



2024:DHC:8175



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

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Date of Decision: 22.10.2024

+ **RFA 82/2022 & CM Appl.12264/2022**

ROHIT SINGH

.....Appellant

Through: Mr. J.P. Sengh, Sr. Adv. with Ms.  
Ishita Mohanty, Mr. Ghanshyam  
Sharma and Mr. M.P. Singh, Advs.

versus

PARIMAL BHATTACHARJEE

.....Respondent

Through: None.

**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)****CM Appl. 61133/2024***[Exemption from filing certified copies]*

1. Allowed, subject to just exceptions.
2. The Application stands disposed of.

**CM Appl.61132/2024***[Seeking correction/modification]*

3. This is an Application filed on behalf of the Appellant seeking modification of the order dated 28.08.2024.
4. The Respondent has already been proceeded *ex parte* in the matter on 28.08.2024.
5. Accordingly, let paragraph 3.1 of the order dated 28.08.2024 be revised to read as follows:

*“3.1 Learned Senior Counsel, on instructions submits that pursuant thereto, the possession of property bearing Flat No. 16/302, East End Apartment, Plot No. A-5 Mayur Vihar Phase-1 Extension Delhi-110096 [hereinafter referred to as ‘subject property’] has been handed over on 11.07.2022. He further submits that arrears of rent*



*are to be adjusted in terms of the counter claim of the Appellant.”*

6. The Application is accordingly disposed of.

**RFA 82/2022 & CM Appl.12264/2022[Stay]**

7. The present Appeal has been filed on behalf of the Appellant impugning the judgment and decree dated 09.11.2021 [hereinafter referred to as “the Impugned Judgment”] passed by the learned ADJ-02, Karkardooma Courts (East), Delhi. By the Impugned Judgment, the Application under order XII Rule 6 of the Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”] filed by the Respondent/Plaintiff was allowed and a decree was passed against the Appellant/Defendant. A decree was passed against the Appellant/Defendant granting possession of the property bearing Flat No.16/302, East End Apartment, Plot No.A-5, Mayur Vihar Phase I, Extension, Delhi 110096 [hereinafter referred to as “subject premises”] to the Respondent. In addition, a decree for arrears of rent as well as future rent and maintenance charges were found to be due and payable by the Appellant to the Respondent along with interest and costs. The decree is extracted below:

*“i. A decree of possession of the suit property bearing number Flat No. 16/302 East End Apartment, Plot no. A-5 Mayur Vihar Phase -I, Extension Delhi- 110096 shown in the site plan, in favour of the plaintiff.*

*ii. Arrears of rent at the rate of Rs. 28,000/- per month and maintenance charges at the rate of 1160/- per month since October 2014 till the date of the decree. As the defendant tried to misappropriate the suit property belonging to a senior citizen, the defendant shall be liable and the plaintiff shall be entitled to receive interest at the rate of 24% per annum on the arrears of rent as well as maintenance charges since the date of its accrual till actual payment is made by the defendant. For example, the interest at the rate of 24% per annum shall be payable on Rs. 29,116/- (i.e., one months' rent and maintenance charge) for the October 2014 till its actual payment is*



*made by the defendant and same shall be applicable for the rent payable by the defendant for each month.*

*iii. The defendant shall be liable to pay the future rent and maintenance charges at the rate of Rs. 28,000/- per month and maintenance charges at the rate of Rs. 1160/- per month from the date of the decree till the defendant hands over the actual and vacant possession of the suit property to the defendant at the rate of 24% per annum from the date of its accrual till its payment.*

*iv. costs of Rs. 50,000/- is hereby quantified to be payable by the defendant to the plaintiff:”*

8. As stated above, this Court had on 28.08.2024 proceeded *ex parte* against the Respondent in view of the fact that there was no appearance of the Respondent for several hearings.

9. This Court had on 28.08.2024 directed as follows:

*“3.2 Learned Senior Counsel appearing on behalf of the Appellant further submits that the only prayer made in the Application under Order XII Rule 6 of the CPC filed by the Appellant was for a decree of possession of the subject property. However, the Trial Court while dealing with this Application wrongly granted a decree of possession along with a decree of recovery of arrears and also future rent which did not fall within the scope of the Application under Order XII Rule 6. He seeks to rely upon the prayers as set out in the Application which reads as follows:*

*“(a) Pass a Decree of possession of property bearing number Flat No.16/302 East End Apartment, Plot No. A-5 Mayur Vihar Phase -I Extension Delhi-110096,*

