



2026:DHC:6568



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on: 07th August, 2026*
Pronounced on: 12th August, 2026

CNR No. DLHC010362142026

+ RFA 797/2026, CM APPL. 52096/2026

MS. RESHMA
W/o Sh.Shahzad
R/o F-76, Second Floor,
West Jawahar Park,
Laxmi Nagar, Delhi-110092

.....Appellant

Through: Mr. Piyush Bhardwaj, Mr. Rajat
Rajoria Singh, Advocates

versus

MS. SHAHNAZ PARVEEN
W/o Sh. Shamim Ahmed,
R/o 724, Sector-23,
Faridabad, Haryana

.....Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 (CPC) has been filed against the judgment and decree dated 15.10.2025, whereby the Suit of the Plaintiff has been decreed for *Recovery of possession, Permanent Injunction and Damages, mesne profits in the sum of Rs.15,000/- p.m. along with interest @ 9% p.a. from 01.01.2023 till the vacation of the premises.*



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2. The Plaintiff had filed a **Suit No. 158/2024** for seeking possession of Flat No. F-76, Second Floor, West Jawahar Park, Laxmi Nagar, Delhi (*“Suit Property”*), *Permanent Injunction* for restraining Defendant from creating third party rights and for *damages/user and occupation charges*.
3. ***The facts in brief are*** that the Plaintiff is the sole and absolute owner of the suit property, having purchased it from the erstwhile owners by virtue of a **registered Sale Deed dated 24.07.2008**. The electricity connection was also transferred in her name.
4. The Plaintiff, a permanent resident of Faridabad, Haryana, lived there with her family and she and her husband were unable to manage it themselves. Accordingly, in February 2020, they appointed one Mohd. Imran as its *caretaker*, as the property had been purchased through him and he had thereafter, developed friendly relations with the plaintiff’s husband. Mohd. Imran assured them that he would look after and take care of the property, pursuant to which they handed over its keys to him and permitted him to manage its affairs.
5. After some time, the Plaintiff and her husband was unable to visit the property due to COVID-19 situation from March 2020 till July 2021. Thereafter, when they visited the premises, they were shocked and surprised to see that *the Defendant, Ms. Reshma was residing in the suit property*.
6. On a query, the Plaintiff was informed that was Defendant was permitted to reside and occupy the suit property, by Mohd. Imran. The Plaintiff and her husband, then tried to contact Mohd. Imran at his residence and on phone, but he avoided meeting and contact with them.
7. The Plaintiff requested the Defendant to vacate the suit property, which she assured to do in six months without payment of any use and



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occupation charges. The Plaintiff acceded to the request of the Defendant. However, she failed to vacate the Suit Property and expressed her inability to do so and again sought time. The Defendant had given time till 31.12.2022, but again failed to vacate the property.

8. The Plaintiff, therefore, served **Legal Notice dated 29.01.2024** calling upon her to vacate the suit premises on or before seven days. The plaintiff informed the defendant that her occupation and possession of the suit property had been *illegal and unlawful since 01.01.2023*. The defendant was called upon to pay damages/user charges at Rs. 15,000 p.m., and a sum of Rs. 1,95,000 towards damages/user charges from 01.01.2023 till January 2024.

9. In the last week of February 2024, the plaintiff asked the defendant to vacate the suit property, but the defendant refused and *threatened to create third-party interest* therein and cause dire consequences if the plaintiff pursued legal action or visited the property. The plaintiff thereafter approached the police seeking legal action, but to no avail, **leading to the present suit for possession and damages/mesne profits.**

10. ***The summons were served*** upon the Defendant for **26.03.2024**. Thereafter, she put her appearance in the Court on **02.07.2024**. However, she *failed to file her Written Statement* and was proceeded *ex-parte*. Her defence was struck off, *vide* **Order dated 20.08.2024**.

11. Thereafter, Defendant filed an Application for setting aside the *ex-parte* order, which was allowed *vide* **Order dated 21.05.2025**, subject to payment of cost of Rs.2,000/-. However, the Defendant *failed to pay the cost* and accordingly, the Written Statement filed by her was directed to be taken off the record, *vide* **Order dated 08.08.2025**.



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12. The Plaintiff examined herself as **PW1 on 21.08.2025** and proved the Sale Deed and other documents in proof of her ownership as **Ex.PW1/1 to PW1/12**, after which the evidence was closed.

