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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 25th May, 2026
Pronounced on: 09th September, 2026

\+ RFA 937/2017

BPCL .....Appellant

Through: Mr. Anil Kumar Batra, Ms. Shashi Bala and Mr. Dhruv Kumar, Advs.
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versus

D.P DHALL (THR HIS LEGAL HEIRS) .....Respondent

Through: Ms. Sonia Mathur, Sr. Adv. with Ms. Aditi Gupta, Ms. Shubhi Bhardwaj, Ms. Safeena Khan, Ms. Manasi Sridhar, Ms. Nikita Gill, Mr. Akashdeep, Ms. Lavanya Bhardwaj and Mr. Amandeep Joshi, Advs.
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CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA, J.

INTRODUCTION

1. The present Regular First Appeal **("RFA")** has been filed under Section 96 of the Code of Civil Procedure, 1908 **("CPC")**, thereby, challenging the judgment and decree dated 09th June, 2017 **("impugned judgment")**, passed by the Additional District Judge-03 (Central), Tis Hazari Courts, Delhi, in the suit bearing *CS No. 99/2016*, titled as *Sh. D.P.*

Dhall Versus Bharat Petroleum Corporation Limited. There is a further prayer seeking dismissal of the suit as having abated on the death of the respondent/plaintiff.

2. The aforesaid suit was filed by the respondent/plaintiff for recovery of damages for coercive eviction from the residential accomodation allotted by the appellant/defendant, in the sum of Rs. 20,00,000/-, along with costs, future and *pendente-lite* interest @24% per annum, with effect from 25th October, 2004, until full payment was made by the appellant/defendant. The damages were sought, *inter alia*, in respect of loss of cash, jewellery and other valuable household goods, as well as mental agony, torture, harassment, loss of prestige, extreme inconvenience, and cost of changing residence.

3. The Trial Court *vide* the impugned judgment decreed the suit in favour of the respondent/plaintiff and held that he was entitled to a total sum of Rs. 15,30,000/-, out of which Rs. 10,00,000/- was awarded under the heads of mental agony, loss of prestige and inconvenience caused to the respondent/plaintiff; Rs. 4,80,000/- was awarded on account of loss of cash, jewellery and other valuables and household goods; and Rs. 50,000/- was awarded for the balance repair of damaged household goods. The respondent/plaintiff was also held entitled to *pendente-lite* and future interest @12% per annum, on the total awarded amount of Rs. 15,30,000/-, and the cost of the suit, being Rs. 22,278/-.

BRIEF FACTS

4. The brief facts, relevant for adjudication of the present appeal, as culled out from the impugned judgment and the pleadings on record, are as follows:

4.1. The appellant/defendant, i.e., Bharat Petroleum Corporation Limited **("BPCL")**, is a Government of India undertaking having its registered office in Mumbai.

4.2. The respondent/plaintiff, i.e., Mr. D.P. Dhall, was employed by the appellant/defendant as the General Manager, and retired from service on 30th April, 2005. At the time of retirement, he was placed on deputation with the Ministry of Petroleum and Natural Gas, Government of India, New Delhi.

4.3. As per the service regulations with effect from November, 1996, the appellant/defendant provided residential accommodation to employees who were at the level of Manager and above.

4.4. Accordingly, the respondent/plaintiff was allotted a residential accommodation bearing no. *A-10, First Floor, South Extension-II, New Delhi* **("subject premises")**, which was taken on lease from its owner/lessor, i.e., Mrs. Reeta Sachdeva, at the monthly rate of Rs. 500/- *vide* Lease Deed dated 16th March, 1968, and the said Lease Deed was renewed from time to time, by separate lease deeds.

4.5. The subject premises were allotted to the respondent/plaintiff by the appellant/defendant in the year 1994, for residential purposes. The lease was thereafter renewed by the appellant/defendant for a further period of two years, commencing from 01st March, 1998, *vide* Lease Deed dated 23rd February, 1998, at a monthly rent of Rs. 4,200/-. The appellant/defendant deducted occupational charges from the monthly salary of the respondent/plaintiff in respect of accommodation in the subject premises.

4.6. Thereafter, the owner/lessor of the subject premises filed a suit, being *CS No. 742/2002*, against the appellant/defendant for possession of the subject premises, which was decreed in her favour *vide* judgment dated 16th April, 2004, passed by the Civil Judge, Central, Tis Hazari Courts, Delhi.

4.7. In respect of the said decree, execution proceedings, being *Ex. Pet. 97/2009,* were initiated, whereby, a warrant of possession was issued. Pertinently, the respondent/plaintiff was neither a party to the proceeding in *CS No. 742/2022* nor to the proceedings in *Ex. Pet. 97/2009.*

4.8. Pursuant to the aforesaid order, on 25th October, 2004, the owner/lessor took possession of the subject premises through her power of attorney and bailiff, by breaking open the lock of the subject premises and removing the belongings of the respondent/plaintiff in his absence. In this regard, a First Information Report **("FIR")**, being *FIR 669/2004*, was registered at the instance of the respondent's/plaintiff's wife, i.e., Mrs. Indira Dhall, in the Police Station **("PS")**, Defence Colony, New Delhi.

4.9. The respondent/plaintiff *vide* E-mail dated 11th November, 2004, addressed to the Director (Human Resources) and Director (Refineries) of the appellant/defendant made a claim towards losses suffered by him, amounting to a total sum of Rs. 4,48,000/-, comprising of Rs. 4,00,000/- towards missing jewellery, and Rs. 48,000/- towards loss of cash.

4.10. The appellant/defendant replied to the said E-mail on 14th February, 2005, explaining that it was not liable to pay any compensation to the respondent/plaintiff and that the loss or damage, as claimed, had been caused by the actions of the owner/lessor.

4.11. Aggrieved by the aforesaid response, the respondent/plaintiff filed a suit on 19th October, 2005, being *CS No. 99/2016*.

4.12. During the pendency of the proceedings in *CS No. 99/2016*, the respondent/plaintiff expired on 30th January, 2016, and an application under

Order XXII Rule 3 of the CPC was moved by the wife and children of the respondent/plaintiff, seeking their substitution in place of the deceased respondent/plaintiff. By way of order dated 21st March, 2016, the Trial Court allowed the application, and the Legal Representatives **("LRs")**, i.e., Mrs. Indira Dhall/wife, Mr. Devashish Dhall/son and Mrs. Debika Dhall/daughter of the respondent/plaintiff, were brought on record.

4.13. The Trial Court framed two issues *vide* order dated 22nd January, 2007, which were as follows –

> *"xxx xxx xxx*
>
> 1. *Whether the Plaintiff is required to claim any amount from the Defendant? If so, what that amount is? OPP*
> 2. *Whether the Plaintiff is entitled to claim interest, if so, on what amount, at what rate and for what period? OPP*
> 3. *Relief.*
>
> *xxx xxx xxx"*

4.14. The Trial Court answered both the aforesaid issues in favour of the respondent/plaintiff, and passed the impugned judgment on 09th June, 2017.

4.15. Aggrieved by the impugned judgment, the appellant/defendant has preferred the present appeal.

<u>SUBMISSIONS OF THE APPELLANT/DEFENDANT</u>

5. Before this Court, the appellant/defendant has raised the following contentions:

5.1. The appellant/defendant has submitted that it was desirous to continue the Lease Deed dated 23rd February, 1998, as the subject premises had been occupied by the respondent/plaintiff for many years. However, the owner/lessor *vide* letters dated 09th July, 1999, and 01st March, 2000, in violation of Clause 22 of the Lease Deed, requested the appellant/defendant to pay an increased rental amount of Rs. 25,000/- per annum for renewal of the Lease Deed for a further period of two years.

5.2. The appellant/defendant *vide* letter dated 16th March, 2000, offered an enhancement @14% over the existing rent, which was not accepted by the owner/lessor. Therafter, the owner/lessor served a Legal Notice dated 01st May, 2000, upon the appellant/defendant for terminating the tenancy.

5.3. The appellant/defendant replied to the said Legal Notice *vide* reply dated 26th July, 2000, requesting renewal of the Lease Deed. However, the owner/lessor filed a suit for possession against the appellant/defendant, being *CS No. 742/2002*, which was decreed in her favour by way of judgment dated 16th April, 2004, and executed in *Ex. Pet. 97/2009*. The appellant/defendant filed a Regular Civil Appeal, being *RCA 16/2004*, in this regard, but the same was dismissed *vide* order dated 31st August, 2004, passed by the Additional District Judge, Delhi.

