
(2001) 10 DEL CK 0169
In the Delhi High Court
Case No : C.R. No. 523 of 2001

Kailash Kaur

APPELLANT

Vs

Sanjit Kumar Saha

RESPONDENT

Date of Decision : 15-10-2001

Acts Referred:

Citation : (2001) 10 DEL CK 0169

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : K.R. Chawla, for the Appellant;

Final Decision : Dismissed

Judgement

R.C. Jain, J.—In this revision petition the petitioner seeks to challenge the order of the learned Additional District Judge, Delhi dated 5-2-2001 thereby holding that the petitioner-decree holder is not entitled to the recovery of interest amount of Rs. 1,14,497.50 paise for which execution was sought by the petitioner-decree holder.

2. Briefly, the relevant facts leading to the filing of the present revision petition are that the petitioner herein had filed a suit for possession and recovery of arrears of rent and damages/mesne profits for use and occupation of the tenanted premises. The suit of the petitioner was decreed vide judgment and decree dated 16-12-1998 for recovery of possession of back portion of house No. A-16, DDA, Naraina Vihar, New Delhi, and a sum of Rs. 10,552/- out of which Rs. 9987/- was awarded as damages/mesne profits with simple interest at the rate of 15% per annum till the amount was paid. A further decree at the rate of Rs. 7040/- per month for damages/mesne profits for use and occupation of the suit premises was also passed from the date of filing of the suit with simple interest at the rate of 15% per annum till such time the decree holder got back possession of the suit premises. Aggrieved by the said judgment and decree, the respondent-judgment debtor filed a Regular First Appeal in this Court which

came up for hearing before a Division Bench of this Court on 1-2-1999 when the Division Bench made the following order:-

"During the course of hearing of this appeal, the parties have arrived at a settlement. The appellant undertakes to vacate and handover peaceful vacant possession of the suit premises to the respondent by or before 31st December, 1999. The appellant further undertakes that w.e.f. January, 1996 up to 31st December, 1998 he will pay rent/use and occupation charges to the respondent @ Rs. 5,000/- per month. After adjusting the amount already paid or deposited in Court towards rent for this period, the appellant will pay the balance amount within one month from today directly to the respondent. With effect from 1st January, 1999, the appellant undertakes to pay rent/use and occupation charges @ Rs. 6,000/- per month. The rent will be paid regularly by the 10th of each succeeding month. The appellant will not create any third party interest in the suit premises during this period.

Let an affidavit by way of undertaking on the above terms be filed by the appellant within two weeks from today. A copy of the same be given in advance to counsel for the respondent.

Adjourned to 19th February, 1999."

3. On the next date i.e. 19.2.1999, the respondent-judgment debtor submitted his undertaking affidavit which was accepted by the Court by making the following order:-

"The undertaking given to this Court orally as well as by way of affidavit is hereby accepted. The account number has been furnished by the respondent today in Court. Let the appellant deposit the rent and occupation charges on or before 10th of each English calendar month in the saving account of the respondent bearing No. 17722 of Punjab National Bank, Naraina. The appellant will also pay electricity and water bills to the departments concerned directly. Respondent shall give the bills received by her in time to the appellant for payment. In view of the undertaking given by the appellant the appeal is disposed in terms of the same. Parties shall be bound by terms of the undertaking.

4. The petitioner-decree holder thereafter filed an execution petition on 6-1-2001 for issuance of warrants of attachment of the bank account of the respondent-judgment debtor to the tune of Rs. 1,52,328.30 paise. The decree holder had claimed a sum of Rs. 6109.25 paise towards the costs, Rs. 37,560.00 towards electricity bill, Rs. 466-00 towards water bill and a sum of Rs. 1,14,497.50 paise towards the interest. The execution was opposed on behalf of the judgment debtor so far as it tended to recover the amount of interest and the learned trial court on a consideration of the matter held that the petitioner-decree holder is not entitled for recovery of any amount towards interest primarily on the ground that the decree of the learned trial court had merged with the orders of this Court dated 1-2-1999 and 19-2-1999 which did not provide for the payment of interest.

5. I have heard Mr. K.R. Chawla, learned counsel for the petitioner-decree holder and have given my thoughtful consideration to his submissions. The only submission put forth on behalf of the petitioner is that despite this Court's orders dated 1-2-1999 and 19-2-1999, the decree passed by the trial court so far as it awarded the interest at the rate of 15% per annum on the amount of damages/mesne profits for use and occupation remains intact and unaltered. The basis of this contention is that the order of award of interest has not been set aside. To me the contention appears to be wholly misconceived and against the settled legal position. It is an established proposition of law that the judgment and decree of the trial court merges with the order of the appellate court. In the case in hand on a consideration of the undertaking given by the respondent-judgment debtor and accepted by the Court, it is impossible to hold that the respondent-judgment debtor had undertaken to pay the interest on the reduced amount of damages/occupational charges as offered. On the other hand it appears that whatever was payable by the respondent-judgment debtor on account of damages/mesne profits for use and occupation, electricity and water charges etc. was fully detailed out in the undertaking which was given in the presence of the opposite side i.e. petitioner-decree holder and was accepted by the Court being just and reasonable, the appeal was disposed of in terms of the said undertaking. It is, Therefore, manifest that whatever claims were made by the petitioner-decree holder and allowed by the Court were finally settled by means of the order dated 9-2-1999. The parties having undertaken to abide by the terms of the said undertaking, it does not lie in the mouth of the petitioner-decree holder to urge now that she is entitled to recover the interest awarded by the learned trial court.

6. For the above said reasons, this Court is of the considered opinion that the order of the learned trial court is fully justified and does not suffer from any illegality, material irregularity or infirmity which calls for any interference at this end. The revision petition being devoid of any merits is dismissed.