

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

+ **RFA No. 833/2017**

% **15th February, 2018**

KHADIJA RAFIQUE Appellant

Through: Mr. Shwetank and Mr. Vibhor
Verdhan, Advocates.

versus

MOHD. NASEEM & ORS. Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 35760/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

C.M. Appl. No. 35761/2017 (for delay)

For the reasons stated in the application, the delay of 93 days in re-filing the appeal is condoned, subject to just exceptions.

C.M. stands disposed of.

RFA No. 833/2017 and C.M. Appl. No. 35759/2017 (for stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant no. 2 in the

suit. The suit was filed by the respondent no. 1/plaintiff for recovery of damages for illegal occupation and for causing damage to the suit property. The suit property is the back portion of the ground floor of property bearing no. B-473, New Friends Colony, New Delhi.

2. The operative paras of the impugned judgment decreeing the suit are paras 69 to 71 and these paras read as under:-

“69. In view of the discussion hereinabove, the plaintiff is entitled to damages for illegal use and occupation of the suit premises @ Rs. 8000/- per month from 20.03.1992 to 09.05.1998 alongwith interest @ 8% per annum till the date of realization. The said damages shall be payable by Defendant No.2 and Legal Representatives of deceased Defendant No.1 (including Defendant No.3).

70. The plaintiff is also entitled to an amount of Rs.93,850/- towards the damage caused to the suit premises alongwith interest @ 8% per annum with effect from three years preceding the date of application seeking Amendment of Plaint (i.e 05.11.2016) till realization.

71. Plaintiff is also entitled to the costs of the suit. Decree sheet be prepared accordingly and after due compliance, file be consigned to record room”

3. It is seen that the respondent no. 1/plaintiff had earlier filed a suit for possession of the suit property against the respondent no.2/defendant no. 1 namely Mohd. Sadiq, who has since expired and is now represented by his legal heirs. That earlier suit was decreed for possession of the suit property. Respondent no.2/defendant no. 1 thereafter in execution filed objections and which objections were dismissed right till the Supreme Court when the Supreme Court

dismissed the Special Leave Petition on 1.10.1997. Appellant herein, and the defendant no. 2 in the present suit thereafter along with her husband being the defendant no. 3 in the present suit, filed objections in the execution of the decree dated 15.5.1991 obtained as against the respondent no.2/defendant no. 1 in the suit filed by the respondent no.1/plaintiff/Mohd. Naseem. These objections filed by the appellant/defendant no.2 and her husband being the defendant no. 3 in the suit were withdrawn with the appellant/defendant no.2 and her husband taking time to vacate the suit premises by 9.5.1998. On 4.5.1998 however, the appellant/defendant no.2 again sought extension of time from the executing court which was declined and possession was taken on 9.5.1998 of the suit property. Thereafter, the present/subject suit came to be filed for damages for the period of illegal possession of the suit property as against the appellant/defendant no. 2 and her husband being defendant no. 3 in the suit as also the defendant in the earlier suit Mohd. Sadiq, and who was also sued as defendant no. 1 in the present suit.

4. I may note that appeal being RFA No. 834/2017 filed by the legal heirs of the deceased respondent no.2/defendant no. 1 was disposed of as withdrawn vide order dated 27.9.2017.

5. Counsel for appellant/defendant no. 2 expresses an apprehension that the language of the operative paras 69 to 71 in the impugned judgment could result in the decretal amount being realized from all the defendants in the suit i.e appellant/defendant no.2 has an apprehension that the decretal amount may be first recovered from defendant no. 1 in the suit, then from defendant no. 2 in the suit, and then from defendant no. 3 in the suit, and which would mean that the decretal amount would be recovered three times over and therefore this appeal is only pressed for seeking a clarification that the money decree passed in favor of the respondent no.1/plaintiff should be observed as being a joint and several decree against the defendants in the suit with the necessary clarification to be granted by this Court that there is no money decree for recovery of the money once against each of the three defendants for the total amount.

6. Accordingly, while this appeal is disposed of as not pressed and it is observed that the money decree passed in the suit in

terms of the impugned judgment and decree dated 25.2.2017 will only be a joint and several money decree against all the defendants in the suit including the appellant/defendant no.2 and it is not as if that because of lack of clarity of wording of the relief clauses in the impugned judgment that the respondent no. 1/plaintiff will be entitled to recover the money decree three times over i.e once each against each of the three defendants in the suit.

7. The appeal is accordingly disposed of with the aforesaid observations.

FEBRUARY 15, 2018

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VALMIKI J. MEHTA, J

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