

## Dhruv Goel Vs Anand Parkash Goyal thru. LRs. and Others

**Court:** Delhi High Court

**Date of Decision:** March 19, 2010

**Acts Referred:** Civil Procedure Code, 1908 (CPC) – Order 12 Rule 6, Order 20 Rule 12, Order 20 Rule 18, Order 9 Rule 7, 151

**Hon'ble Judges:** S. Ravindra Bhat, J

**Bench:** Single Bench

**Advocate:** Pinky Anand and Ketki Goswami, for the Appellant; Jayant Nath and Vivek B. Saharya, for D-3, Ajay Shekhar, for Sanjiv Bahl, for Def No. 2 and Asheesh Jain, for D-14-16, for the Respondent

**Final Decision:** Allowed

### Judgement

S. Ravindra Bhat, J.

I.A. Nos. 2039/2009, 9180/2009, 2657/2009 & 8468/2009 in CS (OS) 420/1982

1. This common order will dispose of four applications, namely I.A. No. 2039/2009 (seeking enhancement of the interim amount of Rs. 15,000/-

directed to be paid by the defendants to the plaintiffs), I.A. No. 9180/2009 (by the plaintiffs, seeking compensation in view of the shops in the

possession of the defendants), as well as I.A. Nos. 2657/2009 and 8468/2009, in which Defendant Nos. 2 and 3 seek a direction to the plaintiffs

for accounting in respect of the use and occupation of certain properties at Asaf Ali Road, being a share in the basement.

2. Briefly the facts are that the plaintiffs are the children and widow respectively of late Sh. Suresh Kumar Goyal, who died in 1972. They claim

partition of the joint family properties on the basis of their being entitled to these shares, of the said late Sh. Suresh Kumar Goyal. In I.A. No.

2039/2009, a direction to the Defendant Nos. 2 and 3, to pay an amount of Rs. 1,37,500/- per month in respect of what is termed as the

entitlement of the plaintiffs, in respect of the undivided share in 31, Sunder Nagar, New Delhi, is sought. The plaintiffs refer to certain arrangements

and family settlements, between the family's larger branch to which Sh. R.S. Madhoram, the common ancestor of Sh. Suresh Kumar Goyal and

the defendants was a party. The said arrangements, it is stated, took place in 1964, as a consequence of which the first defendant's branch

became entitled to several properties, or shares thereto. The first defendant (now deceased during the pendency of the proceedings) was the father

of late Sh. Suresh Kumar Goyal as well as Defendant Nos. 2 and 3, the other sons. It is contended that even though the Defendant Nos. 2 and 3

have disputed the plaintiffs' claim for 25% of the shares in respect of the entire schedule of properties, there is a concession vis-à-vis the Sunder

Nagar property, (to which the plaintiffs are entitled) as the written statements clearly concede a 24.25% share. It is submitted that the plaintiffs, in

1985, had moved an application, stating that the usufruct of Sunder Nagar property was changed then as they had been ousted from it after the

death of Sh. Suresh Kumar Goyal. They refer to an order of this Court, dated 29.03.1985 as recognizing their rights to receive compensation in

view of their right to reside in the said properties. The third defendant was directed to pay an amount of Rs. 3,000/- per month. It is further

submitted that in a previous application, I.A. No. 1415/1996, a decree on admission in terms of Order 12 Rule 6 CPC was sought. The alternative

relief claimed was a direction to pay mesne profits or damages for the plaintiffs' admitted share at Rs. 1,00,000/- per month. It is stated that based

on the authority of the Supreme Court judgment, this Court enhanced the existing rate of Rs. 3,500/- per month (directed earlier), to Rs. 15,000/-

per month, as the rental value in respect of the 24.25% share, to which the plaintiffs' were entitled, and accordingly directed such payment. The

order was confirmed in an appeal preferred to the Division Bench by the defendants on 31.03.1998. The plaintiffs submit that further appeal by

special leave did not result in any favorable order, in that the basis of the interim order was not varied even though the quantum was reduced to Rs.

10,000/-. The Supreme Court's order, dated 24.08.1998 has been placed on the record and relied on for this purpose.

3. It is stated that when the plaintiffs seek further variation of the order claiming that due to passage of time, the rental values had changed,

necessitating a review of the compensation amounts payable by the defendants; the Supreme Court, by its order, dated 24.11.2008, granted the

plaintiffs/applicants liberty to move this Court for such enhancement, observing that it would be appropriate that such exercise were carried-out by

the High Court.

