



\$~74 (Appellate)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RSA 120/2022

RAMESH KUMAR Appellant
Through: Mr. Karan Luthra, Adv.

versus

MUNNI DEVI Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

% **ORDER**
28.09.2022

CM APPL. 42787/2022 and CM APPL. 42788/2022

1. Exemption allowed, subject to all just exceptions.
2. The applications stand disposed of.

RSA 120/2022, CM APPL. 42785/2022 and CM APPL. 42786/2022,

3. This is a second appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC). The proceedings emanate from CS SCJ 858/2020, which was filed by the respondent against the appellant seeking possession of House No. 239, A Block, Pocket 7, Sector 17, Rohini, Delhi – 110089 (“the suit property”, hereinafter), along with injunctive relief against the appellant creating third party interest in respect of the suit property as well as recovery of arrears of rent @₹



13,000/- per month and damages @ ₹1,000/- per day.

4. The learned Additional Senior Civil Judge (“the learned ASCJ”) has, *vide* her judgment dated 14th January 2022, decreed the aforesaid suit CS SCJ 858/2020 in part to the extent of (i) restoration of possession of the suit property to the respondent, (ii) permanent injunction, restraining the appellant from creating third party interest in the suit property and (iii) part damages, payable by the appellant from 11th September 2020 till the date of vacation of the suit property along with part decree of damages @ ₹ 13,000/- per month against the appellant with effect from 11th September 2020.

5. Additionally, para 10.1 of the order dated 14th January 2022 of the learned ASCJ opined that the evidence would be required to be led as to whether on the issue of whether the respondent would be entitled to damages at a higher rate.

6. The aforesaid order stands upheld in appeal by the learned Additional District Judge (“the learned ADJ”) *vide* the impugned order dated 13th September 2022.

7. Mr. Luthra, after some hearing, restricts the relief sought in this appeal. He submits that, insofar as the prayer for handing over of the possession of the suit property to the respondent is concerned, he seeks time till 30th November 2022 to do so as he submits that the appellant is suffering from left side paralysis and his wife is a Stage IV cancer patient. Insofar as the challenge to the impugned orders are



concerned, Mr. Luthra restricts his challenge to the direction for continuation of the suit proceedings to determine whether the respondent would be entitled to a higher rate of damages.

8. In view thereof, the order dated 14th January 2022 of the learned ASCJ and the impugned order dated 13th September 2022 of the learned ADJ are upheld to the extent of the directions contained in para 10.2 of the order dated 14th January 2022 of the learned ASCJ which reads thus:

“(1) The decree of possession in respect of the suit property is granted in favour of the plaintiff and against the defendant.

(2) The decree of permanent injunction is granted in favour of the plaintiff and against the defendant thereby restraining the defendant from creating any third party interest and disposing off the suit property.

(3) The plaintiff is further granted decree thereby holding that the plaintiff is entitled for the damages from the defendant 11.09.2020 till the day of realization of the suit property and a part decree of damages at the rate of Rs13000/- per month is granted in favour of the plaintiff against the defendant from 11.09.2020 till the day of realization of the suit property.”

9. However, the appellant is granted time till 30th November 2022 to vacate the suit property.

10. Let notice be issued in this appeal to the limited extent on the issue of whether the proceedings before the learned ASCJ should be permitted to continue to ascertain whether the respondent would be entitled to a higher rate of damages.



11. Notice be served on the respondent through learned Counsel who appears on behalf of the respondent before the learned ADJ.

12. Reply, if any, be filed within four weeks with advance copy to learned Counsel for the appellant who may file rejoinder thereto, if any, within four weeks thereof.

13. List on 17th March 2023, on which date this Court would examine whether any substantial question of law arises for consideration.

C. HARI SHANKAR, J

SEPTEMBER 28, 2022
r.bararia