*(b) Pass any further order/orders as this Hon'ble Court may deem fit and proper in the present facts and circumstances of the case.”*

*3.3 Learned Senior Counsel further submits that the Appellant has also raised a defence of set-off before the Trial Court with respect to the payments made by the Appellants to the Respondent, which was not considered by the learned Trial Court.”*

[Emphasis supplied]

9.1 Learned Senior Counsel for the Appellant further submits that the Appellant had filed a counter-claim in the matter to set off the amounts that



2024:DHC:8175



have been expended by the Appellant on repairs / maintenance of the subject premises. It is contended that the counter-claim of the Appellant is pending adjudication before the learned Trial Court and the next date of hearing before the learned Trial Court is 21.12.2024.

9.2 In addition, learned Senior Counsel for the Appellant while relying on the record of the learned Trial Court submits that although the Application under Order XV-A of the CPC was filed by the Respondent on 16.03.2019 wherein a prayer was made to strike off the defence of the Appellant and decree the suit in the sum of Rs. 15,12,000/-, the learned Trial Court did not decide the same either. It is contended that, in fact, as per order dated 03.07.2019 passed by the learned Trial Court, this Application under XV-A was kept pending by the learned Trial Court to be decided after the disposal of the Application under Order XII Rule 6 of the CPC and Section 151 of the CPC, which has resulted in the Impugned Order. It is further submitted that the Impugned Judgment decides only the Application under Order XII Rule 6 of the CPC which had a limited prayer. He seeks to rely upon the judgment of the Supreme Court in ***Bachhaj Nahar And Anr. v. Nilima Mandal & Anr.***<sup>1</sup> and ***Manohar Lal (Deceased) Through LRs v. Ugrasen (Dead) by LRs. & Ors.***<sup>2</sup> to submit that the Court cannot go beyond the pleadings filed and grant relief beyond what is prayed for.

10. We find merit in the contention of the learned Senior Counsel for the Appellant. The only prayer in the Application filed by the Respondent/Plaintiff (*which is reproduced in paragraph 9 above*) was for a decree of possession of the subject premises, as follows:

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<sup>1</sup> (2008) 17 SCC 491

<sup>2</sup> (2010) 11 SCC 557



“(a) Pass a Decree of possession of property bearing number Flat No.16/302 East End Apartment, Plot No. A-5 Mayur Vihar Phase -I Extension Delhi-110096”

10.1 While deciding the Application under Order XII Rule 6 of the CPC, it was incumbent on the learned Trial Court to adjudicate upon the issue of title of the property and for the grant of possession of the subject premises. However, the Impugned Judgment decreed arrears of rent and *mesne profits* without any adjudication of the *mesne profits*/damages claimed or upon the counter-claim/set off of the Appellant.

11. Paragraph 41 of the Impugned Judgment shows that the plea of the Appellant *qua* his possession of the property was decided in the Impugned Judgment. The learned Trial Court gave a finding that the status of the Appellant was of a tenant and he was paying rent, water and electricity charges with regard to the same. The learned Trial Court further held that there was no right, title or interest of any kind created in favour of the Appellant merely due to the fact that he was renovating and maintaining the subject premises. Thus, an order was passed decreeing the suit for possession filed by the Respondent.

12. This Court finds no infirmity with the Impugned Order to the extent that the prayer of possession has been granted. However, as stated above, there was no adjudication of the arrears of rent or the *mesne profits* at the time of passing of the Impugned Judgment, since the Application under Order XV-A of the CPC was yet to be decided. There was also no adjudication of the counter-claim filed by the Appellant prior to the passing of the Impugned Judgment.

13. The Supreme Court in ***Bachhaj Nahar*** case has held that only in exceptional cases would a Court go beyond the pleadings in a case and



consider a case which is not specifically pleaded, for example if the parties would raise a contention at the stage of the arguments, that the pleadings in essence contain the averments and that evidence has been led by the parties in respect thereto. The Court cannot make out a case which has not been pleaded, *suo moto*. The relevant extract is below:

*“17. It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contains the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate, this should be only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise. The principles laid down in *Bhagwati Prasad and Ram Sarup Gupta (supra)* referred to above and several other decisions of this Court following the same cannot be construed as diluting the well settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded. Another aspect to be noticed, is that the court can consider such a case not specifically pleaded, only when one of the parties raises the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties proceeded on that basis and had led evidence on that case. Where neither party puts forth such a contention, the court cannot obviously make out such a case not pleaded, suo moto.”*

[Emphasis supplied]

13.1 In addition, the Supreme Court in *Manohar Lal* case has held that where a party has not asked for a certain relief and not filed proper pleadings, the same cannot be granted, and has summarized the law that a relief which has not been prayed for cannot be granted. The relevant extract is below:

*“30. In *Trojan & Co. v. Nagappa Chettiar* [(1953) 1 SCC 456 : AIR*



1953 SC 235] this Court considered the issue as to **whether relief not asked for by a party could be granted and that too without having proper pleadings**. The Court held as under : (AIR p. 240, para 22)

“22. ... It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.”