4. It is argued by the plaintiffs that the increase in rentals and capital values have been phenomenal over the last ten years. They submit that out of

the total built-up area of the said Sunder Nagar property, the third defendant is in possession of 2858.21 sq. feet. The plaintiffs/applicants state

that the current rental for the property is Rs. 5,50,000/-. They rely upon a valuation by Cushman Weikfield and a real estate consultant's valuation,

at Rs. 125/- per sq. feet. They also rely upon the copy of a Registered Lease Deed for the first floor of an adjoining house, i.e. 29, Sunder Nagar,

which works-out to Rs. 95/- per sq. feet. It is stated that the covered area of the plot has increased substantially due to addition, which has

resulted in the premises measuring between 5000-5500 sq. feet.

5. The plaintiffs submit that the Defendant Nos. 2 and 3 are disputing their claim by relying upon two separate Wills, dated 17.08.1987 and

12.12.1987, said to have been executed by the first defendant, Sh. Anand Prakash Goyal. It is pointed-out that the said Will has not been proved

in accordance with law. It is also stated that in any event, the late first defendant, Sh. Anand Prakash Goyal did not possess bequeathable interest

in the property, to the extent claimed and purportedly made the subject of disposition.

6. The plaintiffs argue in support of I.A. No. 9180/2009 that the defendants are in continuous possession and enjoyment of several properties,

listed in the Schedule to the suit, such as shops at 824-825, Nai Sarak, a petrol pump dealership and outlet at Chakrata, an immovable property at

Amritsar, shop premises at Katra Maheshdas, Nai Sarak, two first-floor premises at Nai Sarak, being shop Nos. 826-827, Nai Sarak, a shop at

Palika Bazar and a property at Mussorie. It is submitted that allowing pendency of the suit for all these 27 years has resulted in wrongful

deprivation of the usufructs and rents in respect of the said properties, to which they have a rightful claim and that this Court should, in exercise of

its inherent power, direct payment of interim compensation to the said defendants. The plaintiffs rely on certain documents (Sale Deeds, dated

21.11.2000 and 08.03.2001) and in pleadings, rely on I.A. No. 13599/1992 (by the Defendant No. 3), as well as in Suit No. 525/2009, in the

Civil Court at Dehradun, admitting the nature of property and that the family assets had been divided in 1964. It is submitted that regardless of the

nomenclature given to the asset or the business, the circumstance that it belongs to the HUF, is untenable. It is submitted that in a suit for partition,

the co-owner is entitled to claim compensation if he has been ousted from the properties or business. Since the plaintiffs were ousted without cause

soon after the death of Sh. Suresh Kumar Goyal, from the so-called firms and properties, they are entitled to the usufruct of the properties.

7. Defendant Nos. 2 and 3's responses to the plaintiffs' applications are common. They also advance similar contentions in support of their

applications, I.A. Nos. 2657/2009 and 8468/2009.

8. It is argued by the defendants  $\hat{\sim}\hat{\Delta}\hat{\Delta}\frac{1}{2}$  notably Defendant No. 3 that the plea about ouster from the joint family properties of the plaintiffs or more

particularly, of their being driven away from Sh. Suresh Kumar Goyal's property is without basis.

9. Learned senior Counsel for the third defendant highlighted that the basis of the initial order, dated 29.03.1985, directing payment of Rs. 3,000/-

to the plaintiffs was consensual. In this regard, he relied upon the orders, dated 20.11.1984, 30.01.1985, 29.03.1985 and 07.03.1988, and

contended that all of them were consensual and not based on any restitutionary or compensatory rationale.

10. It is submitted that when the question about the plaintiffs' entitlement to the properties or assets is disputed, as in the present instance, and

Wills are relied upon, the Court should not make any orders directing one party or the other, on an assumption of ouster, to pay amounts towards

interim mesne profits. Learned Counsel submitted that the law provides for payment of mesne profits after a due enquiry, and relied upon Order 20

Rule 12 CPC, which, he stated, alone prescribes the procedure for its determination. The said determination has to be after due enquiry, when all

parties are afforded an opportunity, and is crucially done at the stage of final disposal, when the respective rights of the parties have been

crystallized. In the context of joint family disputes, submitted the Counsel, there can be no direction for interim mesne profits as that would be on

the assumption that one or the other party (typically directed to be one bearing the liability) is the wrong-doer or responsible for the ouster. Since

the suit has not reached the stage of trial, there is no question of arriving at such interim findings or observations, and, therefore, the Court should

desist from making any changes in the existing arrangements whereby the plaintiffs are paid Rs. 10,000/-.