13. Thereafter, on 29.08.2025, an Application under **Order IX Rule 7 and 13 read with Section 151 CPC** was filed on behalf of the Defendant, which was dismissed *vide* **Order dated 30.08.2025**.

14. The Defendant contested the Suit by filing the *Written Statement (though the same had not been taken on record)*, and claimed that the Suit *was a gross abuse of process of law*. She denied the assertions made in the plaint and explained that her relative Mohd. Imran is in *collusion* with the Plaintiff. They had approached the Defendant in December 2018, when she was in need of taking a house on rent. Thereafter, she was duped to take the Suit Property for security and after much negotiation, it was agreed that the Plaintiff shall be paid an amount of *Rs. 5 lakhs for a period of 11 months commencing from 18.12.2017*. She was informed that Mohd. Imran has been authorized to execute the Agreement with the Defendant for tenanted premises and consequently, the ***Defendant paid the sum of Rs. 5 lakhs to him in the manner specified in the security Agreement dated 18.12.2017.***

15. It was further agreed between the Plaintiff and Defendant that at the termination or end of the Security Agreement, Defendant shall handover peaceful and vacant possession of the premises and that Plaintiff shall ***return the security money of Rs. 5 lakhs***. It was further agreed that if the money is not retained, then Defendant shall remain in possession of the tenanted premises till the security amount of Rs.5 lakhs is returned and the possession of the Defendant shall be legal.



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16. It was further agreed that Plaintiff shall refrain herself to take possession of the premises till the security amount was refunded. On the expiry of Security Agreement dated 18.12.2017, Defendant sought the refund of security money from Plaintiff and Mohd. Imran who *offered the continuation of the security arrangement for another 11 months*, to which the Defendant agreed as she had no other place to live. Thereafter, in the month of December 2020, Plaintiff asked the Defendant to *increase the security amount deposit Rs. 6.5 lakhs* for further continuation of the Security Agreement. Therefore, the Defendant paid extra Rs.1 lakh to Mohd. Imran on 23.03.2021 for continuation of residence in the suit premises.

17. The Defendant claimed that ***she had paid in all Rs. 6.5 lakhs for occupation of the premises***. She further asserted that the Defendant had been requesting the Plaintiff to return the amount of security paid, but she as well as Mohd. Imran kept on delaying the matter on one pretext or the other.

18. On one day in February 2024, to her utter shock and surprise, she received Legal Notice dated 29.01.2024 from the Plaintiff to vacate the premises, and also for recovery of damages in the sum of Rs.1,95,000/-. She immediately tried to contact Mohd. Imran but he *failed to respond*. It is claimed that the Suit has been filed in collusion of Plaintiff with Mohd. Imran who has *deceived and cheated* the Defendant out of her money. The *breach of trust* has been committed by the Plaintiff, who has *fraudulently used the security arrangement* to dupe the Defendant of her hard-earned money.

19. ***The averments made in the plaint were denied.*** It was asserted that she is a pregnant woman who is barely able to maintain her day-to-day expenses. The Suit of the Plaintiff is therefore, liable to be dismissed.



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20. The Plaintiff examined herself as PW-1 and deposed in terms of her evidence affidavit Ex. PW-1/A. Her testimony *remained unrebutted* as she was not cross-examined on behalf of the Defendant. The Plaintiff relied upon and exhibited the Sale Deed dated 24.07.2008 as Ex. PW-1/1 (OSR), site plan as Ex. PW-1/2, electricity bill as Ex. PW-1/3, property tax receipts for the years 2022-23, 2021-22, 2020-21, 2019-20 and 2018-19 as Ex. PW-1/4 to Ex. PW-1/8 (colly), legal notice dated 29.01.2024 as Ex. PW-1/9, tracking report as Ex. PW-1/10, original postal receipt as Ex. PW-1/11 and certificate under Section 63 of the BSA as Ex. PW-1/12. It was noted that the documents relied upon by the Plaintiff also remained unrebutted and, therefore, stood proved.

21. ***The learned District Judge*** noted that the Plaintiff had proved her ownership of the suit property beyond preponderance of probabilities through the Sale Deed Ex. PW-1/1, duly supported by the electricity bill and property tax receipts Ex. PW-1/3 to Ex. PW-1/8 (colly), for which the requisite certificate under Section 63 of the BSA had also been placed on record. It was thus held that the Plaintiff, being the owner of the suit property, was entitled to a decree of possession.