5.4. It is submitted that the respondent/plaintiff was intentionally not impleaded as a party to the said suit by the owner/lessor, which proved detrimental to his interests as an occupant of the subject premises.

5.5. Upon hearing of the eviction of the respondent/plaintiff from the subject premises, the officials of the appellant/defendant reached the subject premises and provided all possible assistance to the respondent/plaintiff and his family members, including arrangement for an alternative three-bedroom company accommodation, located at *S-191 Greater Kailash-II, New Delhi* **("GK-II property")**, with all facilities, to enable them to shift immediately.

5.6. Since the respondent/plaintiff was not willing to shift his belongings from the roadside adjacent to the subject premises, the appellant/defendant, in the interregnum, provided security guards for the safety of the belongings.

Further arrangements were made for the respondent/plaintiff and his family to stay at an alternative accomodation, which was a guest house of the appellant/defendant, located at *10 C, Kasturba Gandhi Marg, New Delhi* **("guest house")**.

5.7. The appellant/defendant advised the respondent/plaintiff to lodge an FIR in respect of his allegations that some of his household goods and other valuables had been lost, but the respondent/plaintiff was not agreeable to do the same and thus, an opportunity was lost to recover the goods alleged to have been stolen during the process of eviction. However, the appellant/defendant lodged a police complaint dated 25th October, 2004, against the power of attorney of the owner/lessor in this regard.

5.8. On 26th October, 2004, the appellant/defendant made arrangements for shifting certain belongings of the respondent/plaintiff to the GK-II property, and the remaining belongings to the guest house, where the appellant/defendant undertook to bear the costs for the respondent's/plaintiff's stay. Subsequently, on 15th November, 2004, the respondent/plaintiff shifted to the GK-II property.

5.9. The appellant/defendant had also worked out a compromise on 26th October, 2004, to get possession of the subject premises with the help of the advocate of the owner/lessor. However, during negotiations for the same, the respondent/plaintiff refused to sign an affidavit to the satisfaction of the advocate of the owner/lessor.

5.10. It is the case of the appellant/defendant that the Trial Court failed to appreciate that the suit for recovery of damages instituted against the appellant/defendant abated on the death of the respondent/plaintiff in light of Section 306 of the Indian Succession Act, 1925 **("Succession Act")**.

5.11. It is contended that, in the event of the death of the respondent/plaintiff during the pendency of the suit, the suit would abate, and his LRs should not have been brought on record in view of the principle of *actio personalis moritur cum persona* embodied under Section 306 of the Succession Act.

5.12. It is further contended that the Trial Court failed to appreciate the applicability of the aforesaid principle, which means that a personal action dies when the party to the cause of action also dies. The said principle has been applied in cases where a plaintiff dies during the pendency of the suit filed seeking damages for personal injuries sustained by him, and is also recognized by Section 306 of the Succession Act.

5.13. The Trial Court failed to appreciate that two simultaneous legal proceedings, viz., the Objection Petition filed by the respondent/plaintiff through his wife in *Ex. Pet. 97/2009*, and the present suit filed by the respondent/plaintiff, pertain to the same relief, arise from the same alleged cause of action, and are thus, barred by *res judicata*.

5.14. It is submitted that *vide* order dated 23rd October, 2009, the aforesaid Objection Petition had been dismissed by the Executing Court, however, the Trial Court failed to appreciate that the said dismissal was deemed to be a decree under Order XXI Rule 103 of the CPC. It became absolute by necessary implication of law, accruing no right in favour of respondent/plaintiff, and operating as *res judicata* to the subsequent suit, i.e., *CS No. 99/2016.*

5.15. The Trial court erred in not appreciating the fact that the suit was liable to be dismissed because of non-joinder of the necessary party, i.e., the owner/lessor, whose actions were the reason for the loss suffered by the respondent/plaintiff.

5.16. Further, the Trial Court erred in deciding the quantum of compensation without considering the fact that no evidence had been placed on record by the respondent/plaintiff in order to substantiate his claim, and assess the actual loss suffered by him.

5.17. Additionally, the Trial Court failed to appreciate that it had been established, on the available evidence, that the appellant/defendant was unaware about the process of eviction carried out on 25th October, 2004, and therefore, no negligence could be made out on the part of the appellant/defendant. In view of these facts and circumstances, exemplary compensation awarded to the respondent/plaintiff, on account of tortious liability, is not justified.

SUBMISSIONS OF THE RESPONDENT/PLAINTIFF

6. Rebutting the contentions of the appellant/defendant, the respondent/plaintiff has raised the following arguments before this Court:

6.1. The respondent/plaintiff expired on 30th January, 2016, and his LRs were taken on record *vide* order dated 21st March, 2016, passed by the Trial Court in *CS No. 99/2016*. The said order was never challenged by the appellant/defendant.

6.2. Evidence of the respondent/plaintiff, being *PW-1* and *PW-2*, i.e., Mr. Dhall and Mrs. Dhall, respectively, stood concluded as per the order dated 27th November, 2008, passed by the Trial Court. Evidence of the appellant/defendant was also concluded, as recorded in the order dated 29th October, 2013, and the matter was listed for final hearing. Thereafter, the matter was delayed through no fault of the respondent/plaintiff.

6.3. The respondent/plaintiff and his family had been residing at the subject premises for almost ten years. They enjoyed respect and regard in the society and neighborhood, as both the respondent/plaintiff and his wife held respectable positions in their respective spheres of employment. Since both were employed and their son was a student, the subject premises usually remained locked during the day.

6.4. The respondent/plaintiff and his family members were never informed of any pending litigation between the owner/lessor and the appellant/defendant, nor were they ever impleaded in any of these proceedings. During the absence of the respondent/plaintiff and his family members, the bailiff forcibly executed the eviction by breaking open the locks of the subject premises, following which their personal belongings were removed from the subject premises and left on the road.

6.5. The appellant/defendant was not prepared to handle the situation as it was made aware of the said forcible eviction by Mrs. Dhall. On being informed, the appellant/defendant shifted the respondent/plaintiff and his family to the guesthouse, before shifting them again, to the GK-II property. The respondent/plaintiff placed reliance on the cross examination of *DW-2* and *DW-3*, i.e., Sh. Mukesh Nangia, Senior Manager (Benefits and Administration), BPCL, and Mukesh Kumar Jain, Chief Manager (Legal), respectively, to submit that this interim accommodation was a guest house, and not ready for immediate shifting and for housing a family.

6.6. The belongings of the respondent/plaintiff and his family members remained on the road outside the subject premises for about two to three days, and were only shifted after a valuation was conducted by a Government registered valuer appointed by the appellant/defendant.

6.7. The household goods were shifted to two different locations, including at a makeshift godown, which was contended to be nothing but a servant quarter. The transfer was undertaken without any proper packaging to the said godown, which did not have appropriate storage facilities. This resulted in not only severe damage to household goods, but also theft of the household goods and valuables including cash and jewellery, which is evident from the *FIR 669/2004*, whereby, it was revealed that a person involved in the eviction itself had stolen a mobile phone belonging to the respondent/plaintiff.

6.8. It is submitted that cash amounting to Rs. 48,000/-, jewellery worth over Rs. 4,00,000/-, and other valuables were left locked in the built-in almirahs inside the subject premises.

6.9. Besides the aforesaid, several priceless goods, such as family photo albums and important personal documents, were either destroyed or mutilated. Since the partial eviction had been conducted in the absence of the respondent/plaintiff and his family members, the total loss was difficult to determine. Furthermore, they were not given any opportunity to enter the subject premises after the eviction.

6.10. It has also come on record that at the time of the eviction, the respondent's/plaintiff's son's examinations were scheduled to commence from 1st November, 2004, while his daughter and son-in-law were scheduled to arrive from the United Kingdom on 29th October, 2004, to visit the family during Diwali. In these circumstances, the eviction, carried out without any prior notice, caused severe disruption to the respondent's/plaintiff's family and subjected them to immense pain and suffering.

