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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA 136/2009 & CM No.15367/2009

SHRI INTJAR ALI Appellant
Through: Mr.Javed Ahmed, Advocate

versus

SURENDER KUMAR & ORS Respondents
Through: Nemo.

CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

ORDER
10.11.2009

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Respondents herein had filed the suit for recovery of possession and damages against the appellant (defendant No. 1 in the suit) in respect of property bearing No.103, Village Adhchini, New Delhi, on the grounds that defendant No.2, Shafiq was inducted as a tenant vide Tenancy Agreement dated 11th February, 1993 by his father; Shri Shyam Lal. He vacated the premises in 1997 and executed a writing to that effect. Thereafter, respondents started using the premises by storing their business goods. However, appellant claimed the said property to be his tenanted premises. Though, not in possession, appellant was successful in obtaining an injunction in his favour, restraining the respondents from

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dispossessing him and in the garb of the said order, he took forcible possession on 15th September, 1998. A police complaint was also lodged at Police Station, Hauz Khas, New Delhi. The appellant had taken a defence before the Trial Court that he was inducted as a tenant in the suit premises on a monthly rent of Rs.700/- on 6th February, 1993 and, therefore, the suit was barred under Section 50 of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act'). The Trial Court accepting the plea of the appellant that he, being a tenant, was in possession of the suit premises, dismissed the suit being barred by Section 50 of the Act, vide its judgment and decree dated 3rd November, 2006.

Respondents filed a Regular Civil Appeal bearing No. 21/06 in the First Appellate Court. The First Appellate Court, while allowing the appeal and setting aside the judgment and decree of the Trial Court dated 3rd November, 2006, granted the following relief to the respondents:-

"RELIEF

36. In view of my above discussion, I set aside the findings of Ld Civil Judge that plaintiffs are not entitled to any relief. I therefore pass a decree of possession in favour of appellants/ plaintiffs directing the respondent No. 1/ defendant No.1 to hand over the vacant

possession of the suit property ie **property No.103, Adhchini, Delhi** to appellants/plaintiffs or to anyone of the plaintiffs as the case may be within one month of this judgment.

37. Apart from this, I also pass a money decree in favour of appellants/plaintiffs as compensation for use and occupation payable by the respondent No.1/defendant No. 1 at the rate of Rs 700 p.m. since 4.12.02001 which is the date of filing of the suit till vacation of the suit property.

38. In view of above, appeal is allowed and impugned judgment and decree are hereby set aside. Fresh decree sheet be prepared."

Hence, this appeal before this Court.

The substantial question of law sought to be formulated in this appeal, pertains to the jurisdiction of the Civil Court to entertain a suit for possession, in view of the provisions contained in Section 50 of the Act. Learned counsel for the appellant has submitted that in Suit No. 367/98, respondent, Dharampal had admitted that appellant was a tenant in the suit premises, which is apparent from his statement recorded in the court. Statements of the appellant as well as respondent, Dharampal, made in the said suit on 5th October, 2001, read as follows:-

"Statement of Intizar Ali plttf.

ON SA

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Without prejudice to my rights I state that I have settled all my disputes with the defdts. As per the settlement I have agreed to pay Rs.25900/- towards the arrears of my use and occupation of the suit premises and which charges as per me are towards the rent of the suit premises till Sept.2001. I have paid a sum of Rs.10000/- to defdt. Dharampal today I will undertake to pay the balance arrears and the subsequent amount as accruing after Sept. 2001 by 23.11.2001.

RO&AC

CJ Delhi/5.10.2001

Statement of Dharampal defdt. No.1

ON SA

Without prejudice to my rights I state that I have arrived at a settlement with the pltff. on my behalf and on behalf of defdt.no.1 Rishi Pal as per the settlement pltff. has agreed to pay Rs.25900/- towards the use and occupation charges of the suit premises and which charges I have claimed only as damages and not as rent. I have received Rs.10000/- today. I further state that upon the payment complete arrears the pltff. will not be evicted from the suit premises forcibly without due process of law.

RO&AC

CJ Delhi/5.10.2001"

Thus, it is clear that appellant had agreed to pay a sum of Rs.25,900/- to the respondents towards arrears of use and occupation of the suit premises, which charges, according to the appellant, were towards the rent of the suit premises till September, 2001. This amount was accepted by respondent, Dharampal without prejudice to his rights. Therefore, the issue whether appellant was a tenant in the suit premises remained unsettled in view of the compromise *inter se* the parties in the said suit.

Any statement made by the appellant before the court, without prejudice to his rights and claiming the payment made as towards rent, would not create any tenancy rights in his favour. Subsequent statements of the parties were also recorded by the Court on 23rd November, 2001, wherein the word 'rent' has crept in the statements of respondent, Dharampal as well as that of the appellant. Simply because word 'rent' had been incorporated or had crept in the statements of the parties recorded on 23rd November, 2001, would not create any tenancy rights in favour of the appellant. After having been satisfied, court had disposed of the suit in view of the statements of the parties made on 5th October, 2001 and 23rd November, 2001. The relationship *inter se* the parties, therefore,

was never adjudicated upon by the court. Appellant has placed on record a receipt dated 5th February, 1993, for a sum of Rs.15,000/-. However, this receipt does not, in any manner, indicate that this amount was paid by the appellant to respondent; Dharampal towards arrears of rent for use and occupation of the suit premises as a tenant.

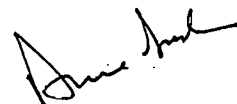
In the impugned order, the Appellate Court considered the statements of the parties recorded in the said suit, in terms of the settlement dated 5th October, 2001, to conclude that the use of word 'rent' in the statements of the parties made on 23rd November, 2001, appear to be a pure slip of tongue out of inadvertence. As regards the other documents like bank accounts etc., the Appellate Court also considered the bank accounts and other documents placed on record to conclude that these documents do not, in any manner, help the appellant in establishing his claim as a tenant in the suit premises.

In this second appeal, this Court has no power to reassess the evidence of the parties and interfere with the fact finding of the courts below, unless the findings are perverse in nature. In this case, no perversity has been pointed out. No substantial question of

law is involved. The finding of the Appellate Court that appellant is not a tenant in the suit premises is based on assumption of oral and documentary evidence produced in court on record by the parties. Hence, no substantial question of law requires to be formulated in this appeal, as there is none. Appeal, being without merits, is hereby dismissed.

CM No.15367/2009 (stay) in RSA No. 136/2009

With the dismissal of the appeal itself, this application has become infructuous. Hence the same is accordingly disposed of.



ARUNA SURESH, J.

NOVEMBER 10, 2009

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