22. Consequently, the Suit was decreed for possession; for permanent injunction and the Defendant was restrained from creating third party rights and ***the damages were awarded @ Rs.15,000/- p.m. along with simple interest @ 9% p.a. granted on use and occupation charges from 01.01.2023 till the handing over the possession to the Plaintiff.***

23. Aggrieved, the Defendant has filed the **First Regular Appeal** under Section 96 CPC.



24. ***The grounds of challenge are*** that that the Appellant had been proceeded *ex-parte*, without being given an opportunity to present her case which has caused a grave prejudice and strike at the root of principles of natural justice.

25. The Written Statement filed by the Appellant was initially subject to payment of costs. However, the same was not taken into consideration on the ***hyper-technical ground of non-payment of costs***. The Defendant had raised a substantial defence and non-consideration of the Written Statement has consequently, resulted in grave miscarriage of justice.

26. The Appellant has admitted that it has not been considered that she is a pregnant single lady having no one to take care of her. She had requested time for payment of costs, but her grievance has been completely ignored. The judgment is bad for ***non-consideration of material pleadings***.

27. The Appellant had also filed an Application under **Order I Rule 10 CPC** seeking impleadment of Mohd. Imran, who had induced the Appellant to pay the amount and was the indispensable link in the entire transaction, but the Application was dismissed. It has not been considered that when the property was taken by the Appellant, ***electricity connection was in the name of Mohd. Imran***. Despite this, the Suit has been decreed without deciding the impleadment Application.

28. The Appellant further contended that it was ***not a conventional tenancy***, but a security deposit based arrangement, wherein she paid Rs.6.5 lakhs and possession was given which was to be retained till the money was refunded to her. It has been erroneously held that *she is the unauthorized occupant in the suit premises*. It is claimed that the entire transaction has been conducted through Mohd. Imran who negotiated the terms, received



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payments and acted as an agent of Respondent, the fact which has been admitted by the Plaintiff in her pleadings. Thus, the ***non-impleadment has rendered the decree ineffective and unenforceable.***

29. Even though the Defendant was *ex-parte*, yet the Plaintiff was required to independently prove her ownership, entitlement of possession and claim of mesne profits, which has not been proved by any cogent evidence. The Appellant had occupied the premises by virtue of Agreement dated 18.12.2018, which has been completely ignored.

30. The Plaintiff has claimed to have visited the property in the year 2021, but the arrangement between her and Mohd. Imran was executed in the year 2018 since when she has been lawfully residing in the premises. However, astonishingly, the Plaintiff visited the premises in the year 2021 and thereafter, created a false story as to why she did not visit the premises and take appropriate action against the Appellant.

31. Furthermore, though the Plaintiff came to know about the Appellant in 2021, she had instituted a Suit only in 2024 with an unreasonable delay in filing the proceedings. Moreover, she along with Mohd. Imran, has planned to usurp the money of the Appellant. The story of COVID-19 pandemic has been created with the evil intention of depriving the Appellant of the possession of the suit premises.

32. Furthermore, the learned Trial Court has observed on the basis of the Sale Deed Ex.PW1/1 and the Site Plan at Ex.PW 1/2 along with the other documents, namely, Property Tax Receipts at Ex.PW1/3 to PW1/8, that the Plaintiff is the owner. However, it was only a copy of the Sale Deed of the premises which had been produced. Moreover, it has not been appreciated that the Suit was for possession and not for the ownership claim. Therefore,



the documents annexed by the Plaintiff were not sufficient to derive any conclusion of her claim and it has been wrongly held that the possession of the Appellant is illegal.

33. The learned Trial Court has observed that no evidence has been led by the Plaintiff in respect of the prevalent rate of rent in the area, despite which damages in the sum of Rs.15,000/- p.m. has been granted, which is patently incorrect. The valid defence of the Appellant has not been considered. *Hence, it is submitted that the impugned judgment and decree be set aside.*

Submissions heard and record perused.

34. The Plaintiff/Respondent had filed the Suit for Possession of the Suit Premises along with the claim of Damages and Mesne Profits.

