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

+ RFA 591/2024, CM APPL. 4472/2025

KALAWATI DEVI

W/o Late Shiv Prasad Chaudhary

R/o H. No. RZL-200, Vijay Enclave, New Delhi.Appellant

Through: Mr. Satyavan K. Advocate.

versus

1. **AJAY KUMAR THAKUR**

S/o Late Budhram Thakur

R/o RZL-200, Vijay Enclave, New Delhi.

2. **SHRI MANOJ KUMAR THAKUR**

S/O Late Budhram Thakur

R/O RZL-200, Vijay Enclave, New Delhi.Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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17.03.2026

1. An Appeal under Section 96 of The Code Of Civil Procedure, 1908, (*herein referred to as 'CPC'*) has been filed on behalf of the Appellant challenging the Judgment/Decree dated 04.06.2024, whereby the learned District Judge has decreed the *Counter-claim of the Defendants/Respondents against the Plaintiff/Appellant, under Order XII Rule 6 CPC, for the Possession.*

1A. The *facts in brief* are that Appellant/Plaintiff-Kalawati had filed a *Suit for Recovery of Rs.5 lakhs* along with interest @ 2% per annum and for *Permanent Injunction*, in respect of the Suit property bearing No.RZL-200, Vijay Enclave, New Delhi-110045 against the Respondent/Defendant Ajay



Kumar Thakur and others.

2. A **Counterclaim No. 2/2020** seeking possession of the Suit Premises, was filed by the Defendant/Respondent Ajay Kumar Thakur.

3. It was the case of the counter claimant, Respondent-Ajay Thakur that Budhram Thakur, his father was the owner of the Suit Property, by virtue of GPA, Receipt and Possession Letter dated 02.02.1984.

4. It was further averred that Kalawati, the Appellant who was living in the vicinity, was a victim of wrongdoings of her husband. The father of Ajay Thakur took mercy on her and permitted her to reside in the portion of the Suit Property, on a nominal license fee of Rs.5,500/- per month.

5. Sh. Budhram Thakur, father of Ajay Thakur expired on 23.02.2012 after which Smt. Kalawati stopped paying monthly license fee. The original title documents of the Suit Property, were in the possession of Kalawati, who refused to return the same. ***Hence, the Respondents filed a Counterclaim for recovery of possession against Smt. Kalawati.***

6. Since Budhram failed to honour his commitment, and the ***Suit for recovery of Rs.5 lakhs and Permanent Injunction***, had been filed by Smt. Kalawati.

7. The **Defendants contested the Suit for Recovery of the Plaintiff, Kalawati by filing Written Statement and also filed a Counter-Claim** asserting that there was no document in writing given, about the loan of Rs.5 lakhs being taken by their father or that he ever agreed to transfer the Suit property in lieu of payment of loan. It was further asserted that the Plaintiff had been inducted as a Licensee for a License Fee of Rs.5,500/- per month. However, she is neither paying the License Fee nor vacating the premises, but has been implicating them in false cases. Hence, the claim of the



Plaintiff was denied. However, a Counter-claim was filed seeking Possession/ Mesne Profits from the Plaintiff/Appellant.

8. The Plaintiff contested the Counter-Claim by asserting that the complete facts have not been disclosed by Sh. Ajay Thakur. She has been residing in the property since 1995; all her documents, namely, Aadhaar Card, Ration Card, Election ID Card, etc., are of the Suit Premises. All the averments made in the Conter-Claim, were denied.

9. The Respondents, filed **the Application under Order XII Rule 6 CPC seeking the possession** of the Suit Property, from Smt. Kalawati, seeking Judgment of Admission qua the Possession of the Suit property.

10. Smt. Kalawati in the Reply to Application under Order XII Rule 6 CPC, admitted that the Suit Property admeasuring 50 sq. yds. had been purchased by Sh. Budhram Thakur, father of Ajay Thakur on 02.02.1984, from one Jagdish, after which he came to reside in the Suit Property. Smt. Kalawati further admitted that she and her family, was residing in a rented accommodation, in the same locality. However, it was submitted that on account of the marriage of the daughter and other requirements, *Budhram took Rs.5 lakhs from the husband of Smt. Kalawati and in order to secure the loan, he gave in writing that loan of Rs.5 lakhs which he had taken, would be returned by selling his own property and till then, the family of Shiv Prashad Chaudhary, would have right to live in half part of the property in question and also that till he fulfils his obligations, he would pay interest @ 2%. Further, in order to secure the loan, the original documents of the property were given to Shiv Prashad Chaudhary, husband of Kalawati. Kalawati and her family, since then, have been residing in the portion of the Suit Property. Her husband died on 24.12.2002.*



11. Earlier, the Defendants were not residing with the father, but in the year 2010, the Defendants came to Delhi from Gujarat and started residing in the other half of the house along with the father. The father of the Defendants died in the year 2012.

12. After the demise of the father of the Defendants, Plaintiff demanded Rs.5 lakhs from the Defendants or to transfer the Suit property in the name of the Plaintiff, but the Defendants requested some time to return the amount and kept on delaying the same on one pretext or the other and assured that in any case the Plaintiff along with the family, was residing in the portion of the Suit property.