11. It is argued in considering the plaintiffs request, the Court should be mindful that Section 151 cannot be used where specific provisions exist, as

in the case of Order 20 Rules 12 and 18 Code of Civil Procedure. Learned Counsel relied upon the decisions reported as Mst. Kainta Meherani

Vs. Damru Meher and Others, ; Irappa and Anr. v. Ramappa Sangappa Potraddi and Ors. AIR 1974 Kar 143, Kavita Gambhir Vs. Hari Chand

Gambhir and Another, , to say that the question of mesne profits, as defined u/s 2(12) of the CPC cannot arise at an interim stage and in any case

has no application to a person not in wrongful possession of the property, like a co-sharer, before the partition. Such claim is essentially for

accounts which are ascertainable after the share is determined.

12. It is argued by both Defendant Nos. 2 and 3 that the consent order  $\text{Rs. } 15,000/-$  which was the basis for the direction to pay Rs. 15,000/- (later

modified to Rs. 10,000/- per month) have not been varied and that there is no justification for the Court to suo motu change such terms. It is

argued that in the application, preferred before the Supreme Court, the plaintiffs had stated that the rental value of the Sunder Nagar property was

Rs. 4 lakhs, whereas they claim it to be Rs. 5.5 lakhs. Learned Counsel further submitted that the question of mesne profits or compensation or

direction to pay money, if done ad-hoc, would not be balancing the equities, which is best left to be performed at the final stage of the proceedings

after a full trial. The defendants also highlighted that the plaintiffs cannot be granted any equitable relief even at this interim stage since they took

exclusive possession of the Aruna Asaf Ali Road premises, i.e. the basement property and have continuously used it since 1999. In the

circumstances, the original rationale of their not having access to assets or any income or having no resources to live elsewhere, no longer subsists.

In support, the judgment of the Supreme Court in Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., is relied upon, to say that a

judicial order based on consent is founded on contract and cannot be changed unless the parties to it agree to do so. It is further submitted that the

application seeking modification in the quantum of compensation is also not maintainable because of the rule that the principles of res judicata

broadly apply even if respective decisions on interlocutory applications. The judgments of the Supreme Court, reported as Arjun Singh Vs.

Mohindra Kumar and Others, and Ajay Mohan and Others Vs. H.N. Rai and Others, are relied on for this purpose.

13. Defendant Nos. 2 and 3 further submit that, as far as the question of paying any further amounts in respect of the other properties or

accounting for them are concerned, the extent of properties are in dispute. The same are also subject matter of the Will. It is stated that while the

existence of two shops at Nai Sarak is admitted, the question of Defendant No. 2 being in possession of any Palika Bazar property or any two-

and-half storied plot at Mussorie does not arise, as the latter was sold.

14. Learned Counsel further submits that the plaintiffs cannot now claim any additional direction for payment of money, as no attempt was made

on their part in respect of other items of property and they have to establish is some semblance of title. It is argued that during his lifetime, the

plaintiffs' predecessor, Sh. Suresh Kumar Goyal never exercised his right in respect of the tenancies of which possession is sought. The defendants

rely upon an inter se family settlement of 1983 and also an order of this Court dated 22.02.1995, rejecting the application by the plaintiffs for

appointment of Receiver.

15. It is lastly argued that the so-called increase of the covered area of the Sunder Nagar property is disputed, as also its area. Further, the

defendants submit that the so-called valuation reports placed on the record cannot be relied, as they are not supported by any deposition or

objective material and that the copy of the registered lease deed similarly cannot be looked-into. It is highlighted here that the premises in question

are old constructions of 1959 and are not conveniently built. According to the third defendant, the total area in his possession in 2076 sq. feet, with

a 176 sq. feet of servant's quarter portion. Of these, it is submitted, 657 sq. feet are inhabitable; thus the plaintiffs can at best claim right in respect

of 843 sq. feet. In view of these circumstances, the defendants argue that the plaintiffs' applications are bereft of any merit and have to be

dismissed.

