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

+ **RSA 84/2025**

SMT. KUSUM LATA

.....Appellant

Through: Mr. Anunaya Mehta, Mr. Vidhan
Malik and Ms. Kunika Champawat,
Advocates.

versus

SH. KAPIL

.....Respondent

Through: Mr. N.K. Sharma and Mr. Harish
Kumar, Advocates alongwith
respondent.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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09.05.2025

CM APPL. 28548/2025 (exemption)

Exemption allowed, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed-of.

CM APPL. 28549/2025

By way of the present application filed under section 151 of the Code of Civil Procedure 1908 ('CPC'), the applicant/appellant seeks exemption from filing the entire trial court record.

2. For the reasons stated in the application, which is duly supported by affidavit, the application is allowed.
3. Let trial court record be requisitioned in electronic form; and copy be supplied to counsel on request.
4. The application is accordingly disposed-of in the above terms.



RSA 84/2025

5. By way of the present regular second appeal filed under section 100 read with section 151 of the CPC, the appellant impugns judgment dated 02.05.2025 passed by the learned District Judge-03, South-District, Saket Courts, New Delhi in appeal bearing MCA DJ No. 69/2024.
6. Mr. Anunaya Mehta, learned counsel appearing for the appellant submits, that the principal plank of the appellant's defence in the suit was that she was holding a usufructuary mortgage in respect of the suit property, which contention was however rejected by the learned trial court on the basis that the appellant had not placed on record any registered mortgage deed.
7. Mr. Mehta argues, that based on the view taken in relation to the usufructuary mortgage, the learned trial court came to the conclusion that the appellant (defendant in the suit) was merely a licensee in the suit property; and on that basis, proceeded to allow the application under Order XII Rule 6 of the CPC and has passed a partial decree against the appellant.
8. Mr. Mehta however submits, that in addition to the defence of holding a usufructuary mortgage, in paras 3 and 4 of the written statement, the appellant had also taken the plea that she had spent an amount of Rs. 15 lacs on making construction above the 03rd floor of the suit property on the asking of the respondent (plaintiff in the suit); and that therefore, the appellant was entitled to the benefit of section 60(b) of the Indian Easements Act 1882 ('Easements Act'), which makes a license irrevocable in those circumstances.



9. It is argued, that once the learned trial court had itself taken the view that the appellant was a licensee in the suit property, that status could not be the basis of passing a partial decree against the appellant, holding that she had no right to continue residing in the suit property, overlooking the appellant's plea that if she was a licensee, then that license was irrevocable in view of the section 60(b) of the Easements Act.
10. The aforesaid proposition has been placed as the proposed substantial questions of law in para 36(A) and (B) of the appeal.
11. It is further argued, that at the very least, in view of the questions that had arisen in the matter, a partial decree could not have been passed in the suit based on purported admissions under Order XII Rule 6 of the CPC.
12. Based on the proposed questions placed in para 36(A) and (B) of the appeal, issue notice.
13. Mr. N.K. Sharma, learned counsel appears on behalf of respondent on advance copy; and accepts notice.
14. Re-notify on 25th August 2025 before the learned Joint-Registrar.
15. List before court thereafter.

CM APPL. 28547/2025 (stay)

16. Issue notice.
17. Mr. N.K. Sharma, learned counsel appears on behalf of respondent on advance copy; accepts notice; and seeks time to file reply.
18. Let reply to the application be filed within 06 weeks; rejoinder thereto, if any, be filed within 04 weeks thereafter; with copy to the opposing counsel.



19. Re-notify on 25th August 2025 before the learned Joint-Registrar for completion of pleadings in this application.
20. List before court thereafter.
21. In view of the circumstances obtaining in the matter, it is directed that the appellant *shall not be evicted* from the suit property in execution of the impugned judgement and decree, till the next date of hearing before this court.

ANUP JAIRAM BHAMBHANI, J

MAY 9, 2025

V.Rawat