
(2023) 07 RAJ CK 0035
In the Rajasthan High Court
Case No : Civil First Appeal No. 247 Of 2023

Shankar Dass And Others

APPELLANT

Vs

Mohit Goyal

RESPONDENT

Date of Decision : 12-07-2023

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2023) 07 RAJ CK 0035

Hon'ble Judges : Rekha Borana, J

Bench : Single Bench

Advocate : Trilok Joshi, Aakash Kukkar

Final Decision : Disposed Of

Judgement

Rekha Borana, J

1. The present appeal has been preferred against the judgment and decree dated 11.10.2022 passed by the Special Judge, NDPS Matters, Sri Ganganagar in Civil Suit No.109/2016 (CIS No.70/2015) whereby the suit for possession, recovery of arrears of mesne profit and perpetual injunction as preferred by the plaintiff had been decreed.
2. An application under Section 5 of the Limitation Act has also been preferred along with the present appeal for condonation of delay of 174 days caused in preferring the present appeal.
3. For the reasons stated in the application, the same is allowed. The delay in filing the appeal is condoned.
4. Learned counsel appearing for the appellants-defendants submitted that the defendants are residing in the said premises since last 19 years and therefore, needs some reasonable time to vacate the suit premises. Learned counsel submitted that he has instructions not to press this appeal on merits but reasonable time may be granted to the appellants to vacate the suit premises

and to handover the vacant possession of the same to the respondent-plaintiff.

5. Learned counsel for the respondent submits that the possession of the premise has already been handed over to him but in view of the submission made by counsel for the appellants and as agreed between the parties, it has been understood between the parties that the possession would be handed over back to the appellants-defendants forthwith and the appellants undertake to hand over the vacant possession of premises in question on or before 31.07.2024.

6. Having heard learned counsel for the appellants-defendants and having perused the judgment and decree of the Court below, the prayer made by learned counsel for the appellants-defendants seems to be reasonable and deserves to be granted subject to the appeal not being pressed on merits.

7. Accordingly, it is directed that the respondent-plaintiff shall handback the possession of the premises to the appellants-defendants forthwith if not handed over till date. The appellants-defendants shall handover the peaceful and vacant possession of the suit premises to the respondent-plaintiff within a period of one year from today i.e. on or before 31.07.2024 and shall, w.e.f. 01.08.2023, continue to pay mesne profit at the enhanced rate of Rs.3,500/- per month (Rupees Three Thousand Five Hundred only) by 15th day of the next succeeding month or in advance to the respondent-plaintiff and in case there is any default in payment of mesne profit, the period of one year for eviction shall stand reduced and the decree of eviction would become executable forthwith. The appellants-defendants shall also clear all the arrears of mesne profit and pay the same to the respondent-plaintiff within two months from today, if not paid till date, otherwise the same will bear interest @9% per annum. The appellants-defendants shall also not sublet, assign or part with the possession of the suit premises or any part thereof in favour of anyone else and would not create any third party interest in the same during the aforesaid period and if it is so done, the same would be treated as void. The appellants-defendants shall furnish a written undertaking incorporating the aforesaid conditions in the Trial Court within one month and one copy thereof along with affidavit, in this Court. It is made clear that if the peaceful and vacant possession of the suit premises is not handed over to the respondent-plaintiff within a period of one year from today, i.e. upto 31.07.2024, or mesne profits are not paid as directed above, besides the expeditious execution of the decree in normal course, the respondent-plaintiff shall also be entitled to invoke the contempt jurisdiction of this Court.

8. With the aforesaid directions, the present first appeal of the appellants-defendants stands disposed of.

9. The stay application also stands disposed of.