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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA 184/2017 & CM APPL. 6215/2017

NORTH DELHI MUNICIPAL CORPORATIONAppellant
Through: Mr. Sunil Goel, Mr. Himanshu
Goel, Ms. Dimple Aggarwal and
Ms. Varsha, Advocates.

versus

SUNITA KAELEY & ANRRespondents

Through: Mr. Sujata Rao A. and Mr. S. Roy,
Advocates for R-1.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
% **09.12.2024**

1. The appeal is directed against a judgment and decree dated 02.07.2016, by which the learned Trial Court has granted a decree of damages in favour of the plaintiff (respondent No. 1 herein) against the appellant-Municipal Corporation of Delhi ["MCD"] (defendant No. 2 before the Trial Court) for a sum of Rs. 4,50,000/- alongwith interest at the rate of 10 % per annum and costs.

2. It is submitted by learned counsel for the appellant-MCD that the decree is liable to be set aside as no prayer for damages was made in the suit against MCD. A copy of the plaint has been placed on record which shows that respondent No. 2 herein was impleaded as defendant No. 1 and MCD was impleaded as defendant No. 2. The reliefs sought in the



suit were as follows:

“A. The Defendant No. 2 to seal another gate nearest to the said Tower Which is marked as “B while opening the presently sealed gate which is marked as “A” in the site map attached with the suit plaint and/or open the sealing for the time being to allow the Plaintiff to enter into the said rooms and remove the said material as well to carry out the necessary repairing;

B. The Defendant No. 1 to take all the requisite actions and completing the necessary formalities and procedures formulated by MCD and other government agencies for installation of a Mobile Tower by depositing the necessary license charges and other charges per-se and penalty, (if any) levied upon them to get desealed the entrance gate on Second Floor of the said premises and further the Defendant No. 2 to ensure desealing of the suit property thereafter within a time bound period.

C. The Defendant No. 1 to pay damages amounting Rs. 6,50,000/- as computed to the date of filing the present suit as has been explained herein above along with pendete-lite and future damages and interest thereupon @ 18 % p.a. till desealing/realization accordance to the mentioned rate as explained herein above and/or as this Hon’ble Court deems fit and correct.

D. Cost of litigation.

E. Pass any or further order(s) which this Hon’ble Court deems fit and correct under the given circumstances in favor of the Plaintiff and against the Defendants.”

3. The issues framed by the learned Trial Court were on the same lines, as follows:

“1. Whether the defendant no. 1 had the permission of the competent authority to install the tower in the premises of the plaintiff, at the time of installation, as alleged by defendant no. 1? (OPD-1)

2. Whether the plaintiff is entitled to a decree for recovery of damages to the tune of Rs. 6,50,000/- as prayed from the defendant no. 1? (OPP)

3. Relief.”

4. It is submitted by learned counsel for the appellant that despite the aforesaid restricted prayer, the operative portion of the judgment reads as



follows:

“(36) In view of my above discussion, both the issues have been decided in favour of the plaintiff who is held entitled to the damages from the defendant no.2 North Delhi Municipal Corporation on account of damages caused to the books and repair done to the premises i.e. **Rs.3,00,000/-** and **Rs.50,000/-** respectively and also damages to the tune of **Rs.1,00,000/-** for mental harassment caused to her (totalling **Rs.4,50,000/-**) along with interest @10/% per annum from the date of filing of the suit till the date of recovery along with the costs of the suit. This shall be subject to the decision of the Hon'ble Delhi High Court and Hon'ble Supreme Court in cases filed by the Cellular Operators Association of India (COM) in **WP(C) No 3267 of 2010** and by Idea Cellular in **WP(C) No 3423 of 2010** before the Delhi High Court, if any and without prejudice to the rights of the defendant no.2 North Delhi Municipal Corporation to recover the same from the defendant no.1 in accordance with law.

(37) In view of my findings on the various issues, I hereby hold that the plaintiff is entitled to the damages from the defendant no.2 North Delhi Municipal Corporation on account of damages caused to the books and repair done to the premises i.e. **Rs.3,00,000/-** and **Rs.50,000/-** respectively and also damages to the tune of **Rs.1,00,000/-** for mental harassment caused to her (**totalling Rs.4,50,000/-**) along with interest @10/% per annum from the date of filing of the suit till the date of recovery along with the costs of the suit. This shall be subject to the decision of the Hon'ble Delhi High Court and Hon'ble Supreme Court in cases filed by the Cellular Operators Association of India (COAI) in **WP(C) No 3267 of 2010** and by Idea Cellular in **WP(C) 3420 of 2010** before the Delhi High Court, if any and without prejudice to the rights of the defendant no.2 North Delhi Municipal Corporation to recover the same from the defendant no.1 in accordance with law.”

5. Learned counsel for the respondent No. 1/plaintiff also submits that the suit is liable to be remanded to the learned Trial Court as the plaintiff's prayers for damages were directed against respondent No. 2. She submits that the suit was also subsequently amended, consistent with this position. Amended plaint be produced on the next date of hearing.

6. An adjournment is sought on behalf of the respondent No. 2 on the ground that there is a medical exigency in the family of learned counsel.

7. It appears *prima facie* that the suit is liable to be remanded as far as



the plaintiff and respondent No. 2 are concerned. The only relief sought against the appellant-MCD was for de-sealing of the plaintiff's property which has already been done. Learned counsel for the plaintiff has not therefore sought to press the said prayer at this stage.

8. To enable respondent No. 2 to make his submissions, list on 19.12.2024. It is expected that no further adjournment will be sought.

PRATEEK JALAN, J

DECEMBER 9, 2024/MR/AL/