6.11. It is submitted that the decretal amount awarded by the Trial Court has become part of the estate of respondent/plaintiff, and passes on to his LRs.

6.12. Further, the jewellery worth Rs. 4,00,000/-, has appreciated over time and is now valued at approximately Rs. 1,00,00,000/-. However, despite the current value of the loss being nearly Rs. 1,00,00,000/-, the respondent/plaintiff is only being given Rs. 4,00,000/-.

6.13. It is contended that the appellant/defendant was negligent and failed to discharge its duty and responsibility to ensure proper accommodation for the family of its employee, thereby, exposing an unprofessional attitude towards its duties. Instead of acknowledging its fault, the appellant/defendant, *vide* reply dated 14th February, 2005, *inter alia*, denied any obligation towards the respondent/plaintiff and stated that expenses towards accommodation in the guest house, transportation, deployment of security personnel, repairs, etc., were otherwise payable by the respondent/plaintiff, but were being waived as a special case.

6.14. The loss suffered by the respondent/plaintiff and his family is also evident from the testimony of the parties, inasmuch as it was stated in the cross examination of *DW-1*, i.e., Sh. Arun Singh, Electrical Contractor, that there were four Air conditioners **("ACs")** at the subject premises, of which one was a split AC given by the appellant/defendant, while the other three were window ACs. There was also one cooler, one TV, two refrigerators, one of which was very old, and two washing machines, one of which was used by the respondent/plaintiff, and the other was brought by him to give to his daughter. There was also a packed TV for gifting to the daughter. The witness further deposed that, to his knowledge, one cooler was fixed at the subject premises and was not evacuated during the process. Therefore, it is contended that the eviction process was incomplete, and loss has evidently been suffered by the respondent/plaintiff.

6.15. The cross-examination of *DW-2* reveals, the high-handed attitude of the appellant/defendant. The witness deposed that, considering the plight of the respondent/plaintiff, the counsel for the owner/lessor was requested to permit re-entry into the subject premises and had agreed to the same, subject to an affidavit being furnished to the effect that the subject premises would be handed back by August, 2005. He further deposed that the appellant/defendant was well aware of the theft of the belongings of the respondent/plaintiff. The allegation that Mrs. Dhall derailed the negotiations is falsified by the admission that only an affidavit from the appellant/defendant was required for the subject premises to be restored to the respondent/plaintiff till August, 2005.

6.16. The cross-examination of *DW-2* further elucidated that the respondent/plaintiff and his family members would remain outside the subject premises during working hours on weekdays and, as such, could not have known about the eviction proceedings under any circumstances. Further, the appellant/defendant falsely deposed that the respondent/plaintiff and his family members were entitled to claim damages from the owner/lessor, failing to appreciate that it was the appellant's/defendant's own callousness and negligence that caused the respondent/plaintiff to suffer humiliation, theft of household goods, including, a mobile phone, and loss of belongings, some of which, including, the air cooler and other household goods, were left attached to the subject premises.

6.17. It is submitted that the principle of *res ipsa loquitor* is applicable to the present case. Once it is held that the respondent/plaintiff has established the injury suffered, the onus would then shift upon the appellant/defendant to explain the circumstances and demonstrate whether it took the requisite care to avoid a foreseeable event. Once the presumption of the appellant's/ defendant's negligence begins to operate, the burden of proof lies upon the appellant/defendant.

6.18. It is further submitted that the existence of liability for negligence depends on whether a duty of care was owed by the appellant/defendant to the respondent/plaintiff. Such a duty of care exists in the present case, as it was reasonably foreseeable to the appellant/defendant that the respondent/plaintiff would suffer injury or damage by an act or omission of the appellant/defendant.

6.19. The maxim *actio personalis moritur cum persona*, as stipulated under Section 306 of the Succession Act, is inapplicable, since the wrong committed had tangibly affected the estate of the deceased respondent/plaintiff. Further, since his LRs were brought on record without any objection and obtained a decree in their favour, it cannot be said that the suit ought to have abated. In any event, the pleadings had been completed, the respondent's/plaintiff's evidence stood closed on 27th November, 2008, as well as the appellant's/defendant's evidence which stood closed on 29th October, 2013, whereafter the matter was listed for final hearing on 15th November, 2013. Thereafter, Mr. D.P. Dhall expired on 30th January, 2016, and his LRs were brought on record *vide* order dated 21st March, 2016.

6.20. The Objection Petition dated 30th October, 2004, filed in *Ex. Pet. 97/2009*, by the respondent/plaintiff through his wife, was primarily directed against the owner/lessor and the bailiff, and not against the appellant/defendant.

6.21. The said Objection Petition was dismissed on the ground that the objector, i.e., Mrs. Dhall, could sue the appellant/defendant for neglecting its duty to inform the respondent/plaintiff regarding the Court proceedings. It is contended that the said dismissal of the Objection Petition does not bar the filing of the suit for damages against the appellant/defendant, nor does it amount to *res judicata*. Regardless, the appellant/defendant is liable for damages on account of the forcible eviction of respondent/plaintiff from the subject premises without any notice.

6.22. In the instant case, the loss suffered by the respondent/plaintiff was not only on account of the forcible eviction, but also due to the negligence on the part of the appellant/defendant in failing to take due precautions in time, which could have avoided, if not entirely prevented, some loss or damage. In the peculiar facts of the present case, the respondent/plaintiff and his family members were placed in a situation where their household goods were thrown onto the road in their absence, making it impossible to ascertain the full extent of the belongings that were lost or missing.

<u>PROCEEDINGS BEFORE THIS COURT</u>

7. This Court *vide* order dated 10th November, 2017, stayed the operation of the impugned judgment and decree dated 09th June, 2017, subject to the appellant/defendant depositing 50% of the decretal amount with the Registrar General of the Court, within a period of four weeks, from the date of the said order.

8. Thereafter, learned counsel for the respondent/plaintiff moved an application, being *CM APPL. 46430/2017*, seeking vacation of the aforesaid order dated 10th November, 2017, which stayed the operation of the impugned judgment. By way of order dated 10th April, 2018, the said

application was dismissed, holding that the main appeal would become infructuous if the interim order was vacated.

9. *Vide* order dated 02nd March, 2020, this Court noted that against the amount directed to be deposited under the order dated 10th November, 2017, the appellant/defendant had deposited only half thereof, by way of Demand Draft dated 02nd November, 2017. On 04th March, 2020, the appellant/defendant submitted that the balance amount, together with interest, would be deposited. Pursuant thereto, a further sum of Rs. 13,31,549.95/- was deposited by way of Demand Draft dated 16th March, 2020, taking the total amount deposited to Rs. 20,96,549.95/-. The said amounts were kept in two Fixed Deposit Receipts **("FDRs")** in the name of the Registrar General.

10. The Registrar General by way of order dated 21st March, 2024, noted that the total amount deposited with the Registry, along with accrued interest was Rs. 25,66,622.95/-, as on 08th December, 2023. It was further noted that the respondent/plaintiff's wife, i.e., Mrs. Dhall, had furnished FDRs issued by Punjab National Bank, along with her property, bearing no. *32, Duplex I, Block A, Rajat Vihar, Sector-62, Noida, Uttar Pradesh*, as security for the release of the deposited amount along with accrued interest, in terms of the orders dated 04th April, 2022, 31st October, 2023, and 28th November, 2023 passed in the present proceedings. In respect of the said property, Mrs. Dhall, who appeared in person before the Court, submitted that she was the owner and the same was in her possession. She further placed on record an affidavit dated 01st December, 2023, stating therein that during the pendency of this appeal, she would not alienate, mortgage, or create any encumbrance or any third-party interest in the property.

11. Accordingly, the Registrar General directed that the total amount deposited with Registry be released to Mrs. Dhall, in terms of the previous orders passed by this Court. The Registrar General further noted that the earlier statement given by Mrs. Dhall, as recorded in the order dated 01st December, 2023, in respect of furnishing her Senior Citizen Savings Scheme Account as security, stood withdrawn as the same had not been accepted.

12. Subsequently, *vide* order dated 02nd April, 2024, this Court, in view of the application filed by Mrs. Dhall, being *CM APPL. 19364/2024*, directed that she shall not be bound by her statement that she shall not create any third-party rights in respect of her property, as recorded in the order dated 21st March, 2024.