16. In support of their applications, the defendants argue that the plaintiffs and one of them was entitled to take possession of the Aruna Asaf Ali

Road property, which was to be kept under lock-and-key after the tenancy expired in 1999. Whilst the joint possession was actually taken

subsequently, the plaintiffs started using it and are even reported to have rented it. In the circumstances, say the defendants, the plaintiffs being

disentitled to relief by way of entitlement are also liable to be paid and the appropriate amounts for use and occupation of such property, to which

they (the defendants) also claim entitlement.

17. In this Court's opinion, the questions to be decided are as to the true nature of the previous orders whereby the plaintiffs were held entitled to

monthly payments from in respect of the Sunder Nagar property. The defendants argue that the orders were consent based, and cannot be varied

without such consent; the plaintiffs, on the other hand, contend that the court recognized their shares, and entitlement to 24.25% share in the

property, from which they were ousted, and directed payments as interim arrangements; further that having regard to the passage of time, the

quantum of amounts payable has to be enhanced. The plaintiffs' as well as the defendants' rival claims for compensation, or accounts, in respect of

other properties, at this stage, for the first time, calls for consideration.

18. The relevant previous orders of the court, are extracted below. The order dated 29-3-1985 is as follows:

Mr. Shiv Charan Singh states that the plaintiff shown a few apartments and the rent of those apartments ranged from Rs. 2200/- to Rs. 2600/- per

month but the plaintiff has not approved any of those apartments.

After hearing the Learned Counsel and looking to all the circumstances I order that in lieu of the plaintiffs' right to reside in the property No. 31,

Sunder Nagar, the defendants shall pay to her Rs. 3000/- per month commencing from 1st of March, 1985. The Defendants shall pay within 15

days a sum of Rs. 18,000/- that is, six months advance to the plaintiffs. Thereafter, the Defendants shall by the 1st of every month pay a sum of Rs.

3000/- per month to the plaintiff. Out of Rs. 3000/- to be paid in future Rs. 1000/- shall be deducted by the Defendants towards the amount paid

in advance till that amount gets adjusted. The next payment of Rs. 3000/- shall become due from 1st April, 1985.

The above order is without prejudice to the contentions of the parties in the suit. The above shall also not be considered to be a lease of the share

of the plaintiff in the suit to be Defendant. I As 1205/82 and 2512/84 are disposed of....

19. By an application, IA 1415/1996, the plaintiffs had sought enhancement of the quantum of monthly payments, claiming that the rental values

had shot up, and that they were also entitled to a part decree on admissions, since their right to 24.25% of share in the Sundar Nagar property was

not denied. The court declined to part decree the suit, and as far as the question of increasing the quantum of monthly payments was concerned,

held in its order dated 27-10-1997, that:

...Now, in the present application the plaintiffs have alleged that defendant No. 3 is in illegal possession of the plaintiffs portion of residence and

they have been denied the enjoyment of their rightful residence; they are living in a rented accommodation rent of which earlier was Rs. 3000/- but

was subsequently increased to Rs. 3500/- and now since December, 1995 it has been increased to Rs. 5500/- per month and still the landlord is

continuously harassing her to increase the rent to Rs8,000/- or to vacate the said premises. It is further alleged that the property in question is

situated in a posh locality of New Delhi and the rental value of the ground floor is more than Rs. 4,00,000/- per month and in this way the plaintiffs

share can fetch Rs. 1,00,000/- per month and as such they are entitled to mesne profits at this rate. They accordingly claim that defendant No. 3

be directed to vacate their premises or in the alternative damages may be suitably award.

Defendant No. 3 has filed a reply contesting the claim of the plaintiff. He has alleged that he did not have earlier right of residence in the premises,

however, he is now a co-owner of the property to the extent of 37.85% share by virtue of the will dated 12.12.1987 of late Shri Anand Parkash

