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

+ **RFA 534/2018**

BALA DEVI & ORS

..... Appellants

Through: Mr. Kedar Yadav and Mr. Harkaran  
Singh, Advocates with appellant no. 1  
in person.

versus

VIJENDER SINGH

..... Respondent

Through: Mr. Dhruv Bhagat and Ms. Ashna  
Bhagai, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

**ORDER**

% **25.07.2018**

**CAVEAT No. 621/2018**

1. Since counsel for the caveator has entered appearance, the  
caveat stands discharged.

**RFA 534/2018 and C.M. Appl. No. 27486/2018 (for stay)**

2. **ADMIT.**

3. List this appeal in due course in the category of '*Regulars*' as  
per the year of its seniority.

4. Impugned judgment and decree is a decree for possession of  
the suit premises in favour of the respondent/plaintiff and against the

appellants. The best case of the appellants was that they are the tenants in the premises at Rs.800/- per month and as per the admission made by the appellant no. 1 in her cross-examination on 2.6.2016 appellants have in a blatant manner not paid even the admitted rate of rent of Rs.800/- per month from March, 2004. Section 26 of the Delhi Rent Control Act, 1958, provides that a tenant who fails to pay the monthly rent is liable to pay interest on the unpaid rent at 15% per annum. Therefore, as a condition for grant of stay of the impugned judgment it is ordered that appellants will within one month from today clear the admitted arrears of rent at Rs.800 per month with interest at 15% per annum payable from the end of the month from which rent is payable till date. In case the arrears are not deposited in this Court along with interest as stated above, the stay granted in favour of the appellants of the impugned judgment and decree dated 20.4.2018 will be deemed to be vacated and the respondent/plaintiff can then forthwith execute the impugned judgment and decree.

5. That takes us to the aspect with respect to the claim of the respondent for charges after passing of the impugned judgment. As

held by the Supreme Court in the case of *Atmaram Properties Vs. Federal Motors (2005) 1 SCC 705* that after an eviction decree is passed, a tenant is liable to pay mesne profits at the market rent with respect to the tenanted suit property. In the present case, the tenanted suit property is the first floor of a premises situated in East of Kailash, New Delhi, and which is a reasonably good area in the South Delhi. The admitted rate of rent being Rs.800/- per month from the year 2000 when the appellants claim existence of tenancy and today we are in the year 2018 with there being a decree for possession against the appellants, though counsel for the respondent/plaintiff states that one floor of the suit premises has been let out at Rs.12,000/- per month to a tenant, namely, Sh. Richard Dass, and with respect to which copy of the Lease Agreement is filed in the Court, however, in the opinion of this Court for the present charges from the date of passing of the impugned judgment would be taken at Rs.5,000/- per month. Arrears in this regard at Rs.5,000/- per month from the date of impugned judgment till date be also paid to the respondent within a period of one month from today.

6. Future charges at the rate of Rs.5,000/- per month be paid by

the appellants to the respondent month by month every month by 15<sup>th</sup> of each month during the pendency of this appeal.

7. C.M. No. 27486/2018 is therefore disposed of by staying operation of the impugned judgment, but subject to the payment of charges by the appellants as stated above.

8. At this stage, counsel for the appellants, on instructions from the appellant no. 1 who is present in person, states that the appellants will vacate the suit premises within three months from today, and counsel for the respondent/plaintiff agrees that if this is done then the respondent/plaintiff will claim no charges whatsoever from the appellants with respect to their stay in the suit premises till 31.10.2018.

9. Let the appellant nos. 1 and 3 to 5 file their affidavits of undertakings in this Court in terms of the present order to vacate the suit premises and hand over vacant physical possession to the respondent/plaintiff within a period of two weeks from today. The affidavit on behalf of appellant no. 1 will be for herself and on behalf of the minor grandson, appellant no. 2, Master Pulkit.

10. On the appellants filing the aforesaid undertaking and

complying with the terms of the same, appellants will have time to vacate the suit premises on or before 31.10.2018.

11. The appeal and the pending application is disposed of accordingly.

**VALMIKI J. MEHTA, J**

**JULY 25, 2018**

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