13. Further, *vide* order dated 19th September, 2024, the Court recorded the submission of the counsel appearing for the respondent/plaintiff that Mrs. Dhall, at this stage, was not interested in receiving the money deposited by the appellant/defendant, which was directed to be released in her favour, as she had difficulty in furnishing the necessary surety desired by the Court. Accordingly, the Court directed that Mrs. Dhall was no longer bound by any affidavit furnished by her in compliance of the interim direction, for release of the deposited amount.

FINDINGS AND ANALYSIS

27. I have heard learned counsels for the parties and have perused the record.

Suit Of Respondent/Plaintiff Not Barred By Res Judicata

28. The first issue to be decided by the Court is whether the suit filed by the respondent/plaintiff before the Trial Court was barred by the principle of *res judicata*.

29. The contention raised by the appellant/defendant is that the respondent/plaintiff filed an Objection Petition dated 30th October, 2004, through his wife before the Executing Court, claiming damages for the alleged loss of reputation, cash, jewellery and other household goods. The said Objection Petition was dismissed *vide* order dated 23rd October, 2009.

30. Thus, the appellant/defendant has contended that the Trial Court failed to appreciate that the two simultaneous legal proceedings, first being the Objection Petition in *Ex. Pet. 97/2009* and second, being the suit bearing *CS No. 99/2016*, filed by the respondent's/plaintiff's wife and himself, respectively, for the same relief on the alleged cause of action, are hit by Section 11 of the CPC. The final decision dated 23rd October, 2009, in the previously instituted Objection Petition filed in *Ex. Pet. 97/2009* would operate as *res judicata* in the subsequent suit.

31. Reading of the judgment passed by the Trial Court, clearly brings to the fore that the Executing Court simply dismissed the Objection Petition filed by the wife of the respondent/plaintiff on the ground that since possession was given to the decree holder, i.e., the owner/lessor, in due process of law, if the objector had any grievance, she could sue the appellant/defendant-BPCL for neglecting its duty to inform the objector about the proceedings of the Court. However, the decree holder/landlady was not held liable for any loss caused to the objector or her husband, i.e., the respondent/plaintiff.

32. As noted by the Trial Court, it has specifically been held in the order passed by the Executing Court that liability, if any, for damages caused to the respondent/plaintiff lay against the appellant/defendant. Moreover, it is to be noted that the order dated 23rd October, 2009, passed by the Executing

Court did not bar the respondent/plaintiff from seeking a remedy *qua* the grievance regarding manner of eviction against the appellant/defendant and only held that the decree holder/landlady was not liable.

33. The position of law in this regard is very clear that for *res judicata* to apply, the previous suit should have been decided on merits. However, the Objection Petition was not decided on merits and was rather dismissed on the ground that the respondent's/plaintiff's wife could sue the appellant/defendant-BPCL for neglecting its duty to inform her regarding the proceedings of the Court.

34. Thus, it is apparent that such dismissal of the Objection Petition, did not operate as *res judicata* in filing a suit against the appellant/defendant, nor was there any legal bar for filing a suit for damages by the respondent/plaintiff against the appellant/defendant.

35. In this regard, reference may be made to the judgment in the case of ***Prem Kishore and Others Versus Brahm Prakash and Others, (2023) 19 SCC 244***, wherein, the Supreme Court held that the general principle of *res judicata* under Section 11 of the CPC contains rules of conclusiveness of judgment. However, for *res judicata* to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits, and the decision should have attained finality. The relevant extracts are as follows:

> *"xxx xxx xxx*
>
> *34.* ***The general principle of res judicata under Section 11 CPC contain rules of conclusiveness of judgment, but for res judicata to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was***

directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality. Where the former suit is dismissed by the trial court for want of jurisdiction, or for default of the plaintiff's appearance, or on the ground of non-joinder or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letter of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation, or for failure to pay additional court fee on a plaint which was undervalued, or for want of cause of action, or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision, not being on the merits, would not be res judicata in a subsequent suit.

xxx xxx xxx"

(Emphasis Supplied)

36. Accordingly, the plea of the appellant/defendant that the suit filed by the respondent/plaintiff before the Trial Court, was barred by the principle of *res judicata,* does not hold any merit. The same is accordingly, rejected.

Suit Not Liable To Be Dismissed For Non-Joinder Of Owner/Lessor

37. The next plea raised by the appellant/defendant is that the suit was liable to be dismissed because of non-joinder of the necessary party, i.e., the owner/lessor, whose actions were the reason for the loss suffered by the respondent/plaintiff. In this regard, reference may be made to the provision of Order I Rule 9 of the CPC which deals with misjoinder and non-joinder of parties. The said provision reads as under:

"xxx xxx xxx

*9. **Misjoinder and non-joinder.**—No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:*

[Provided that nothing in this rule shall apply to non-joinder of a necessary party.]

xxx xxx xxx"

38. Under Order I Rule 9 of the CPC, no suit is to be defeated by reason of the non-joinder of parties, save in respect of a party whose presence is necessary for the Court to effectually and completely adjudicate upon the issues raised in the suit. The present suit did not seek any relief against the owner/lessor or adjudication of any right, title or interest *qua* the owner/lessor. The case of the respondent/plaintiff before the Trial Court rested entirely upon the negligence of the appellant/defendant in not informing the respondent/plaintiff about the decree and pending execution concerning the subject premises in occupation of the respondent/plaintiff. The said issue is capable of adjudication as between the respondent/plaintiff and the appellant/defendant alone. The owner's/lessor's presence was not necessary for deciding the said issue. Accordingly, no merit is found in the said ground and the same is accordingly rejected.

Liability Of The Appellant/Defendant For Negligence

39. The next issue to be considered by this Court is whether the appellant/defendant can be held liable for negligence on account of tortious liability.

40. Challenging the finding of the Trial Court regarding negligence, the appellant/defendant has submitted that the respondent/plaintiff has a rightful claim for damages in respect of his household goods, loss of cash and jewellery against the owner/lessor only, who is responsible for such loss and who got the subject premises vacated in the absence of the respondent/plaintiff through her power of attorney and bailiff, while fully

being aware of the fact that the subject premises are under the occupation of the respondent/plaintiff and that they return home daily in the evening from work. It is submitted that the appellant/defendant was itself not aware about the eviction proceedings and the same has also come on record during evidence. The appellant/defendant has provided the respondent/plaintiff complete and immediate assistance in re-settling them and the displaced household goods, and incurred all expenditure required at that time, as well as at a later stage, till they shifted to a new accommodation.

41. This Court notes that the respondent/plaintiff had been allotted the residential accomodation by the appellant/defendant. As noted by the Trial Court, one implied term of allotment of premises to the employee by employer is that such employee will occupy the premises till the allotment is lawfully determined or terminated. Thus, in the facts and circumstances of the present case, it was the duty of the appellant/defendant to inform the respondent/plaintiff, in writing, that it has suffered an eviction decree from the Court in a suit filed by the owner/lessor of the subject premises. Though the witness of the appellant/defendant, i.e., *DW-2*, has deposed that he had informed the respondent's/plaintiff's wife telephonically about the eviction decree and the execution proceedings, however, the same has been categorically denied by the respondent/plaintiff and his wife. This Court notes that besides the oral deposition of the said witness that the respondent's/plaintiff's wife had been orally informed about the pendency of the eviction and the execution proceedings, there is no document on record to substantiate the same.

42. The appellant/defendant has contended that the respondent/plaintiff retired as the General Manager of the appellant/defendant-BPCL and was

also on their Management Committee to contend that the respondent/plaintiff would have been aware of the eviction proceedings. However, nothing has been brought on record as to the scope of the subjects that were under the authority of the Management Committee, and as to whether issues regarding pendency or contest of court cases were within the domain of the decision of the Management Committee. Merely because the respondent/plaintiff was a General Manager, would not mean that he would be aware of the eviction proceedings, especially, when it has come on record that he was on deputation with the Ministry of Petroleum and Natural Gas, Government of India, at the time of his retirement.

43. It is also to be noted that no evidence was produced by the appellant/defendant that any alternative accommodation had been offered to the respondent/plaintiff owing to the pendency of the eviction or execution proceedings, prior to the eviction of the respondent/plaintiff from the subject premises. Further, there is no documentary evidence on record which could impute knowledge of the eviction proceedings to the respondent/plaintiff or his family members.