Goel and thus he has right to reside in the same and is not a trespasser. It is not disputed that by virtue of the earlier order dated 29.03.1985 he

was ordered to pay Rs. 3000/- per month to the plaintiff which subsequently was raised to Rs. 3500/- vide order dated March, 7, 1988. It is

admitted that deceased Shri Suresh Kumar Goel was the owner of 24.25% share in the premises and he was using the premises along with other

members of the family and after his death plaintiffs inherited this share and they have also been residing there but now the plaintiff are not residing in

the said house. An affidavit dated 24th January, 1997 has also been filed by defendant No. 3 wherein it is stated that the partition of the property

amongst the then co-sharers by means of agreement dated 30.04.64 and 01.05.64 had taken place whereby the ground floor portion had fallen to

the share of three persons as mentioned earlier. He has stated that Shri Anand Parkash Goel died on 14.01.1988 and by virtue of his will he had

got 37.85% share and Shri Virender Kumar Goel has got 13.625% share and now the shares of Shri Virender Kumar and his own are 37.85%

each and the plaintiffs have 24.25% share. As regards the possession, it is admitted that defendants 2 and 3 alone are in exclusive possession of

the whole of the ground floor. A building plan of the ground floor has also been filed showing the accommodation and the area in respective

occupation of defendants No. 2 and 3. His case is that the plaintiffs are not entitled to the relief claimed.

xxxx xxxx xxxx

In the present application, (I.A. No. 1415/96) it has inter alia been pleaded that defendant No. 3 is in illegal possession of the plaintiff's lawful

residence and they have been denied the enjoyment of their rightful residence and in the circumstances they are entitled to various reliefs are

claimed therein. The defendant No. 3 claims 37.85 of share on the basis of will.

The undisputed facts are that the plaintiffs are co-owners of 24.25% share in is being disputed by the plaintiffs. Defendant No. 2 has not so far

disclosed his stand in this respect. If there is a will and the plaintiffs have been inherited under the will, the plaintiffs have will remain the same i.e. 24

-1/4th share and if there is no will their share will be proportionately increase. However, the position remains that the plaintiffs have been ousted

from and are not in occupation of the suit property and the premises jointly owned by the parties is in occupation of defendants No. 2 and 3 to the

exclusion of the plaintiffs.

Right of the plaintiffs to compensation for excluding the, from the use and enjoyment of the property has been upheld when two orders dated

29.03.1985 and 07.03.1988 awarding compensation to them were passed. The question is at what amount the plaintiffs was entitled and from

which of the defendants?

The rental value of the 24.25% share of the plaintiffs would not be less than Rs. 15,000/- per month. In my view, it is just equitable and in the

interest of justice and to prevent injustice and the abuse of the process of the court, that the plaintiffs showed to compensated at least to this extent

for the time being.

I, accordingly, allow this application to the extent that defendant No. 3 will entitled to adjustment of the amount that may have been paid for the

period from 01.12.1995 onward in pursuance of the earlier order. If the arrears due are not paid within one month, Defendant No. 3 shall be liable



to pay interest at rate of 15% per annum. This is without prejudice to the rights and contentions of the parties about the actual share of the parties

compensation that may be awarded on trial. It is ordered accordingly.

20. The defendants' appeal to the Division Bench was disposed of by an order, dated 31.03.1998 in FAO (OS) 268/97, which reads as follows:

FAO (OS) 268/97 & CM- 386/98

We have perused the impugned order and the material on record and heard Learned Counsel for the parties. Having regard to the nature of

controversy, the relationship between the parties and the fact that the property in which respondents 1 to 3 have admittedly a share but have not

enjoyed the fruits thereof, we think that order of learned single judge fixing monthly compensation of Rs. 15,000/- does not call for any

interference in this appeal. The appeal is accordingly dismissed. We also do not find any substance in the cross objections which are also

dismissed.

21. The order of the Supreme Court, disposing of the appeal (Civil Appeal Nos. 4292-93/1998) arising from the defendants' special leave

petition, against the Division Bench order, is as follows:

Leave granted in both the matters.

After hearing the Learned Counsel on both sides for some time, the parties are agreed that in place of Rs. 15,000/- p.m. fixed by the High Court

an amount of Rs. 10,000/- will be paid by the third defendant in the suit, the appellant herein in Civil Appeal arising out of SLP (C) No. 8389/98.

The said amount of Rs. 10,000/- will be paid from the date of application. This payment is without prejudice to the rights of the parties in the suit.

Three months' time is granted to pay the arrears. The appeals are disposed of accordingly.

