reasons stated in the application, this application is allowed and the petitioner is allowed to sue as a pauper. Main appeal now be numbered as an RFA.

C.M. stands disposed of.

C.M. No.36501/2017 (exemption)

2. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

+RFA No. _____/2017 (to be numbered by Registry) and C.M. No.36499/2017(stay)

3. Learned counsel for the appellant, on instructions from the appellant who is present in person, states that the appeal be disposed of as not pressed but the appellant be granted time to vacate the entire suit property by 31.12.2018.

4. Considering the fact that relation between the parties being an Ex-daughter-in-law and the respondent/plaintiff

being a mother-in-law, and the appellant has no other place to go, interest of justice requires that appellant be granted time to vacate the suit premises till 31.12.2018. Appellant will file an affidavit of undertaking in this Court to vacate the suit premises and hand over its possession to the respondent/plaintiff on or before 31.12.2018 and in the meanwhile ensure that electricity and water charges with respect to the suit premises are cleared till the time possession remains with the appellant.

5. Counsel for the appellant argues that award of mesne profits for one year prior to the suit is illegal because not only issue was not framed with respect to the claim prior to 15.1.2017 but also the respondent/plaintiff did not pay the court fees for any such amount of damages accrued prior to filing of the suit. It is also argued that considering the relations between the parties and the fact that appellant/defendant had with her certain photocopies of the documents of the title to the property given to her by her husband who is the son of the respondent/plaintiff grant of interest in the facts of the present case is not justified much less at 8% per annum simple.

6. Counsel for the appellant, on instructions, also states that appellant will comply with the impugned judgment by making the payment of money decree with respect to the pendente lite mesne profits as awarded at Rs.15,000/- per month and also continue to pay future monthly charges month by month in terms of the impugned judgment and decree till the time the appellant stays in possession of the suit premises. It is prayed, and which prayer is allowed that appellant will clear all arrears of money decree of mesne profits on or before 31.1.2018, however, monthly charges will be continued to be paid month by month every month.

7. Limited to the aspect of the grant of mesne profits prior to the suit and on the issue of rate of interest to be awarded, let notice be issued in the appeal to the respondent, on filing of process fee, both in the ordinary method as well as by registered post AD, returnable on 13th

December, 2017. Dasti.”

2. Appellant has not complied with this order. Neither the undertaking has been filed nor payment has been made of mesne profits in terms of this order dated 13.10.2017. Notice was only issued on 13.10.2017 limited to the aspect of the grant of mesne profits prior to the suit and on the issue of rate of interest to be awarded.
3. Since appellant has neither filed affidavit of undertaking to vacate nor has paid any charges in terms of the order dated 13.10.2017, this appeal is accordingly dismissed.

VALMIKI J. MEHTA, J

DECEMBER 13, 2017/rb