44. Moreover, it has come on record that it was the case of the appellant/defendant that even it was not aware of the execution proceedings or that any bailiff had been appointed. Submission of the appellant/defendant in this regard in the appeal is as follows:

"xxx xxx xxx

j. Whether Ld Trial court failed to appreciate that it has been established by evidence that even appellant-defendant was unaware regarding process of eviction carried on 25.10.2004 and therefore, there is no negligence, breach of duty on the part of the appellant-defendant and thus in the facts and circumstances of the case exemplary compensation awarded to the respondent-plaintiff on account of tortuous liability is not justified.

xxx xxx xxx

m. That the Ld. Trial court erred in not appreciating the fact that the present suit is bad in law and liable to be dismissed because of non joinder of the necessary party, the Lessor/ landlady and mis joinder of appellant-defendant. This is submitted that the respondent-plaintiff has the rightful claim for damages to his articles/ loss to cash and jewelry against the Lessor/ landlady only, who is responsible for such loss and, who got the premises vacated in the absence of the respondent-plaintiff through her POA, fully aware with the fact that the premises is under the occupation of the respondent-plaintiff and that they return home in the evening daily from their work. The Lessee/ landlady or her attorney, despite having complete knowledge, got the locks of the premises break open and removed the articles of the respondent-plaintiff. This is further submitted that appellant – defendant were themselves not aware about the eviction proceedings and the same has also come on record during evidence. However, appellant-defendant has provided the respondent-plaintiff complete and immediate assistance in settling everything and incurred all expenditure required at that time as well as at later stage till their shifting to new accommodation.

xxx xxx xxx"

45. When the appellant/defendant itself has admitted that it was not aware about the execution proceedings, it is clear that no information in this regard could have been given by the appellant/defendant to the respondent/plaintiff.

The relevant portion of the pleadings of the appellant/defendant in the present appeal in this regard is reproduced as under:

> *"xxx xxx xxx*
>
> z. Because the Ld. Trial court has wrongly interpreted the bonafide and honest pleadings of the appellant- defendant, wherein defendant pleaded that there is no negligence on the part of the appellant-defendant and that appellant-defendant itself was unaware about the eviction proceedings, the conclusion reached by the Ld Trial court on the question of liability is wrong and biased.
>
> *xxx xxx xxx"*

46. Further, *DW-4*, i.e., Manoj Singh, Advocate for the appellant/defendant, *vide* letter dated 25th October, 2004, addressed to the Station House Officer **("SHO")**, PS, Defence Colony, New Delhi, lodged a police complaint against Mr. Charunpal Singh, attorney of the owner/lessor, alleging trespass under Section 448 of the Indian Penal Code, 1860 **("IPC")**, and damage to the subject premises. The said letter, exhibited as *DW-2/30* and *PW-1/24* before the Trial Court, stated, *inter alia*, that no notice had been received before breaking open the lock of the subject premises, and that no local authority had been informed before the household goods and other belongings of the respondent/plaintiff were removed therefrom. Thus, the appellant/defendant itself acknowledged that the respondent/plaintiff had not been given any notice prior to his eviction from the subject premises.

47. The aforesaid categorically points to the clear stand of the appellant/defendant that it was itself unaware of the execution proceedings.

48. Accordingly, in the absence of information by the appellant/defendant to the respondent/plaintiff regarding the execution proceedings, it is evident that the appellant/defendant was negligent in that regard. The appellant/defendant ought to have communicated to the respondent/plaintiff, in clear terms, with regard to the eviction decree and the impending execution proceedings. Further, steps ought to have been taken for allotment of an alternate accommodation with clear communication to the respondent/plaintiff in this regard.

49. This Court takes note of the submission of the respondent/plaintiff that the existence of liability for negligence depends on whether a duty of care was owed to one person by the other. A duty of care exists when it is reasonably foreseeable to one person that an act or omission by them, would result in the other suffering injury or damage.

50. The Trial Court took note that it had been proved on record that the respondent/plaintiff and his family remained unaware about passing of the eviction decree or the issuance of the warrant of possession in the execution proceedings. Thus, it was held that the respondent/plaintiff had been able to establish negligence on the part of the appellant/defendant and therefore, the appellant/defendant bears tortious liability.

51. In the facts and circumstances of the present case, this Court finds no infirmity in such finding of the Trial Court that would warrant interference. This Court accordingly upholds the finding of the Trial Court in this regard that the appellant/defendant owed a duty of care on account of the proximity of their relationship with the respondent/plaintiff. Failure to discharge the duty resulted in the respondent/plaintiff suffering injury and damages.

Compensation Awarded To Respondent/Plaintiff

52. The next question to be considered by this Court is whether the Trial Court erred in deciding the quantum of compensation awarded to the appellant/defendant, on the ground that no evidence had been placed on record by the respondent/plaintiff in order to substantiate his claim and to assess the actual loss suffered by him.

Compensation Towards Repair Of Damaged Household Goods

53. The respondent/plaintiff has submitted that their belongings remained on the road outside the subject premises for almost two to three days, and were shifted after the valuation conducted by the valuer appointed by the appellant/defendant.

54. It is submitted that the household goods were shifted to two different locations, including a makeshift godown, which was nothing but a servant quarter. The transfer was without any proper packaging to a makeshift godown without proper storage. This not only resulted in severe damage to the household goods, but also theft of the other valuables including cash and jewellery, which is evident from *FIR 669/2004*, whereby, it was revealed that a person involved in the eviction itself had stolen a mobile phone belonging to the respondent/plaintiff.

55. *Per contra*, it is the case of the appellant/defendant that the quantum of loss, as claimed by the respondent/plaintiff, is exaggerated and the suit was a result of an afterthought.

56. In this regard, it is to be noted that the valuer appointed by the appellant/defendant carried out the inspection of the household goods on 27th October, 2004, and assessed the damages to the household goods to the tune of Rs. 1,43,000/-. The appellant/defendant claims to have already

provided assistance to the tune of Rs. 1,20,000/-, which is stated by them in the letter dated 14th February, 2005. Additionally, the appellant/defendant had placed on record before the Trial Court a total number of 30 bills which were towards various works done including repair of household goods and other modifications at the GK-II property. The Trial Court, without going into the quantification of bills, specifically incurred by the appellant/defendant towards repair of damaged household goods, has awarded a lumpsum amount of Rs. 50,000/-.

57. It is to be noted that though bills have been placed on record by the appellant/defendant purportedly towards repair of the damaged household goods of the respondent/plaintiff, however, majority of the said bills are towards the work done in the alternate accommodation, i.e., the GK-II property provided to the respondent/plaintiff. The details of the bills placed on record by the appellant/defendant, as enumerated in the evidence affidavit of *DW-2*, is reproduced as under:

"xxx xxx xxx

(i) Shri Kailash Chand Sharma for kitchen cabinets and kitchen shutters at a cost of Rs: 14142/-. Bill/Cash Memo no. 544 dated 24.01.05 is Ex. 2/2. P-40

(ii) M/s H.M. Decorators for painting at a cost of Rs: 10033/-. Bill/Cash Memo no. 847 dated 09.01.05 is Ex. DW-2/3. P-55

(iii) Shri Brahma Dev for polishing of cup-board, wood work and furniture at a cost of Rs: 5483.70/-. Bill/Cash Memo no. 699 dated 16.11.04 is Ex. DW-2/4, P-23

(iv) Shri Darshan Singh for carpentry work at a cost of Rs: 1900/-. Bill/Cash Memo no. 951 dated 29.12.04 is Ex. DW-2/5, P-25

(v) M/s Alekha Swain for plumbing work at a cost of Rs: 1350/-. Bill/Cash Memo no. 426 dated 02.12.04 is Ex. DW-2/6, P-20

(vi) Shri Arun Kumar Singh for electrical fixtures at a cost of Rs: 4165/-. Bill/Cash Memo no. 2738 dated 05.12.04 is EX. DW-2/7, P-13

(vii) Shri Arun Kumar Singh for supply of electrical fixtures and fittings at a cost of Rs: 947/-. Bill/Cash Memo no. 2761 dated 29.12.04 is Ex. DW-2/8, P-15

(viii) M/s Punja Sahib Electricals for electrical switches at a cost of Rs: 205/- Bill/Cash Memo no. 4838 dated 20.01.05 is Ex. D .-2/9, P-5

(ix) M/s Punja Sahib Electricals for electrical items at a cost of Rs: 1034/- Bill/Cash Memo no. 4874 dated 28.12.04 is Ex. Dw-2/10. P-3

265

P-45

(xxi) M/s V. K. Refrigeration and Electricals for repair of air conditioners, copper pipe, valves etc of air conditioners at a cost of Rs: 4850/-. Bill/Cash Memo no.2233 dated 06.11.04 is Ex. DW- 2/22.

