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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA 145/2009 & CM Nos. 16585-86/2009

KRISHAN KOHLI

..... Appellant

Through: Mr. K.P.Singh, Advocate with
Appellant in person with his
wife.

versus

HARISH AHUJA

..... Respondent

Through: Mr.M.G.Vachar, Advocate with
Respondent in person with his
wife.

CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

ORDER

19.11.2009

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The respondent had inducted the appellant as a tenant on the second floor of the property bearing H.No.E-149, Lajpat Nagar, New Delhi and a Registered Lease Deed was executed *inter se* the parties on 4th June, 2007. The appellant was earlier in possession of the demised premises as a tenant since the year 2003, prior to the execution of the Lease Deed for the period from 28th May, 2007 to 27th May, 2008. Since the appellant was in arrears of rent,

respondent terminated his tenancy by way of a legal notice dated 26th July, 2007 and another notice dated 19th December, 2007. Despite directions issued by the Court vide its order dated 6th October, 2008, appellant failed to clear the arrears of rent. Hence, the Trial Court was pleased to strike off the defence of the appellant vide its order dated 27th March, 2009.

The Trial Court vide its judgment and decree dated 19th August, 2009, was pleased to pass a decree for possession of the demised premises in favour of the respondent and against the appellant and also passed a decree for Rs.70,000/- as arrears of rent from August, 2007 till February, 2008 and damages @ Rs.10,000/- per month till the vacant possession of the demised premises was handed over to the respondent.

The appellant challenged the said judgment and decree of the Trial Court in appeal bearing RCA No.13/2009. The Appellate Court, while concurring with the findings of the Trial Court, upheld the judgment and decree of the Trial Court and dismissed the appeal vide its judgment and decree dated 6th November, 2009.

In this second appeal before me, the appellant has challenged the judgment and decree of the courts below on the

ground that he had paid Rs.1,80,000/- as security amount to the respondent and was entitled for the adjustment of the same. It is submitted by the counsel for the appellant that he had made a counter-claim before the Trial Court for claiming Rs.1,80,000/- and the Court erred in law while passing a decree for possession, arrears of rent and damages without deciding the counter-claim of the appellant.

The fact remains, counter-claim of the appellant is pending adjudication before the Trial Court and therefore, at this stage, in this appeal, it is not proper for this Court to interfere with the findings of the courts below on facts of the case while granting decree for possession, arrears of rent and damages to the respondent. Claim of the appellant for refund of the security amount, being subjudice, cannot be considered as a substantial question of law to be considered by this Court in this appeal. It is not disputed that despite this decree, appellant is still in arrears of rent and has not handed over the vacant possession of the demised premises to the respondent. If, the counter-claim of the appellant is accepted and decreed by the Trial Court, the appellant would be entitled to recover the same from the respondent or claim

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adjustment against the arrears of rent, which might remain unpaid by the appellant at that relevant time.

The case of the respondent was decreed by the Trial Court on fact finding. This Court, in the second appeal, has no right or power to interfere with the fact finding of the courts below.

Hence, I find no substantial question of law involved in this appeal which needs formulation. The appeal, therefore, is hereby dismissed being without any merits.

CM Nos. 16585-86/2009 in RSA No. 145/2009

With the dismissal of the appeal itself, these applications have become infructuous and the same are disposed of accordingly.


ARUNA SURESH, J.

NOVEMBER 19, 2009
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