31. A similar view has been reiterated by this Court in *Krishna Priya Ganguly v. University of Lucknow* [(1984) 1 SCC 307 : AIR 1984 SC 186] and *Om Prakash v. Ram Kumar* [(1991) 1 SCC 441 : AIR 1991 SC 409] **observing that a party cannot be granted a relief which is not claimed.**

32. Dealing with the same issue, this Court in *Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi* [(2010) 1 SCC 234 : (2010) 1 SCC (Cri) 757 : AIR 2010 SC 475] held : (SCC p. 246, para 30)

“30. ... Though the court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner.”

33. In *Fertilizer Corpn. of India Ltd. v. Sarat Chandra Rath* [(1996) 10 SCC 331 : 1997 SCC (L&S) 75 : AIR 1996 SC 2744] this Court held that “the High Court ought not to have granted reliefs to the respondents which they had not even prayed for”.

34. In view of the above, **law on the issue can be summarised that the court cannot grant a relief which has not been specifically prayed by the parties.**”

[Emphasis supplied]

14. A review of the pleadings and order sheets show that no examination was conducted on the issue of *mesne profits* or on arrears of rent. The counter-claim which was filed by the Appellant had mentioned that the Appellant has spent more than Rs. 12 lakhs in repairs and maintenance of the subject premises from time to time and that this amount is to be adjusted against the arrears of rent and *mesne profits*, if any are due, from the Appellant.



2024:DHC:8175



15. The record shows that the Application filed by the Respondent under Order XV-A of the CPC has been filed for grant of *mesne profits*. It is stated in the Application that the tenancy has been admitted and there is no rental being paid since the year 2014. Relying on the judgment of this Court in ***Raghubir Rai v. Prem Lata & Anr.***<sup>3</sup>, it is further stated that the Court is empowered to direct deposit at such rates as the erstwhile tenant on the basis of material of record is found to have agreed to pay to the landlord.

15.1 However, as stated above, the learned Trial Court had by its order dated 03.07.2019 directed that the said Application under Order XV-A shall come up after disposal of the Application under Order XII Rule 6 of the CPC and the Application under Section 151 of the CPC filed by the Appellant. Thus, the issue *qua mesne profits*, damages, arrears of rent was not adjudicated upon by the learned Trial Court.

16. It is no longer *res integra* that an Application under Order XII Rule 6 of the CPC has to be passed upon clear and categorical admissions made by a party. Order XII Rule 6 of the CPC provides for a judgment in view of the clear and categorical admissions made by a party. [See : ***Hari Steel and General Industries Limited and Another v. Daljit Singh and Others***<sup>4</sup>]. The record available before this Court do not show any admission with respect to arrears of rent / *mesne profits*. In fact, as stated above, this adjudication is still pending before the learned Trial Court as is clear from the order dated 03.07.2019, which was placed on record by the learned Senior Counsel for the Appellant.

17. Accordingly, the Impugned Judgment and decree to the extent it

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<sup>3</sup> (2014) 211 DLT 516 (DB)

<sup>4</sup> 2019 20 SCC 425



2024:DHC:8175



decrees arrears of rent and *mesne profits*, future rent and maintenance and interest thereon, is hereby set aside. It is clarified that this Court finds no infirmity with the judgement/decreed of possession as passed by the learned Trial Court and as set out in para 42(i).

17.1 The Appeal and pending Application is accordingly disposed of in the foregoing terms.

18. The parties appear before the learned Trial Court on the date already fixed i.e., 21.12.2024 for adjudication of the counter-claim and the aspect of arrears of rent as well as the mesne profits due in respect of the premises bearing number Flat No. 16/302, East End Apartment, Plot no. A-5, Mayur Vihar Phase-I, Extension, Delhi-110096.

19. Parties will act based on the digitally signed copy of the order. Registry is directed to take appropriate steps.

**TARA VITASTA GANJU, J**

**OCTOBER 22, 2024/r/ ha**

[Click here to check corrigendum, if any](#)