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

% ***Date of decision: 18th October, 2024***

+ CM(M) 3628/2024

KAMLESH MEHTA SINCE DECEASED THROUGH LRS

.....Petitioner

Through: Mr. Kunal Srivastava, Advocates.

versus

VINOD GARG

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner filed a suit for possession, recovery of arrears of rent and damages.
2. As far as relief regarding possession was concerned, on the basis of the admission made by the defendant/respondent, decree to that effect was passed. Such decree was challenged by the defendant but, eventually, such *Regular First Appeal* was *dismissed-in-default*.
3. The possession has now been restored back to the plaintiff, *albeit*, during the execution only.
4. However, the suit proceeded further for the purposes of recovery of rent and damages/mesne profit.
5. In terms of prayer (c) made in the suit, the plaintiff was also seeking damages premises @ Rs.1,50,000/- per month for further continuous use of the tenanted.
6. The admitted rate of rent was Rs.1,10,000/- per month which



was subject to increase, even.

7. As per Para 14 of the plaint, the prayers (a), (b) and (c) read as under:-

- “a. Decree of Possession against the Defendant and in favour of the Plaintiff, directing Defendant to hand over peaceful physical and vacant possession of the suit Premises to the plaintiff.*
- b. Decree in favour of plaintiff and against the Defendant for the sum of Rs.8,70,000/- plus Service Tax comprising of arrears of rent i.e., Rs. 2,20,000/- for period 1-04-2018 to 30-05-2018 and Rs. 6,50,000/- plus service tax/GST towards damages for the period 01-06.02018 till 10.10.2018:*
- c. Decree directing the defendant to continue paying damages to the Plaintiff for use and occupation @ Rs.1,50,000/- per month, or at such rates as may be determined and assessed after enquiry under provisions of order XXII of the Civil procedure code.*

8. When the final decree was passed by learned Trial Court on 18.12.2023, it allowed prayer (b) and awarded a sum of Rs.8,70,000/- in terms of prayer (b).

9. It seems that the grievance of the petitioner was with respect to prayer (c) as instead of awarding damages for further continuous use, which was sought @ of Rs.1,50,000 per month, learned Trial Court seems to have granted damages as a lump sum amount of Rs.1,50,000/-, besides decreeing prayer (b).



10. Accordingly, petitioner/plaintiff moved an application under Section 152 CPC read with Section 151 CPC seeking amendment in the judgment on account of the above clerical error as the period of such further use was substantial.

11. Learned Trial Court, however, dismissed the above said application holding that there was no such clerical error, supplementing that further interference would rather amount to altering the judgment.

12. This Court is conscious of the fact that the challenge in the present petition is only with respect to the order dated 07.06.2024 whereby the learned Trial Court has dismissed the above said application moved under Section 152 read with Section 151 CPC. If petitioner wants to challenge decree as such, the proper course for him would be to file Regular First Appeal.

13. It is though evident that while passing *ex-parte* judgment, learned Trial Court observed that the point of consideration was whether the plaintiff was entitled for a decree for a sum of Rs. 8,70,000/- in terms of prayer (b) and further whether the plaintiff was also entitled for *continuous damages* for use and occupation @ Rs. 1,50,000/- per month along with interest. Though the prayer in terms of (b) was decreed but with respect to future use and occupation, the learned Trial Court seems to have granted fixed damages as Rs. 1,50,000/-.

14. It seems that the petitioner has not been able to highlight the



above error very clearly before the learned Trial Court as he merely confined himself to prayer (b) whereas the aspect qua damages for future use was contained in prayer (c). This inadvertent error on part of the petitioner seems to have resulted in dismissal of his such request. It will be, therefore, in the fitness of the things, if the present petition is disposed of by directing the learned Trial Court to hear the arguments afresh on the above said application and to decide it afresh, in accordance with law. Ordered accordingly.

15. The petitioner would be at liberty to move application seeking review as well and, in case, any such application is moved, it is expected that the learned Trial Court considers the same, in accordance with law.

16. Petitioner is directed to appear before the learned Trial Court on 04th November, 2024 for doing the needful.

17. Present petition stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

OCTOBER 18, 2024
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