(xxii) Shri Brahma Dev for supply of mazdoor at the said premises, purchase of polythene bags for covering the household items and other works at a cost of Rs: 1120/-. Bill/Cash Memo no. 683 dated 02.11.04 is Ex. DW- 2/23. P-27

(xxiii) M/s V. K. Refrigeration and Electricals for repair of air conditioners, refrigerators and washing machines at a cost of Rs: 4850/-. Bill/Cash Memo no. 2229 dated 05.11.04 is Ex. DW-2/24. P-44

(xxiv) M/s Alekha Swain for repair of washing machine connection tube, adopter, washing machine drain pipe etc at a cost of Rs: 2303/-. Bill/Cash Memo no. 417 dated 18.11.04 is Ex. DW-2/25. P-17

(xxv) Shri Arun Kumar Singh for supply of cable tv wire, switch socket combined etc at a cost of Rs: 2270/-. Bill/Cash Memo no. 2720 dated 08.11.04 is Ex. DW-2/26. P. 8

(xxvi) Shri Darshan Singh for wood work such as lock change, glass door lock etc at a cost of Rs: 4560/-. Cash Memo/Bill no. 903 dated 29.11.04 is Ex. DW-2/27, P. 24

(xxvii) Shri Arun Kumar Singh for supply of exhaust fan and shifting of materials from 17, Aurnagzeb Road to S-191, G.K.-II, New Delhi at a cost of Rs: 800/-. Bill/Cash Memo no. 2721 dated 14.11.04 is EX. Dw-2/28, P- 9

(xxviii) Shri Arun Kumar Singh for supply of iron door with jali at a cost of Rs: 4200/- Bill/Cash Memo no. 2769 dated 08.01.05 is Ex. Dw-2/29, P-16

(xxix) Shri Arun Kumar Singh for supply of door mat, dust bin brass name plate, etc at a cost of Rs: 1560/-. Bill/Cash Memo no. 2753 dated 18.12.04 is Ex.DW-2/30. P-14

(xxx) Kailash Chand Sharm at a cost of Rs: 14142/- for kitchen cabinets. Cash Memo/ Bill no: 544 dated 24.1.05 is Ex.DW-2/31. P-40

(xxxi) Shri Kailash Chand Sharma for glass for furniture at a cost of Rs: 385/- Cash Memo: 542 dated 22.11.04 is Ex.DW-2/32. P 39

(x) Shri Kailash Chand Sharma for glass for furniture at a cost of Rs: 385/- Bill/Cash Memo no. 542 dated 22.11.04 is Ex. DW-2/11, P- 39

(xi) Shri Arun Kumar Singh for disposal of waste materials during shifting at a cost of Rs: 500/-. Bill/Cash Memo no. 2722 dated 15.11.04 is Ex. DW- 2/12. P-10

(xii) Shri Arun Kumar Singh for supply of labour, bath room and water tank cleaning at a cost of Rs: 1300/- Bill/Cash Memo no. 418 dated 18.11.04 is Ex. DW-2/13.

(xiii) Shri Arun Kumar Singh for shifting of godrej almirah at a cost of Rs: 700/-. Bill/Cash Memo no. 2719 dated 04.11.04 is Ex. DW- 2/14. P-7

(xiv) M/s Rockey Carpet Cleaners for cleaning the carpets and sofas at a cost of Rs: 3299.25/-. Bill/Cash Memo no. 603 dated 17.11.04 is Ex. DW- 2/15. P-41

(xv) Shri Arun Kumar Singh for repair of compressor of refrigerator and filter at a cost of Rs: 4500/-. Bill/Cash Memo no. 2730 dated 21.11.04 is Ex. DW- 2/16. P-11

(xvi) M/s Rockey Carpet Cleaners for cleaning of carpets and rooms at a cost of Rs: 1970/-. Bill/Cash Memo no. 606 dated 29.11.04 is Ex. Dw- 2/17. P-43

(xvii) M/s Alekha Swain for dry cleaning of curtains, blankets and bed-sheets at a cost of Rs: 3315/-. Bill/Cash Memo no. 428 dated 03.12.04 is Ex. Dw- 2/18. P-23

(xviii) Shri Arun Kumar Singh for repairing of TV remote, frame for cup board and supply for packing box at a cost of Rs: 4150/-. Bill/Cash Memo no. 2733 dated 28.11.04 is Ex. DW- 2/19. P-12

(xix) Shri Kailash Chand Sharma for polishing of furniture, sofa set, dressing table and show case at a cost of Rs: 4850/-. Copy of Bill/Cash Memo no. 541 dated 20.11.04 is Ex. Dw- 2/20. P-38

(xx) Shri Kailash Chand Sharma for repair of 2 double beds, dining set, table, shoe rack etc at a cost of Rs: 4900/-. Bill/Cash Memo no. 540 dated 19.11.04 is Ex. DW- 2/21. P-37

xxx xxx xxx"

58. Perusal of the aforesaid details clearly brings forth that only a miniscule amount was spent towards repair/restoration of the damaged household goods. This Court takes into account that the valuer appointed by

the appellant/defendant had assessed the damages to the tune of Rs. 1,43,000/-. The Trial Court has awarded only a sum of Rs. 50,000/- towards the said claim. Therefore, considering the fact that the negligence on the part of the appellant/defendant stands established, the loss suffered therein would have to be compensated.

59. Considering the evidence on record, this Court finds no error in the award of Rs. 50,000/- towards repair of damaged household goods to the respondent/plaintiff. Thus, the challenge by the appellant/defendant in this regard, is rejected.

Compensation Towards Loss Of Cash And Jewellery

60. The next head under which compensation has been awarded in favour of the respondent/plaintiff is Rs. 4,48,000/- towards loss of cash and jewellery. The Trial Court has upheld the exact amount as claimed by the respondent/plaintiff under the said claim, on account of the peculiar facts of the case.

61. In this regard, this Court notes that *FIR 669/2004* filed by the wife of the respondent/plaintiff in the PS, Defence Colony, New Delhi, on 07th December, 2004, did not explicitly record any claim with respect to the loss of cash amounting to Rs. 48,000/- or loss of jewellery worth Rs. 4,00,000/-.

62. Furthermore, the respondent/plaintiff has admitted in his cross-examination that the complaint made to the police did not mention the loss of cash and jewellery since he was worried about his dispossession and humiliation. The deposition of the respondent/plaintiff, i.e., *PW-1*, dated 24th May, 2007, in this regard, is reproduced as under:

"xxx xxx xxx

It is wrong to suggest that Mr. Manoj Singh had lodged the complaint after discussing the matter with me. Vol. Mr. Manoj Singh had advised me to make a complaint to the police which I did and I incorporated the facts, as well as the suggestions given by Mr. Manoj Singh. It is correct that in the complaint made by me to the police I had not mentioned about the loss of jewellery and the loss of cash and valuables. Vol. I was more worried about my dispossession and humiliation. It is wrong to suggest that there had been a proposal from the side of the Defendant to settle the matter amicably on 25.10.2004 with suggestion to take back the possession of the A-10 or that it was my wife who had quarrel with each and every official of the Defendant and did not allow the settlement to materialize. Vol. The house was locked at that time and our anxiety at that time was to find out as to whether all the articles had been taken out or not. It is wrong to suggest that my wife did not permit the bailiff to prepare inventory of all the articles.

xxx xxx xxx

Q. I put it to you that in all of your E-Mails sent initially, nothing had been mentioned by you about the loss of cash and jewellery. Therefore, the claim which now you are making is an afterthought?

