



2025:DHC:4291-DB



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

Date of decision: 22.05.2025

(7) + FAO(OS) 110/2024, CM APPL. 45328/2024, CM APPL. 45329/2024

HARDEEP SINGH SAFRIAppellant
Through: Mr. Kundan Kr. Mishra & Mr. Ratnesh Kumar, Advs.

versus

SARDAR GURDYAL SINGHRespondent
Through: Mr. Tarang Gupta, Mr. Kartikeya Sharma, Advs.

(8) + FAO(OS) 111/2024, CM APPL. 45368/2024, CM APPL. 45369/2024

HARDEEP SINGH SAFRIAppellant
Through: Mr. Kundan Kr. Mishra & Mr. Ratnesh Kumar, Advs.

versus

MANAV BAJAJRespondent
Through: Mr. Tarang Gupta, Mr. Kartikeya Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (Oral)

1. These appeals have been filed challenging the Order dated 08.05.2024 passed by the learned Single Judge of this Court in I.A. No.17325/2023 in CS(OS) No. 223/2021 and I.A. No. 15840/2021 in CS(OS) No. 643/2021, whereby the applications filed by the appellant under Order XVA of the Civil Procedure Code, 1908 (in short, 'CPC') were disposed of with the direction to await the outcome of the appeal filed by the respondents being RFA No.409/2010.

Signature Not Verified

Signed
By: PRIYADARSHANI JAIN
Signing Date: 22.05.2025
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2. To give a brief background of the facts in which the present appeals arise, the appellant has filed the above Suits against the respondents, seeking possession, damages, mandatory, and permanent injunction with respect to the portions of property bearing No. 76, M.M. Road, Motia Khan, Dump Scheme, Jhandewalan, New Delhi-110055.

3. The plaintiff in the said Suits has claimed that the respondents had filed a Suit, being CS(OS) No.281/2004, titled as ***Shri Manav Bajaj & Ors. vs. Sardar Mehal Singh & Ors.***, wherein, by a Judgment dated 02.01.2010 passed by learned Additional District Judge, Tis Hazari Court, Delhi, the respondents have been held to be illegal occupants of the above Suit premises. The appellant claimed that though the respondents have filed an appeal challenging the said Judgment, being RFA No.409/2010, there is no *interim* Order passed in the said appeal in favour of the respondents.

4. In the above Suits, the appellant filed the above the applications under Order XVA of the CPC, praying for the direction to the respondents to pay/deposit, during the pendency of the Suits, such amount as may be directed by the Court, as use and occupation charges.

5. As noted hereinabove, the learned Single Judge, however, was of the opinion that as the appeal is pending adjudication, it would be advisable to dispose of the abovementioned applications, and to await the decision of the court in RFA No. 409/2010. We may quote from the Order as under:



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“19. In the present case, admittedly, the question of the issue as to the status of the defendant in the suit property is pending for consideration before this court in RFA 409/2010. The learned Additional District Judge in CS 281/2004 has held the defendant to be the illegal occupant. However, the first appeal which is a matter of right is pending for consideration before this court.

20. I consider that till the issue is decided by this court in RFA 409/2010, any order in the present application may prejudice either of the parties. The documents as raised by the defendant claiming its tenancy are pending scrutiny before the first Appellate Court. The evidence in the present case is also yet to be recorded. Therefore, in the interest of justice, the present applications are disposed of with a direction to await the decision of the Court in RFA No.409/2010. However, the plaintiff shall be at liberty to take appropriate legal steps in RFA No. 409/2010.”

6. The learned counsel for the appellant submits that mere pendency of the appeal, does not amount to a stay on the findings or on the operation of the judgment impugned therein. He submits that the respondents having been declared as illegal occupants of the suit property, have to be directed to deposit the use and occupation charges during the pendency of the Suits filed by the appellant.

7. On the other hand, the learned counsel for the respondents submits that the Suit itself are completely vague and do not establish any right of the appellant in the Suit Property. He submits that mere passing of the decree against the respondents would not justify passing of an Order under Order XVA of the CPC. He raises various other objections as well on the merits of the application.

8. We have considered the submissions made by the learned counsels for the parties.



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9. At the outset, we would note that as the Impugned Order does not consider the merits of the rival claims of the parties. We would, therefore, also refrain ourselves from dealing with the same.

10. The only question that is to be determined by us is whether the learned Single Judge has erred in disposing of the applications filed by the appellant on the ground of mere pendency of the appeal filed by the respondents.

11. As noted hereinabove, in the said appeal filed by the respondents, there is no order of stay granted in favour of the respondents. The judgment impugned therein, therefore, remains operative till date. Order XLI Rule 5 of the CPC states that an appeal shall not operate as a stay of proceedings under a decree or order appealed from. We quote sub-rule (1) of Rule 5 of Order XLI of the CPC as under:

“5. Stay by Appellate Court.—(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

[Explanation.—An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance].”

12. The effect of the judgment of the learned Additional District



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Judge on the applications filed by the appellant, therefore, has to be considered by the learned Single Judge. The learned Single Judge, in our opinion, has, therefore, erred in disposing of the abovementioned applications merely on the ground of the pendency of the appeal.

13. Therefore, the impugned Order dated 08.05.2024 is set aside, I.A. No.17325/2023 in CS (OS) No. 223/2021, and I.A. No. 15840/2021 in CS (OS) No. 643/2021, are restored back to their original numbers. They shall be listed before the learned Single Judge on 23rd July, 2025 for considering afresh. As the parties are appearing before us, there shall be no necessity to issue a fresh Notice of these applications to the parties.

14. In such consideration, of course, all objections of the respondents would also remain open to be considered. Unless there is any order passed to the contrary by the Court hearing the appeal, that is, RFA No.409/2010, to the contrary, the learned Single Judge shall decide on the applications remaining uninfluenced by the pendency of the said appeal.

15. The appeals, along with pending applications, are disposed of in the above terms.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

MAY 22, 2025_{lpr/kz/VS}

Click here to check corrigendum, if any