

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

+ **RFA No. 28/2018**

% **Reserved on : 27th April, 2018**
Pronounced on : 3rd May, 2018

ASHWANI KUMAR NIM Appellant

Through: Kumar Rajesh Singh and Ms.
Punam Singh, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Praveen Kumar Jain and
Ms. Komal Pandey, Advocates.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the Trial Court dated 26.8.2017 by which the trial court has decreed the suit filed by the appellant/plaintiff for a sum of Rs.1,48,444/- along with future interest at 9% per annum, instead of Rs.7,70,000/- as prayed for by the appellant/plaintiff along with *pendent-lite and* future interest.

2. On 12.1.2018 when notice was issued in this appeal, it was recorded that appeal was pressed only for a limited relief of seeking grant of *pendente lite* interest which has not been granted by the impugned judgment.

3. The facts of the case are that appellant/plaintiff was found to be in unauthorised possession of a premises being Quarter No. 3-A Vasant Vihar, New Delhi, a premises which was owned by the Government and let out by the Government to respondent no.3 herein. On account of the respondent no.3/defendant no.3 illegally sub-letting the Vasant Vihar premises to the appellant/plaintiff, pursuant to the eviction proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the Government took back possession of the Vasant Vihar premises on 10.10.2005. At the time of taking possession locks were put on Vasant Vihar premises, and which premises contained the goods of the appellant/plaintiff. The goods of the appellant/plaintiff were released to the appellant/plaintiff on furnishing a Bank Guarantee No.46/2006, dated 12.9.2006 pursuant to the order passed by this Court in a writ petition. Subsequently proceedings were initiated for recovery of damages by the respondent

no.2/ defendant no.2/Estate Officer against the appellant/plaintiff and the respondent no.3 herein and the respondent no.2/ defendant no.2/Estate Officer passed his order dated 22.12.2006 holding the appellant/plaintiff liable to pay damages for unauthorized occupation. This order of the respondent no.2/ defendant no.2/Estate Officer was however set aside in an appeal by the Additional District Judge (ADJ) in terms of the judgment dated 11.4.2007. ADJ as per the judgment dated 11.4.2007 observed that respondent no.2/ defendant no.2/Estate Officer had surprisingly held only the appellant/plaintiff as liable and there was no direction of recovery of damages against the respondent no.3/defendant no.3 , and therefore, the order of the respondent no.2/ defendant no.2/Estate Officer dated 22.12.2006 was set aside. respondent no.1/ defendant no.1/Union of India challenged the order of the ADJ to this Court, and a learned Single Judge of this Court vide his judgment dated 21.1.2010 dismissed the challenge but clarified that in case respondent no.1/ defendant no.1/Union of India initiates proceedings against the respondent no.3 herein then the present appellant/plaintiff would be made a party to the proceedings and a claim would also be made against the present appellant/plaintiff.

Surprisingly the respondent no.1/ defendant no.1/Union of India did not file any proceedings thereafter against the appellant/plaintiff although it was given liberty to do so in terms of the judgment dated 21.1.2010 passed by a learned Single Judge of this Court in WP(C) No.1845/2008.

4. I may note that in the subject suit whereas the appellant/plaintiff led evidence, the respondent no.1/ defendant no.1/Union of India failed to lead any evidence. Trial court by its impugned judgment while dismissing the claim for damages of the appellant/plaintiff has passed a money decree for recovery of Rs.1,48,444/- being an amount of bank guarantee encashed by the respondent no.1/ defendant no.1/Union of India as this amount became repayable to the appellant/plaintiff in view of the judgment of the ADJ dated 11.4.2007 and as upheld by this Court in terms of its judgment dated 21.1.2010 in W.P.(C) No.1845/2008, with the fact that there is nothing in the record of the trial court to show that any proceedings were initiated against the appellant/plaintiff for recovery of any amount against the appellant/plaintiff along with the filing of claim against the respondent no.3/defendant no.3/original allottee.

5. In my opinion, since the bank guarantee amount which was encashed by the respondent no.1/ defendant no.1/Union of India for amount payable by appellant/plaintiff as damages, this amount became repayable to appellant/plaintiff in terms of the judgment 21.1.2010 in W.P.(C) No.1845/2008, and therefore with effect from 21.1.2010 respondent no.1/ defendant no.1/Union of India is found guilty of keeping with itself the bank guarantee amount payable to the appellant/plaintiff, and inter-alia for which amount, the appellant/plaintiff had to file the subject suit. Appellant/plaintiff is therefore entitled to interest at 5% per annum simple w.e.f. 21.1.2010 till the passing of the impugned judgment. However, in exercise of my powers under Order XLI Rule 33 CPC even the future interest I reduce to 5% per annum simple inasmuch as rates of interest have been consistently falling with the fact that appellant/plaintiff was admittedly in unauthorized occupation of Government premises.

6. In view of the aforesaid discussion, this appeal is allowed and disposed of by granting the appellant/plaintiff interest at 5% per annum w.e.f 21.1.2010 till recovery against the respondents no.1 and 2/defendants no.1 and 2 . Parties are left to bear their own costs.

MAY 3rd,2018/godara

VALMIKI J. MEHTA, J