22. The plaintiffs had filed an application, IA 2-3 in the disposed of civil appeal, before the Supreme Court. Those applications were disposed of,

granting liberty to them to approach this Court, in the following terms:

Having heard Mr. Sorabjee, learned senior Counsel appearing on behalf of the applicants and Dr. Singhvi, learned senior Counsel appearing on

behalf of the Respondent(s), we are of the opinion that the application for enhancement of compensation of the amount as was fixed by this Court

by its order dated 24.08.1998 may be considered by the High Court on its own merits expeditiously. We say so, firstly, because suit is pending

before the High Court and the High Court would be in a better position to take into consideration all relevant contentions which may be raised

before it upon adducing fresh evidence as may be provided by the parties, Secondly, it was the High Court which found that the applicants were

entitled to compensation for a sum of Rs. 15,000/- per month "for the time being".

If such an application is filed before the High Court, we are sure that the same be disposed of expeditiously, we, furthermore, request the High

Court to consider the desirability of disposing of the entire suit as expeditiously as possible, preferably within a period of six months from the date

of receipt of a copy of this order. We may place on record that we have made these observations pursuant to the joint request of Mr. Sorabjee

and also Dr. Singhvi.

The interlocutory applications are disposed of accordingly.

23. The above order of this Court, dated 27-10-1997 establishes, (to this Court's mind) the entitlement of some compensatory relief, by monthly

payments, to the plaintiffs. That part of the order has remained unchallenged by the defendants; the order of the Supreme Court merely varied the

amount, and lowered it, but did not disturb the logic which impelled the grant of such interlocutory relief. Therefore, it is too late in the day for the

defendants to argue that the order is essentially consensual, and such being the case, there is no constraint on the power of the court to vary the

quantum, having regard to the overall circumstances, if the justice of the case so demands. Nor is the defendant right in contending that the

principles of res judicata apply to interim proceedings, and apply in such inflexible manner that even a demonstrable change in the circumstances

would relieve the parties from conditions and terms of a previous order, made in the light of previously prevailing facts. In fact, the bulwark of the

defendants' submission, i.e the Arjun Singh decision (supra) of the Supreme Court, has this to say:

It is needless to point out that interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to preserve the

status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the court,

usually take. They do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it

even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on

proof of new facts or new situation which subsequently emerge. As they do not impinge upon the legal rights of parties to the litigation the principle

of res judicata does not apply to the findings on which these orders are based, though if applications were made for relief on the same basis after

the same has once been disposed of the court would be justified in rejecting the same as an abuse of the process of court. There are other orders

which are also interlocutory but would fall into a different category. The difference from the ones just now referred to lies in the fact that they are

not directed to maintaining the status quo, or to preserve the property pending the final adjudication but are designed to ensure the just, smooth,

orderly and expeditious disposal of the suit. They are interlocutory in the sense that they do not decide any matter in issue arising in the suit, nor put

an end to the litigation. The case of an application under Order IX, Rule 7 would be an illustration of this type. If an application made under the

provisions of that rule is dismissed and an appeal were filed against the decree in the suit in which such application were made, there can be no

doubt that the propriety of the order rejecting the reopening of the proceeding and the refusal to relegate the party to an earlier stage might be

canvassed in the appeal and dealt with by the appellate court. In that sense, the refusal of the court to permit the defendant to ""set the clock back

does not attain finality. But what we are concerned with is slightly different and that is whether the same Court is finally bound by that order at later

stages so as to preclude its being reconsidered. Even if the rule of res judicata does not apply it would not follow that on every subsequent day

which the suit stands adjourned for further hearing, the petition could be repeated and fresh orders sought on the basis of identical facts. The

principle that repeated applications based on the same facts and seeking the same reliefs might be disallowed by the court does not however

necessarily rest on the principle of res judicata. Thus if an application for the adjournment of a suit is rejected, a subsequent application for the

same purpose even if based on the same facts, is not barred on the application of any rule of res judicata, but would be rejected for the same

grounds on which the original application was refused. The principle underlying the distinction between the rule of res judicata and a rejection on

the ground that no new facts have been adduced to justify a different order is vital. If the principle of res judicata is applicable to the decision on a

particular issue of fact, even if fresh facts were placed before the Court, the bar would continue to operate and preclude a fresh investigation of the

issue, whereas in the Other case, on proof of fresh facts, the court would be competent, may would be bound to take those into account and make

an order conformably to the facts freshly brought before the court.

