

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. \_\_\_\_\_ OF 2018**  
**(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. 11819 OF 2016)**

SARDAR BHAG SINGH (SINCE  
DECEASED) THROUGH Lrs. ....APPELLANT(S)

VERSUS

VIKRAM SANDHU .....RESPONDENT(S)

**WITH**

**CIVIL APPEAL NO. \_\_\_\_\_ OF 2018**  
**(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. 27487 OF 2017)**

**J U D G M E N T**

**A.K.SIKRI, J.**

Leave granted.

2. The appellant entered into an agreement to sell dated 09.09.1994 with the respondent in respect of Second Floor with Terrace forming part of property No. A/11, N.D.S.E Part-I, New Delhi (hereinafter referred to as “the suit property”) for a total sale consideration of Rs. 27 lakhs. The respondent paid Rs. 1 lakh to the appellant as earnest money and took the possession of the suit property. The balance sale consideration i.e. Rs. 26 lakhs was payable at the time of registration of sale deed which

was to be executed within four months. The appellant after taking all necessary permissions requested the respondent to perform his part of the contract. However, the respondent did not turn to perform the contractual obligations. The appellant filed a suit for possession being CS(OS) No. 1143 of 1996 of the suit property and as also for mesne profits from the date of filing of the suit till delivery of the possession. The respondent filed written statement wherein he claimed that his possession was protected under Section 53A of the Transfer of Property Act, 1882. It was further alleged that the appellant was liable to execute sale deed after taking necessary permission from the concerned authorities but they failed to do so and violated the contractual obligations. It was also alleged that the respondent was not liable to pay any damages since he was occupying the suit property pursuant to the agreement to sell.

3. It is worth mentioning that after filing of suit by the appellant in the year 1996, the respondent herein also filed a suit for specific performance being CS (OS No. 1874/1997 against the appellant. The said suit was dismissed vide order dated 23.03.2005.
4. Issues were framed on 04.03.2003 in the suit filed by the appellant. However, the appellant filed an application under Order 12 Rule 6 of the CPC being I.A. No. 1462 of 2011 which was disposed of by the learned Single Judge vide order dated 15.02.2011. The learned Single Judge

returned to the finding that the respondent had failed to abide by the terms of the agreement to sell since he did not pay balance sale consideration inasmuch as continued to occupy the suit property for a long period of about 17 years against the earnest money i.e. Rs. 1 lakhs only and directed the respondent to handover the peaceful possession to the appellant. Further, the appellant and respondent were directed to led evidence in respect of damages/mesne profit and other remaining issues.

5. The learned Single Judge after taking into consideration the evidence led by the parties came to the conclusion vide order dated 10.01.2014 that the suit property was in illegal occupation and as per the market rate of the rent in the area where the property in question is situated, the appellant is entitled for mesne profit and damages.
6. Being aggrieved by judgment and decree dated 10.01.2014 passed by the learned Single Judge, the respondent filed RFA No. 119 of 2015 before the Division Bench of the High Court after a lapse of 623 days. The Division Bench of the High Court vide judgment and order dated 11.12.2015, while setting aside the judgment and decree dated 10.01.2014 passed by the learned Single Judge, held as under:

“7. Vide impugned judgment dated January 10, 2014 the learned Single Judge noted that plaintiffs have proved on record another lease deed dated April 28, 2009 in respect of property being No.A-12, Ring Road, NDSE, Part-I which was adjacent to the suit property, however, the said lease related to the entire property and

the property in question was second floor of the building. Thus determining the rate of rent of the second floor at Rs. 60/- per sq. ft. on the date of filing of the suit and the area of the suit property being 2000 sq. ft. the learned Single Judge calculated mesne profit at Rs. 1.20 lakh per month with further stipulation of 20% increase after every three years from the date of filing of the suit. While returning this finding the learned Single Judge committed serious flaw. The property in question in the present case was a terrace above the first floor and not a built up second floor. No evidence was led by the plaintiffs to show that even a terrace which was not built up would fetch rent and thus the defendant was liable to pay mesne profit. No doubt, Vikram Sandhu led no evidence, however, even on the basis of the evidence led by the plaintiffs there is no material to show that an unbuilt terrace can fetch some rent. Since the learned Single Judge confused the terrace to the second floor of the building as a built up area and granted the mesne profit on the same basis, the impugned judgment is liable to be set aside.

8. No evidence was led by the plaintiffs for issue No. 6 & 7 as noted by the learned Single Judge. Hence, except that a decree of possession has been passed in favour of the plaintiffs they are not entitled to any other relief as prayed for. Thus the suit is liable to be dismissed with regard to issues Nos. 3,6&7.”

7. Hence this appeal. The grievance of the appellant is limited to grant of mesne profits and, therefore, that is the only focus of the present appeal.
8. We have heard the appellant who appeared in person and the learned counsel for the respondent at length and perused the material placed on record.
9. From the facts noted above, two pertinent aspects become manifest, which are as under:
  - (i) The suit filed by the respondent for specific performance of agreement stood dismissed way back in the year 2005 and the said

decree has attained finality.

(ii) On the contrary, suit filed by the appellant for possession was decreed by the trial court, by allowing application of the appellant filed under Order XII Rule 6 CPC.

10. From the aforesaid, it is clear that not only the respondent was held not entitled to specific performance of the agreement, the possession of the premises with him was held to be wrongful which led to passing of the decree of possession in favour of the appellant. As a consequence, it follows that for a period in question when the respondent remain in possession of the premises, such possession was not lawful. It is on this basis that the appellant had also claimed mesne profits in the suit filed by him. These mesne profits were even granted by the trial court i.e. learned Single Judge of the High Court. This part of the decree has been set aside by the Division Bench in appeal on the ground that no evidence was led by the appellant.

11. It is correct that the appellant had not led any evidence on the issue of mesne profits though such an issue was specifically framed. However, in the interest of justice, the appellant could have been granted some reasonable compensation for the wrongful possession of the premises from the respondent herein.

12. Accordingly, we put it to the learned counsel for the respondent if the

respondent could pay some compensation. At our instance, the respondent has agreed to pay Rs. 5 lakhs to the appellant in Civil Appeal arising out of Special Leave Petition No. 11819 of 2016. Since the appellant who appeared in person is not satisfied with the amount so awarded and refused to accept the same, the respondent shall deposit the amount in the High Court within a period of two months from the date of receipt of copy of this order. It would be open to the appellant to withdraw this amount. The appeal is disposed of accordingly.

13. Insofar as cross appeal of the respondent is concerned, the same is dismissed as withdrawn.

.....J.  
(A.K. SIKRI)

.....J.  
(ASHOK BHUSHAN)

**NEW DELHI;**  
FEBRUARY 23, 2018.