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

+ **RFA 506/2019 & CM APPL. 24713/2019**

RAJ KUMAR GAUR & ANRAppellants

Through: Mr. Md. Naudhad Alam &
Mr. Mithilesh Kumar,
Advocates.

versus

ISHWAR DASSRespondent

Through: Mr. T.C. Yogi, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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07.10.2024

1. The present appeal is directed against a decree and judgment dated 20.02.2019. The plaintiff-respondent filed the suit against the appellants herein, who are his son and daughter-in-law for possession of the suit property and *mesne* profits/occupation charges.
2. The suit was decreed in respect of possession of the suit property and a decree for damages/*mesne* profit at the rate of ₹2,250/- per month with effect from 01.10.2015 until handing over of actual vacant and physical possession was also granted.
3. By an order dated 13.03.2020, it was recorded as follows:-

“Learned counsel for the appellants states that since the deposit required was not made, stay granted against the impugned judgment and decree by order dated 22.05.2019 stands vacated; and that the appellants are not agitating this issue any longer. Counsel



further states that possession of the subject property has been surrendered to the respondent on 18.02.2020, which is confirmed by learned counsel for the respondent.

Accordingly the only issue which survives is about mesne profits/damages for use and occupation that have been awarded by way of the impugned judgment and decree @ Rs.2,250/- per month w.e.f. 01.10.2015 till 18.02.2020, the date on which possession was surrendered.

Counsel for the respondent confirms that court fee due till date of surrender of possession, as was required to be paid in accordance with judgment, has not yet been paid. He undertakes to pay the deficit court fee within two weeks from today; and place proof of payment before this court.

List for compliance of the above direction on 13 May 2020.”

4. Mr. T.C. Yogi, learned counsel for the respondent, states that the respondent does not intend to execute the decree for *mesne* profit/damages for use and occupation and has no objection to the decree be set aside to that extent. He confirms that possession has been handed over to the respondent on 18.02.2020, as recorded in the said order.
5. In view of the above, with the consent of Mr. Yogi, the impugned judgment and decree is modified to the extent that the decree for damages/*mesne* profits [paragraph b of the relief granted by the impugned judgment] is set aside.
6. The appeal, alongwith pending application, stands disposed of in these terms.

PRATEEK JALAN, J

OCTOBER 7, 2024

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