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

Date of decision: 21.11.2023

+ **RSA 216/2023, CM APPL. 60008/2023, CM APPL. 60009/2023
& CM APPL. 60010/2023**

RAJENDER BHARDWAJ

..... Appellant

Through: Mr. J.K. Singh and Pankaj Kumar,
Advocates with Appellant in person

versus

SULOCHANA

..... Respondent

Through: None

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 60009-10/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

RSA 216/2023, CM APPL. 60008/2023

1. The present appeal has been filed impugning the judgment dated 19.08.2023 passed by the Additional District Judge – 04, South West District, Dwarka Courts, New Delhi in RCA No. 54/2022 titled as **Rajinder Bhardwaj v. Sulochana** ('First Appellate Court') whereby the First Appellate Court dismissed the Regular Civil Appeal filed by the Appellant and upheld the Judgment of Trial Court dated 08.10.2021 passed by the



Senior Civil Judge, South-West District, Dwarka Courts, New Delhi in CS no. 196/2017 ('Trial Court'). Subsequently, the First Appellate Court granted two months' time to the Appellant to vacate the property i.e., House No.118, Baba Haridas Nagar, Gitanjali Enclave, Jharoda, South- West, Delhi - 110072 admeasuring 40 square yards ('suit property')

2. The Appellant is original defendant and the Respondent is the original plaintiff in the civil suit filed before the Trial Court.

3. The aforesaid suit was filed by the Respondent against the Appellant for recovery of possession of the suit property, for recovery of arrears of rent of Rs. 24,000/-, for payment of rent of Rs. 4,000/- per month along-with electricity charges from date of filing of petition till the handing over of vacant peaceful possession of suit property to the Respondent.

4. The Trial Court vide judgment dated 08.10.2021 decreed the aforesaid civil suit in favour of the plaintiff and against the defendant with the direction to the defendant to hand over vacant and peaceful possession of suit property along with user charges at Rs. 400/- payable to the Respondent herein per month from February 2017 and clearing the electricity charges till handing over the vacant peaceful possession of the suit property. The Appellant was further directed to pay pendente-lite interest at 6% per annum upon usage charges from February 2017 till the date of decree.

The First Appellate Court vide impugned judgement dated 19.08.2023 has upheld the judgment of the Trial Court and granted two (2) months' time to the Appellant to vacate the suit property. The said period expired on 19.10.2023.

5. Initially, the oral arguments raised by the Appellant and the averments made in appeal do not raise any question of law much less a substantial



question of law and the grounds merely challenge the finding of facts.

6. In this regard, it would be appropriate to refer to the case of *Nazir Mohamed v. J. Kamal and others (2020) 19 SCC 57* wherein the Supreme Court observed that second appeal only lies on a substantial question of law and the party cannot agitate facts or call upon the High Court to re-appreciate the evidence in a second appeal. The operative portion to this aspect reads as under:

*“22. A second appeal, or for that matter, any appeal is not a matter of right. the right of appeal is conferred by statute. A second appeal only lies on a substantial question of law. If statute confers a limited right of appeal, the court cannot expand the scope of the appeal. **It was not open to the respondent-plaintiff to reagitate facts or to call upon the High Court to reanalyse or reappreciate evidence in a second appeal.**”*

23. Section 100 CPC, as amended, restricts the right of second appeal, to Only those cases, where a substantial question of law is involved. The existence of a "substantial question of law" is the sine qua non for the exercise of jurisdiction under Section 100 Cr.

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28. To be “substantial”, a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.

29. To be a question of law "involved in the case, there must be first, a foundation for it laid in the pleadings, and the question should emerge from the sustainable findings of fact, arrived at by courts of facts, and it must be necessary to decide that question of law for a just and proper decision of the case.”

(Emphasis supplied)

7. After some arguments, learned counsel for the Appellant states on instructions from the Appellant who is present in Court that the Appellant will peacefully vacate and handover the vacant possession of the suit property to the Respondent on or before 21.01.2024. He states that the time



for vacation of the suit property be enlarged to enable the Appellant to vacate the suit property peacefully. He further undertakes that in the event the Appellant fails to comply with the undertaking given to this Court, Appellant will become liable to pay use and occupation charges at Rs. 5,000 per month with effect from 01.11.2021, in view of the fact that the decree of possession already stands passed against the Appellant herein by the Trial Court vide judgment dated 08.10.2021. The Appellant will ensure that electricity charges up-to the date of possession are paid to the electricity company. The undertaking of the Appellant is accepted and he is bound down to the same.

8. In view of the undertaking given to this Court, the execution of the decree of possession dated 08.10.2021 is stayed until 21.01.2024. The Appellant is directed to file an affidavit of undertaking before the Executing Court in Ex. Civil No. 680/2021 within 10 (ten) days and thereafter appear before the Executing Court on or before 21.01.2024 for handing over the possession of the suit property.

9. With the aforesaid directions, the present appeal is disposed of and the judgment of the First Appellate Court dated 19.08.2023 and the decree of possession passed by the Trial Court dated 08.10.2021 is upheld.

10. Pending application, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 21, 2023/msh/ms

Click here to check corrigendum, if any