

(2010) 12 DEL CK 0383

In the Delhi High Court

Case No : Regular Second Appeal No. 234 of 2010 and CM No. 23251 of 2010

Shri Dinesh Aggarwal

APPELLANT

Vs

Shri Sanjeev Kumar Gupta and Another

RESPONDENT

Date of Decision : 24-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(12)

Citation : (2010) 12 DEL CK 0383

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Manu Nayar and Karan Chauhan, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.

CM No. 23252/2010 (for exemption)

Allowed subject to just exceptions.

CM No. 23253/2010 (for delay)

In view of the averments made in the application, the delay of 17 days in refilling the appeal is condoned. Application is disposed of.

R.S.A. No. 234/2010 and CM No. 23251/2010 (for stay)

1. This appeal has impugned the judgment and decree dated 29.7.2010 whereby the appeal filed by the Plaintiffs had been allowed; the judgment and decree of the trial court was modified to the extent that apart from the award of mesne profits, the Plaintiffs were also held entitled to interest on the aforesaid amount which was calculated at the rate of 6% per annum from the date of institution of the suit till its realization.

2. The present suit was a suit for possession, recovery of damages and mesne

profit filed by the Plaintiffs Sanjeev Kumar Gupta and Devender Kumar Jain against Dinesh Aggarwal. Suit was decreed. Admittedly suit property had been delivered back to the Plaintiff on 10.9.2002. While dealing with issue No. 4 and 5 admitted rental of Rs. 18000/- was awarded for period 16.8.2000 to 15.9.2000 i.e. when the suit property was in occupation of the Defendant. Thereafter w.e.f. 16.9.2000 up to 10.9.2002 mesne profits @ Rs. 25000/- per month had been awarded. In this appeal filed by the Defendant he has challenged the interest awarded to the Plaintiff.

3. The impugned judgment while granting interest @ 6% per annum has relied upon the definition of "mesne profit" as contained in Section 2(12) of the CPC which inter alia reads as follows:

(12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession;

Reliance has also been placed upon a judgment of the Bombay High Court reported in AIR 1989 Bombay 309 to support the submission that the interest is an integral part of mesne profits.

4. There is no perversity in this finding. The substantial questions of law have been formulated in para 2 of the memo of appeal. No such substantial question of law has arisen. Interest had been awarded on the claim of mesne profits being an integral part of mesne profits as is evident from the definition of mesne profits as contained in Section 2(12) of the Code. This was in terms of the statute. The said finding calls for no interference.

Appeal is without any merit. Appeal as also pending application is dismissed.