

NON REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.4581 OF 2008
(Arising out of SLP (C) No. 4929 of 2007)**

Mohammed
Appellant (s)

VERSUS

Pushpalatha
Respondent (s)

O R D E R

1. Leave granted.
2. This is an appeal from an order dated 30th of August, 2006 passed by the High Court of Karnataka at Bangalore in RFA No. 403 of 2004. The appellant before us is a tenant in respect of the premises in question and he had filed a suit for permanent and mandatory injunction, directing the respondent to construct a toilet in the said premises on the basis of an agreement entered into by the parties. It is not in dispute

that under the agreement, being Exhibit No. P1 before the trial Court, the respondent agreed to reconstruct the premises in question with toilet facility. The premises in question was reconstructed, but, however, the toilet was not reconstructed according to the terms of the agreement. In the old structure of the said premises, the appellant was paying, as a tenant to the respondent, a sum of Rs. 325/- per month as rent. It would be evident from the agreement itself that the tenant had agreed to pay rent at the rate of Rs. 1250/- per month after reconstruction in terms of the said agreement. Admittedly, under the said agreement, the respondent was liable to reconstruct the premises with toilet facility. The toilet was not constructed and accordingly, the aforesaid suit was filed by the appellant for a decree that the respondent shall construct a toilet and to declare that the tenant was liable to pay the rent at the old rate and not as per Exhibit P1 and for permanent injunction not to interfere with the peaceful possession and enjoyment.

3. The trial Court decreed the suit and directed the respondent to construct the toilet as agreed to by the parties within three months from the date of the delivery of the judgment. The impugned order of the High Court discloses that the toilet has not yet been constructed. According to the appellant, the tenant is only liable to pay at the rate of Rs.1250/- per month after the toilet is constructed and given possession to him. The High Court, in Appeal, held that the appellant was liable to pay rent at the rate of Rs. 1250/- per month and not at the rate of Rs. 325/- per month, although, in terms of the agreement, toilet was not constructed and possession not given in respect of the same.
4. Feeling aggrieved by the Judgment of the High Court, the present appeal, after grant of leave, has been filed, which was heard by us in presence of the learned counsel for the parties. Having heard the learned counsel for the parties and after going through the materials on record including the judgments of the Courts below and the agreement executed between the parties, we are of the

view that the appellant shall be liable to pay rent at the rate of Rs. 1250/- per month after the toilet is constructed and possession given thereof.

5. As noted herein earlier, in this case, toilet has not been constructed at all, although, the other part of the agreement, namely, reconstruction has been made and possession has been delivered to the appellant. In view of Section 51 of the Contract Act, we are of the view that the appellant is liable to pay rent at the rate of Rs. 1250/- per month, only after the toilet is constructed and possession of the toilet given to the appellant.
6. The learned counsel for the respondent also agreed that if three months' time is granted to the respondent, the toilet shall be constructed and possession can be given within a month from the date of construction of the toilet.
7. Such being the stand taken by the learned counsel for the respondent, we dispose of this appeal in the following manner :-

- a) The decree passed by the trial Court that the toilet shall be constructed is affirmed and the respondent is directed to construct the toilet and

possession of the toilet must be given to the appellant within four months from the date of supply of a copy of this order.

- b) If such toilet is constructed and possession is delivered to the appellant, the appellant shall pay rent at the rate of Rs. 1250/- per month from the 1st day of the Calendar month, in which the possession of the toilet shall be given to the appellant.
- c) If no toilet is constructed and possession of the toilet is not given to the appellant, the Judgment of the High Court shall stand affirmed and this appeal shall stand dismissed.

8. With the above directions, the appeal is disposed of.

There will be no order as to costs.

.....**J.**
(TARUN CHATTERJEE)

.....**J.**
(AFTAB ALAM)

NEW DELHI,

JULY 21, 2008