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

+ **RFA 569/2016 & CM APPLs. 2549/2017, 2789/2017**

SHAKUNTLA

..... Appellant

Through: Mr. Anis Ahmed, Advocate (M-9818843330).

versus

DHARAM PAL

..... Respondent

Through: Mr. K.R. Chawla & Mr. Sunil Verma, Advocates (M-9811105226).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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26.04.2018

1. This is an appeal against order dated 19th April, 2016, passed by the Trial Court, by which the suit for possession in respect of portion of property bearing No. 3192, Lal Darwaza, Sita Ram Bazar, School Wali Gali, Delhi (*hereinafter `suit property`*) filed by the Respondent/Plaintiff has been decreed in the following terms:

“From the above discussion I am of the opinion that the suit of the plaintiff deserves to be decreed and is hereby decreed. A decree of possession in respect of the suit premises is hereby passed in favour of the plaintiff and against the defendant. The defendant shall hand over the vacant possession of the suit premises to the plaintiff within six months from the date of decree. No order as to cost. Decree sheet be prepared subject to deposit of requisite court fees be deposited by the plaintiff.

File be consigned to Record Room.”

2. The finding of the Trial Court is that the Appellant/Defendant is not entitled to any share in the suit property and that the Defendant is in the capacity of a licensee in the suit property - which license stands terminated.

3. The present appeal was preferred against the above order. On 10th November, 2016, this court had directed that since six months period for vacating the suit property had already lapsed and thus the Appellant would be liable to pay use and occupation charges. Accordingly, it was directed as under:

“4. Having regard to the fact that the suit premises, which is a residential premises, is situated in the walled city and taking judicial notice of the fact that use and occupation charges of the said floor would not be less than Rs. 12,000/- per month, it is deemed appropriate to direct the appellant to pay the respondent a sum of Rs. 12,000/- per month towards use and occupation charges from 18.10.2016 onwards, on a month to month basis, on or before the 7th day of each calendar month, against receipt.

5. Needless to state that in the event the appellant succeeds in the present appeal, the respondent shall restitute the appellant for the amounts received. Subject to the appellant complying with the aforesaid order, operation of the impugned judgment and decree shall remain stayed during the pendency of the appeal.”

4. Subsequent to the passing of the above order, two applications were filed, one for reduction of rent and another by the Respondent for the vacation of stay. The said two applications were taken up for hearing on 19th March, 2018 on which date the following order was passed:

**“CM APPL. 2549/2017 (for vacating the stay),
2789/2017 (for reduction of rent) in RFA 569/2016**

Vide order dated 10th November, 2016, this Court had directed that the Appellant would pay the use and occupation charges of Rs.12,000/- for the suit property from 18th October, 2016 onwards on a month to month basis on or before the 7th day of each calendar month. The Appellants are admittedly in possession of the suit property but have not complied with the order of this court. Not a single payment has been made by them since 10th November, 2016.

A decree of specific performance has been passed in favour of the Respondent by the Trial Court on 19th April, 2017. A perusal of the records shows that the Appellant was not present on 22nd November, 2017 and on 18th December, 2017 the Appellant has been appeared in person only. Even today, when the matter was called in morning, the Appellant was present in person and submitted that her counsel, Mr. Anis Ahmed is on his way and the matter was passed over. On the second call, Mr. Rizwan Ahmed appears and submits that Mr. Anis Ahmed is suffering from viral fever and cannot come in the Court.

There has been complete non-compliance of the orders of this Court. Since the Appellants are enjoying the suit property, use and occupation charges have to be paid in compliance of the previous order. In these circumstances, the Appellants are directed to bring the amount of Rs.2,04,000/- by way of a Demand Draft, on the next date failing which the keys of the suit property shall be deposited in the Court on the next date.

List on 26th April, 2018.

The parties are directed to be present in Court on the next date.”

5. In compliance with the above order, Appellant/Defendant - Mrs. Shakuntla is present and the Respondent/Plaintiff - Mr. Dharam Pal is also present. Statements of both the parties have been recorded. The purport of

the statements have also been explained to both the parties in *Hindi* language. They have agreed to resolve all their disputes on the following terms:

i. The Appellant has agreed to hand over vacant and peaceful possession of the suit property today itself and undertakes not to claim any rights to the suit property if the mesne profits/use and occupation charges are waived;

ii. In view of the Appellant agreeing to hand over vacant and peaceful possession, the Respondent agrees not to insist on the payment of the mesne profits/use and occupation charges and waive the same;

6. The Appellant has handed over the keys of the suit property to the Respondent. The impugned judgment/decreed stands satisfied. No use and occupation charges would be liable to be paid by the Appellant to the Respondent. The Respondent has waived the same. Statements of the parties have been recorded.

7. The appeal and all pending applications are disposed of as settled between the parties. There shall be no orders as to costs.

PRATHIBA M. SINGH, J

APRIL 26, 2018

Rahul