Ans. It is a matter of record. However, in my E-Mails, I had mentioned about the loss of cash and jewellery. It is wrong that my claim is an afterthought.

It is wrong to suggest that if there is a transfer within the city, the employee is not entitled to claim the change of residence allowances.

It is wrong to suggest that I have deposed falsely

xxx xxx xxx"

63. Accordingly, considering the evidence on record, it is pertinent to note that *firstly*, the respondent/plaintiff has not placed on record any bank withdrawal slip, payment bill, jewellery purchase bill or any other document to show that they were in possession of cash amounting to Rs. 48,000/- and jewellery worth Rs. 4,00,000/-, as on the date of eviction.

64. *Secondly*, though the *FIR 669/2004* filed by the wife of the respondent/plaintiff on 07th December, 2004, mentioned the loss of a phone, no claim regarding loss of cash or jewellery was stated therein. In the absence of any documentary evidence, no amount can be awarded in favour of the respondent/plaintiff, merely based on the peculiar circumstances of their case.

65. *Thirdly*, in the Objection Petition filed by the respondent's/plaintiff's wife in *Ex. Pet. 97/2009*, she had claimed a sum of Rs. 30,000/- on account of missing cash and Rs. 60,00,000/- to Rs. 70,00,000/- as loss suffered against certain articles and other assets. The aforesaid submission of the respondent's/plaintiff's wife reflects a contradictory stance in respect of the purported monetary losses suffered against loss of cash and jewellery and other valuable assets.

66. Accordingly, the Trial Court has erred in awarding compensation of Rs. 4,48,000/- to the respondent/plaintiff towards loss of cash and jewellery, in the absence of any evidence on record. In view of the same, the award of compensation of Rs. 4,48,000/- under the said head, is set aside.

Compensation Towards Mental Agony, Loss Of Prestige And Inconveniences

67. The Trial Court has further awarded compensation of Rs. 10,00,000/- towards mental agony, loss of prestige and inconvenience caused to the respondent/plaintiff. The same has been challenged by the appellant/ defendant on the ground that on account of death of the original respondent/plaintiff during the pendency of the suit, compensation under the said claim could not have been awarded.

68. It is to be noted that the respondent/plaintiff expired during the pendency of the suit and his LRs were brought on record *vide* order dated 21st March, 2016, which, though opposed, was not challenged by the appellant/defendant.

69. The appellant/defendant has challenged the impugned judgment on the ground that the Trial Court failed to appreciate that in the event of the abatement of the suit due to death of the respondent/plaintiff during the pendency of the suit, the LRs could not have been ordered to be brought on record based on the principle of *actio personalis moritur cum persona* enshrined under Section 306 of the Succession Act.

70. It may be noted that this question was not raised before the Trial Court. However, the said question being a purely legal issue, can be raised in the present proceedings.

71. In this regard, reference may be made to Section 306 of the Succession Act, which reads as under:

> *"xxx xxx xxx*
>
> ***306. Demands and rights of action of, or against deceased survive to and against executor or administrator**.—**All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

72. The words 'other personal injuries not causing the death of the party' have been read *ejusdem generis* with 'defamation' and 'assault', to cover any injury to a person's dignity, reputation, mental agony and the like. Accordingly, in terms of Section 306 of the Succession Act, relief for personal injuries such as mental agony, etc. do not survive upon the death of the person concerned. Thus, clarifying the distinction between an individual's personal right and the proprietary rights relating to his estate, the Supreme Court in the case of ***Kumud Lall Versus Suresh Chandra Roy (Dead) Through LRs and Others, 2026 SCC OnLine SC 797***, held as follows:

> *"xxx xxx xxx*
>
> ***60.*** *This Court in Vinayak Purshottam Dube v. Jayashree Padamkar Bhat, while deciding the liability of legal heirs of the deceased opposite party-developer to provide completion certificate, conveyance deed etc., to the complainant in addition to the monetary payment arising out of a development agreement, made the following classification between proprietary and personal rights-*

	Proprietary rights	*Personal rights*
1.	*Proprietary rights mean a person's right in relation to his own property. Proprietary rights have some economic or monetary value.*	*Personal rights are rights arising out of any contractual obligation or rights that relate to status.*
2.	*Proprietary rights are valuable.*	*Personal rights are not valuable in monetary terms.*
3.	*Proprietary rights are not residual in character.*	*Personal rights are the residuary rights which remain after proprietary rights have been subtracted.*

4.	*Proprietary rights are transferable.*	*Personal rights are not transferable.*
5.	*Proprietary rights are the elements of wealth for man.*	*Personal rights are merely elements of his well-being.*
6.	*Proprietary rights possess not merely judicial but also economic importance.*	*Personal rights possess merely judicial importance.*

In the light of the above, it is clear that in distinction to an individual's personal right which is attached to his status, the proprietary right relates to his estate. On the other hand, personal right or claim usually includes damages for loss of reputation, pain, and suffering, etc.

xxx xxx xxx

***64.** What falls from the above discussion are as under-*

i. The common law maxim 'actio personalis moritur cum persona' in India has been statutorily modified by various statutory instruments such as Fatal Accidents' Act of 1855, Legal representatives' Suits Act of 1855, Indian Succession Act of 1925, etc.;

ii. That the legal representative of the deceased can institute a fresh suit or be sued afresh in terms Legal Representatives Suits Act, 1855 or in terms of Section 306 of Indian Succession Act, 1925;

*iii. **Continuation of suit by or against the legal representative of the deceased has to be in terms of Section 306 of Indian Succession Act, 1925 (substantive law);***

iv. Procedural prescription under Order XXII of CPC, concerning substitution of legal representative of the deceased party should be harmoniously construed with Section 306 of Indian Succession Act.

v. The continuation of 'right to sue' under Order XXII Rule 2 read with Rule 4 is to be seen on the date of death.

*vi. **Generally, all rights and liabilities to maintain a suit are carried to the legal representative under***

> ***<u>Section 306 of Indian Succession Act, 1925. However, when adjudicating claims under 1st exception to Section 306 of the Indian Succession Act, 1925, personal injury claims abate, while claims for or against the estate of the deceased survive</u>.***
>
> *xxx xxx xxx"*

(Emphasis Supplied)

73. Likewise, the Supreme Court, in the case of ***M. Veerappa Versus Evelyn Sequeira and Others, (1988) 1 SCC 556***, has held the maxim of *actio personalis cum moritur persona* to be inapplicable only in those cases where the injury caused to the deceased person has tangibly affected his estate or has caused an accretion to the estate of the wrong doer. If the entire suit claim is founded on torts, the suit would undoubtedly abate. If the action is founded partly on torts, and partly on contract, then such part of the claim as relates to torts would stand abated and the other part would survive. If the suit claim is founded entirely on contract, then the suit has to proceed to trial in its entirety and be adjudicated upon. Thus, it has been held as follows:

> *"xxx xxx xxx*
>
> ***10. <u>The maxim "actio personalis cum moritur persona" has been applied not only to those cases where a plaintiff dies during the pendency of a suit filed by him for damages for personal injuries sustained by him but also to cases where a plaintiff dies during the pendency of an appeal to the appellate court, be it the first appellate court or the second appellate court against the dismissal of the suit by the trial court and/or the first appellate court as the case may be. This is on the footing that by reason of the dismissal of the suit by the trial court or the first appellate court as the case may be, the plaintiff stands relegated to his original position before the trial court.</u>*** *Vide the decisions in Punjab Singh v. Ramautar Singh [AIR 1920 Pat 841: (1919) 4 Pat LJ 676], Irulappa v. Madhava [(1916) 31 MLJ 772] Maniramlala v. Chattibai [AIR 1937 Nag 216 : ILR 1938 Nag 280],*