13. The Plaintiff gave a Complaint dated 29.01.2012 to the Police against the Defendants who were threatening her to vacate the house and that she had danger to her life from the Defendants and the anti-social elements. Eventually, when the Defendants failed to return the money, *she filed a Suit for Recovery of Rs.5 lakhs along with interest @ 2% per annum since 1995 and in the alternative sought the directions be given to the Defendants to transfer the Suit property in the name of the Plaintiff and also for Permanent Injunction.*

14. *Smt. Kalawati though contested the Counterclaim of the Respondent, and the Application under O.XII Rule 6 CPC, but admitted the ownership in favour of Sh. Budhram, father of Ajay Thakur, but claimed that her husband had advanced Rs.5 lakhs to Sh. Budhram Thakur, on account of which, husband of Kalawati was permitted to reside on a small portion of the Suit Property, under the assurance that either he would return Rs.5 lakhs or transfer the Suit Property in favour of husband of Kalawati.*

15. The Application under Order XII Rule 6 CPC to seek possession by



Ajay Thakur, is claimed to be an arm twisting tactic and *mala fide* and his Counterclaim seeking possession, is liable to be dismissed.

16. The **learned District Judge** referred to the admissions of Kalawati, that in view of the loan of Rs.5 lakhs given by her husband to father of Ajay Thakur, who was admittedly the owner of the property, they had been permitted to live in the premises. Since the loan of Rs.5 lakhs has not been repaid, they have a right to continue in the premises.

17. Considering that all the ingredients of decree of possession stood admitted, the Application under Order XII Rule 6 CPC was allowed and the relief of recovery of possession in the Counterclaim filed by Ajay Thakur, vide Judgment dated 04.06.2024, though the Counter-Claim for Mesne Profits is still pending.

18. Aggrieved by the said Judgment, the **present Appeal** has been preferred by the Plaintiff/Non-Counter-Claimant.

19. The **grounds of challenge** are that the impugned Judgment dated 04.06.2024, in contrary to law and facts of the case and is totally unsustainable. There were no admissions made by the Plaintiff, either in the Plaint or in the response to the Counter-Claim and, therefore the ingredients of Application under Order XII Rule 6 CPC, were not met. The Counter-Claim had been filed with the sole motive to harass the Plaintiff.

20. It has not been considered that the father of the Respondents/Defendants had agreed to sell the property to the Appellants, as mentioned in the Plaint. The actual dispute has not been considered in the right perspective. Moreover, it has been admitted in the Counter-claim that the Appellant is in Possession of the original documents of the property, but it has not been explained that how the original documents came in the



Possession of the Appellant. *No documentary evidence has been brought on record to show that the Appellant is a Licensee in the half portion of the Suit property.* Without recording of evidence in regard to their respective cases, the impugned Order, in part decreeing the Counter-Claim, was not justified. It has resulted in a great miscarriage of justice to the Appellant and also huge financial loss along with mental harassment. The Appellant cannot be thrown out of the Suit property in the manner adopted by the Respondent, which is gross misuse of the process of the Court.

21. Reliance is placed on Ashok Kumar Bagga vs. Rajvinder Kaur AIR OnLine 3021 Del 724 in RFA No.226/2020 decided on 07th April, 2021 by the Co-ordinate Bench of this Court. Reliance is also placed on Himani Alloys Limited vs. Tata Steel Limited (2011) 15 SCC 273, wherein the scope of Order XII Rule 6 has been explained.

22. It is submitted that the present Judgement is without merit and is liable to be set aside.

23. **Learned Counsel for the Respondent submits** that though there is a reference made by the Plaintiff about the written document, but the same has not been filed on record. From the averments made in the Plaint, it is evident that *her status was only that of a Licensee*, who had been permitted by the father of the Respondent to live in the property. It is submitted that there is no infirmity in the impugned Judgment and the Appeal is liable to be dismissed.

Submissions heard and record perused.

24. The Appellant Kalawati has admitted that Budhram, father of the Defendant was the owner of the Suit Property. She herself has explained that her husband Shiv Prashad Chaudhary, along with his family, was permitted



to reside in the Suit Property since 1995 in view of a loan of Rs.5 lakhs which was given by her husband. Admittedly, to secure the loan of Rs.5 lakhs, original documents of paper were given to Shiv Prashad Chaudhary, deceased husband of Smt. Kalawati.

25. It is quite evident from the admissions of Smt. Kalawati herself, that the possession was given only in lieu of loan of Rs.5 lakhs which had been taken by late Sh. Budhram, father of the Defendant. Smt. Kalawati has already sought the recovery of loan, by way of Suit for Recovery, in which the present Counter-Claim has been filed for possession.

26. Even if the case of the Appellant is admitted, her case is that Budhram had undertaken that he would continue to pay interest @ 2% on the loan amount and in case, he was unable to pay the loan, he would execute the documents of title in favour of Shiv Prashad Chaudhary, deceased husband of Kalawati.

27. From her own contentions, it emerges that at best, this written document can be considered as an Agreement to Sell whereby late Budhram agreed to transfer the property in favour of Shiv Prashad Chaudhary, deceased husband of Kalawati, but the Appellant herself never sought execution of sale documents in her favour. She has only claimed the return of Rs.5 lakhs for filing a Suit.

28. In these circumstances, when admittedly, her occupation was permissive as per her own submissions, she in the absence of any title documents, which are admittedly in the name of Budhram, father of the Respondents, cannot claim any right to continue in the possession of the Suit Premises.

29. The learned District Judge *vide* impugned Order dated 04.06.2024,



has rightly observed that all the ingredients for passing an Order for possession stood clearly admitted by Smt. Kalawati and therefore, passed a decree for possession.

30. The Appellant-Kalawati may have an independent right to seek the recovery of loan of Rs.5 lakhs for which she has already filed a Suit, but it does not entitle her to continue the possession in the Suit Property.

31. There is no merit in the present Appeal, which is hereby, dismissed along with pending Applications.

NEENA BANSAL KRISHNA, J.

MARCH 17, 2026/VA/N