35. The Plaintiff proved her ownership of the Property in question by virtue of the *Sale Deed dated 24.07.2008 at Ex.PW-1/1*. She also proved her *Property Tax bills from the year 2018 till 2022-2023 at Ex.PW-1/4 to Ex.PW-1/8* and also her *Electricity bill, Ex.PW-1/3*, in support of her ownership. S

36. He further deposed that the Property had been purchased, through Mohd. Imran, in whom they had developed the faith and trust. The Plaintiff and her husband being based in Faridabad, handed over the keys to Mohd. Imran Khan for taking care of the property. They were unable to visit the suit premises for some time on account of COVID Pandemic, and when they visited the Property in July, 2021, they were shocked to find the Defendant present in the premises, who initially sought time of six months and thereafter, another period up to 31.12.2022 to vacate the Property. Despite which, she failed to do so leading to the Legal Notice dated 29.01.2024, Ex.PW-1/9 *vide* Postal Receipt, Ex.PW-1/11 was duly served upon the



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Defendant as evidenced by Tracking Report, Ex.PW-1/10.

37. The Defendant despite due service, failed to file the Written Statement on time. However, on her subsequent Application, the Written Statement was taken on record subject to payment of cost, which she admits not having paid and further admitted that she failed to appear on the date so fixed for payment of cost. The Written Statement for want of the payment of cost, had rightly not been taken on record.

38. The learned Trial Court, therefore, rightly proceeded *ex-parte* when she failed to appear and struck off the defence of the Appellant on **20.08.2024**.

39. There is *no explanation forthcoming* to explain her admitted possession in the suit premises. Even though her Written Statement was not taken on record and her defence was struck off, her defence is that she claimed that she had been inducted by the Plaintiff and Mohd. Imran in the suit premises as a tenant by virtue of the **Security Agreement dated 18.12.2018** under which she paid Rs. 5,00,000/- as an interest free security for a period of 11 months and was liable for eviction only on return of their security amount.

40. Pertinently, thereafter **another Security Agreement dated 22.03.2021** on similar terms, was executed between the Defendant and Mohd. Imran. Further, in the first Security Agreement, **it was mentioned that Mohd. Imran who claimed himself to be the owner**, had taken Rs.2,00,000/- in cash along with two cheques of Rs. 1,50,000/- each. However, in the second Security Agreement, it is indicated that the amount received in cash was Rs.2,50,000/-. In addition, it was also mentioned that a cheque of Rs.1,00,000/- dated 23.03.2021 was given, in addition to the



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erstwhile two cheques of Rs.1,50,000/- each, had been received by Mohd. Imran.

41. From these arrangements, it emerges that Mohd. Imran claiming himself to be the owner, had entered into these two Security Agreements. It is clearly evident that Mohd. Imran, who had been deputed as a care taker of the suit property, had ***misused his authority*** and handed over the keys to the Defendant, for his own independent benefit.

42. He may have taken Rs. 6,50,000/- in all from the Defendant, but the *claim to recover this amount rests against Mohd. Imran* and not against the Plaintiff, who was never in the picture and this money was never handed over to the Plaintiff. This is evident from the fact that though, the Defendant had claimed that Mohd. Imran had come along with the Plaintiff, nevertheless, the two Security Agreements are only with Mohd. Imran mentioning him as an owner.

43. The testimony of the Plaintiff has ***remained un rebutted*** that she was the owner of the suit property and had never let it out to the Defendant, which is also proved from the assertions made by the Defendant in her own admitted statements (Written Statement not taken on record), as well as from the grounds of Appeal.

44. The Respondent being the owner of the Property, is *entitled to the possession* from the Appellant, who has not been able to establish any right of occupancy *vis-à-vis* the Plaintiff. **Whatever be her rights against Mohd. Imran, she is at liberty to pursue the same.**

45. It may also be mentioned that though, she had filed an Application under Order 1 Rule 10 CPC for impleadment of Mohd. Imran, but had not pursued her Suit since she was proceeded *ex-parte*. She herself failed to



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pursue her Application. Furthermore, from the aforesaid discussion, it is quite evident that Mohd. Imran was not a necessary or a proper party in the present Suit, wherein the Plaintiff had asserted her rights in respect of the Suit Property by virtue of a registered Sale Deed.

46. The learned District Judge has rightly decreed the Suit for Possession.

47. Insofar as, the damages/illegal user occupation charges are concerned, the Plaintiff in her Affidavit on evidence, had deposed that the suit property can fetch a value of Rs.15,000/- per month, a fact which has remained totally unrebutted by the Defendant.

48. The learned District Judge *rightly considered the prevailing market rate and the location of the Property*, to make an assessment of the Mesne Profits/user occupation charges **@Rs.15,000/-per month.**

49. There is no infirmity in the impugned Judgment and decree dated 15.10.2025. **The Appeal is hereby, dismissed and disposed of accordingly.** Pending Applications, if any, also stands disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

AUGUST 12, 2026

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