(emphasis added)

24. It is held that the above reasoning is dispositive of the defendants' submission that the application for enhancement does not lie, and is not

maintainable. As far as the submission that the court lacks in power to make an order on interim mesne profits, since a provision exists, for that

purpose, under Order 20 Rule 18, and invocation of Section 151 under such circumstances is not justified, it is held that there cannot be any such

inflexible rule. After all, procedural rules are the handmaidens of justice. If they are allowed to prevail, they would subvert, not sub-serve ends of

justice. This Court, in Col. R.C. Virmani Vs. Rampat Estate Pvt. Ltd., held that:

This Court has been called upon to examine the prayer for grant of mesne profit at an interim stage. Certainly, the parties would have an

opportunity to lead evidence on this issue in the light of the settled provisions of law. But interest of justice and equity mandate that a person though

admittedly an owner, cannot be deprived of benefits of a property as in the instant case, more so, in facts of the present case noticed above. The

plaintiff has indicated the value of the property and prayed that this Court make an order of mesne profits equivalent to percentage thereof. The

defendant has stated that fifty percent of the rental which was being paid by him be given to the plaintiff.

22. Mesne profits are the award in favour of a person who is wrongfully deprived of use and occupation of his property. Mesne profits have

normally been equated to the market rate of rental which such property would fetch in the open market on the date of consideration of the issue. In

the absence of information of the prevalent market rate of rent, the formula and basis for fair assessment of rental may be drawn from the

methodology for fixation of standard rent under the provisions of the Delhi Rent Control Act, 1958. As per this statute, in respect of the properties

to which this Act applies, the standard rent of the property to which this statute applies is equivalent to 10% per annum of the aggregate amount of

the actual cost of construction and the market price of the land comprised in the premises on the date of commencement of the construction.

There are other decisions, also which support the view that ad-hoc or interim amounts can be granted before final adjudication of a suit, if the

justice of the case so demands.

25. As far as the amount is concerned, the evidence on record, by way of valuer's assessment, cannot be looked into, since it is unverified, and

unsupported by affidavits. However, the plaintiffs rely on the certified copy of a lease deed, in respect of adjacent property, the rent for the first

floor of which works out roughly to Rs. 95 per square feet, per month. On that calculation, the approximate rental value for about 4800 square

feet would be Rs. 4,75,000/- per month. The plaintiffs' share is 24.25%, which would be about Rs. 1,18,000/- or so. Taking into consideration

the fact that the construction is an old one, the rental value might be lower, by about 25%. If that amount (Rs. 29,500/-) is deducted, the said one

fourth share of the tentative market rental value would be Rs. 88,500/-. Having regard to the overall conspectus of circumstances, the court is of

opinion that ends of justice would be satisfied if the monthly amount payable to the defendants is fixed at Rs. 80,000/- from the date of the

application. This Court is aware of the fact that there is an element of ad-hocism in the determination of the quantum, which is perhaps

unavoidable. At the same time, such exercise is necessitated, having regard to the phenomenal increase in rentals in New Delhi over the last few

years. In this case, the compensation directed in 1997 was based on a tentative assessment carried out over 12 years ago; judicial notice can be

taken of the fact that the property is in one of the prime residential localities in Delhi, where the capital value of real estate is one of the highest (in

the city) and rents are very high.

26. As far as the other applications are concerned, this Court is of the view that neither the plaintiffs, nor the defendants have shown any

justification for such orders. Concededly, such applications or requests for fixing interim compensation were not made all these years; the suit has

reached the stage of trial and examination of witnesses. Further, one of the parties' application for appointment of receiver was also rejected. In

these circumstances, there is no perceptible change in circumstances which justifies the Court issuing such directions against the plaintiffs, through

the defendants' applications. Equally, the plaintiff has not claimed any amounts in respect of the other items all these years. In this view of the

matter, and after taking into consideration the fact, that issuing a direction in respect of such property would be robbing the trial of any meaningful

content, driving the parties to seek such reliefs, in respect of each item of such property is an unsatisfactory, even untenable situation, especially

when the relative strength of the parties is untested, to say the least, these applications are to be rejected.

27. In the light of the above findings, the plaintiffs' application for increase of the amounts payable by defendants, in respect of the Sunder Nagar

property, is allowed. The defendants are directed to pay the sum of Rs. 80,000/- per month effective from the day the application for that purpose

was filed. IA 2039/2009 is, therefore, allowed in such terms. The other applications, i.e IA 9180/2009, 2657/2009 and 8468/2009 are therefore

rejected. No costs.

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List for further proceedings on 19.04.2010.