Baboolal v. Ramlal [AIR 1952 Nag 408] and Melepurath Shankunni Ezhuthassan v. Thekittil Geopalankutty [(1986) 1 SCC 118 : AIR 1986 SC 411] . In Palaniappa Chettiar v. Rajah of Ramnad [ILR 49 Mad 208], and Motilal v. Harnarayan [AIR 1923 Bom 408 : 25 Bom LR 435 : ILR 47 Bom 716] it was held that ***a suit or an action which has abated cannot be continued thereafter even for the limited purpose of recovering the costs suffered by the injured party.*** *The maxim of actio personalis cum moritur persona has been held inapplicable only in those cases where the injury caused to the deceased person has tangibly affected his estate or has caused an accretion to the estate of the wrong-doer vide Rustomji Dorabji v. W.H. Nurse [ILR 44 Mad 357] and Ratanlal v. Baboolal [AIR 1960 MP 200] as well as in those cases where a suit for damages for defamation, assault or other personal injuries sustained by the plaintiff had resulted in a decree in favour of the plaintiff because in such a case the cause of action becomes merged in the decree and the decretal debt forms part of the plaintiff's estate and the appeal from the decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff which his legal representatives are entitled to uphold and defend (vide Gopal v. Ramchandra [ILR 26 Bom 597] and Melepurath Sankunni v. Thekittil [(1986) 1 SCC 118 : AIR 1986 SC 411]).*

xxx xxx xxx

15. *Having regard to the nature of the claim we are not able to comprehend how without any enquiry and recording of evidence the trial court and the High Court have proceeded on the basis that the suit claim is based only on tortious liability though the two courts have reached different conclusions about the abatement of the suit. The learned counsel for the respondent placed reliance upon the summary of the averments in the plaint set out above and argued that the plaintiff had suffered loss of over Rs 20,000 due to the closure of the business and hence the restricted claim of Rs 4500 is really towards loss suffered by the estate and not a claim made on the basis of the loss of reputation, mental agony, worry etc. suffered by the plaintiff. He further stated that the claim of Rs 1500 under three heads of Rs 500 each also related to the loss suffered by the estate of the deceased and hence the suit has to proceed for the entire suit claim. Since no discussion has been made and no finding has been rendered on this question and since we cannot render any* *finding on the basis of the materials on record whether the suit is based on the personal injuries sustained by the plaintiff or upon the loss suffered by the estate, we think the proper course would be to allow the judgment under appeal to stand even though we do not approve the reasoning of the High Court and dismiss the appeal. We leave the matter open for the trial court to decide whether the suit is founded entirely on torts or on contract or partly on torts and partly on contract and deal with the matter according to law.* ***If the entire suit claim is founded on torts the suit would undoubtedly abate. If the action is founded partly on torts and partly on contract then such part of the claim as relates to torts would stand abated and the other part would survive. If the suit claim is founded entirely on contract then the suit has to proceed to trial in its entirety and be adjudicated upon.****"*

(Emphasis Supplied)

74. Further, in the case of ***National Insurance Co. Ltd., Trichy P.R.I. 11, [Haritha Finance Extn. Gounder 0. 2/7, Pudukotai Road. Pin Code-620 020] Versus Sivabakkiyam (Deceased). 1. Balakrishnan and Others, 2018 SCC OnLine Mad 14935***, it was held that the LRs of the deceased cannot succeed to the compensation awarded towards personal injuries and pain suffering of the deceased, even though such amount would have enriched the estate of the deceased during her lifetime. Thus, it was held as follows:

"xxx xxx xxx

24. In M. Veerappa v. Evelyn Sequeira, (1988) 1 SCC 556 : AIR 1988 SC 506, the distinction was drawn between action "founded entirely on torts" and "entirely on contract". In the former case, it would abate while in the later it would not and survive to legal representatives. If action is founded partly on Contract and partly on torts then it would survive to the extent, it is based on Contract, rest would abate.

25. *In Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair, 1986 ACJ 440, the Supreme Court said that the right to sue where maxim " ction personalis moritur cum* *persona"" applies, does not survive to the legal representatives; therefore, they were not entitled to prosecute the claim.*

26. Thus, it is clear that the legal representatives/Legal Heirs of the deceased Sivabakkiyam cannot succeed to the Compensation awarded towards "Personal Injuries" and "Pain & Suffering" of the deceased even though such amount would have enriched the estate of the deceased during her life time.

xxx xxx xxx"

(Emphasis Supplied)

75. Similarly, delving into the scope of Section 306 of the Succession Act, this Court in the case of ***Daljit Singh and Another Versus Yogeshwar Prasad, 2006 SCC OnLine Del 438***, held as follows:

"xxx xxx xxx

***16.** I may here refer to the judgment of the Supreme Court in the case of M. Veerappa (supra) wherein after examining the maxim " ction personalis cum moritur persona" it was held that in such cases where the plaintiff dies during the pendency of the suit or an appeal, the plaintiff stands relegated to his original position before the trial court. However, it was held that this doctrine would not apply where injury caused to the deceased person had tangibly affected his estate or had caused an accretion to the estate of the wrongdoer. In this regard the Supreme Court approved of the observations made by the Madras High Court and the Madhya Pradesh High Court in Rustomji Devabji v. W.H. Nurse reported in AIR 1921 Mad 1 and Ratanlal v. Baboolal reported in AIR 1960 MP 200.*

***17.** The maxim "actio personalis cum moritur persona" has not been accepted in India as one of universal application. It operates in a limited class of actions ex delicto and not every action where on death of a party relief cannot be claimed or granting the same would be futile. There are also exceptions to the said maxim even in cases of personal injuries (See Section 37 of the Contract Act, 1872, Section 52 of the Transfer of Property Act, 1882 and Section 50 of the Code). Care must be taken not to extend this maxim beyond what is specified in Section 306 Of the Indian Succession Act, 1923 to actions founded on an obligation, contract, debt, covenant or any other duty to be performed.*

*18. <u>**Section 306 of the Indian Succession Act, 1923 provides that all rights to prosecute or - defend any action in favour of or against a person shall survive inspite of death of any of the parties except where cause of action are for defamation, assault or other personal injuries not causing death of a party or cases where after the death of a party, relief cannot be enjoyed or granting it would be negatory. The term "personal injury" has been construed as edjusdem (sic) generis and therefore takes its colour and meaning from the earlier two words: "defamation and assault". In Margarida v. Neckintu reported in AIR 1968 Bom 328, Section 306 of the Indian Succession Act, 1923 was examined and it was held that the term "other personal injuries" must be construed with reference to the preceding words, namely, defamation and assault. However, it may be clarified that the term "personal injury" need not refer only to physical injuries but also mental injuries as it happens in the case of defamation**</u> (See Mahajan v. Baboolal reported in AIR 1960 MP 666). In the case of Margarida (supra) the Bombay High Court that the legal representatives of a plaintiff are entitled to continue with a suit filed for compensation of damage caused to goods as it was a case of damage caused to the estate and not merely a personal right that perished and corroded with the death of the original plaintiff.*

xxx xxx xxx"

(Emphasis Supplied)

76. Considering the law as discussed hereinabove, it is evident that the compensation of Rs. 10,00,000/- awarded by the Trial Court towards mental agony, loss of prestige and inconvenience caused to the respondent/ plaintiff, are not tangible as to form a part of his estate. Accordingly, compensation of Rs. 10,00,000/- could not have been granted in favour of the LRs of the deceased respondent/plaintiff, on account of the right to sue for such claim having abated on the death of the respondent/plaintiff.

77. Thus, the award of compensation of Rs. 10,00,000/- towards mental agony, loss of prestige and inconvenience, is set aside.

Costs Of The Suit

78. The Trial Court has decreed the suit of the respondent/plaintiff along with costs of the suit amounting to Rs. 22,278/-. This Court has held the appellant/defendant to have acted in a negligent manner, and thus, no error is found in the costs of the suit having been awarded in favour of the respondent/plaintiff.

CONCLUSION

79. The judgment and decree dated 09th June, 2017, passed by the learned Additional District Judge (Central), Tis Hazari Courts, in *CS No. 99/2016*, is accordingly, modified to the following extent:

i. The award of Rs. 4,80,000/- for loss of cash, jewellery and valuable goods, is set aside.

ii. The award of Rs. 10,00,000/- towards mental agony, loss of prestige and inconvenience, is set aside.

iii. The award of Rs. 50,000/- towards balance repair of damaged goods, together with interest awarded therein, is upheld.

iv. The award of Rs. 22,278/- towards cost of the suit, is upheld.

80. The decree sheet be drawn up accordingly.

81. The present appeal is allowed partly in terms of the aforesaid.

MINI PUSHKARNA
(JUDGE)

SEPTEMBER 9, 2026/Kr/Ak/Sk