

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

% *Date of Judgment: 24.11.2010*

+ **RSA No.217/2010 & C.M.20998/2010**

GAURAV KAPOOR & ANR. Appellants
Through: Mr.Sandeep Kumar, Advocate.

Versus

SHIV KUMAR Respondent
Through: Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. This second appeal has impugned the judgment and decree dated 7.10.2010 which has endorsed the finding of the trial judge dated 2.8.2010 whereby the suit of the plaintiff seeking possession of the suit property i.e. property bearing no.5126, Rui Mandi, Sadar Bazar, Delhi had been decreed under Order 12 Rule 6 of the Code of Civil Procedure (hereinafter referred to as 'the Code') in his favour.

2. The suit property had been let out by the plaintiff to the defendant in terms of a registered rent agreement dated 21.11.2008 for a period of 11 months expiring on 31.8.2009. This document is an admitted document. It is also admitted that in terms of the aforementioned rent agreement, rent of Rs.20,000/- was being paid by the defendant to the plaintiff. It is also not in dispute that a legal notice dated 2.9.2009 had been served by the plaintiff

upon the defendant terminating his tenancy.

3. This is a second appeal. On behalf of the appellant it has been urged that a substantial question of law has arisen as admittedly prior to this registered rent agreement dated 21.11.2008 there was another agreement of tenancy between the parties which was dated 21.9.2007 and on its termination this fresh rent agreement was entered into between the parties. At this time, the defendant had paid a sum of Rs.10 lakhs in cash to the plaintiff as a security money and there was a mutual understanding between the parties that this security of Rs.10 lakhs would not be mentioned in the present rent agreement i.e. agreement dated 21.11.2008. This has raised a substantial question of law and this point has not been considered by both the courts below. Decree could not have followed under Order 12 Rule 6 of the Code.

4. This argument is bereft of any merit. It is relevant to mention that this defence had not been set up by the defendant in his written statement. Thereafter, an application for amendment of the written statement had been preferred which was dismissed. These submissions which all border on oral understandings between the parties cannot be given effect to in view of the clear statutory provision of Section 91 of the Evidence Act. When a written document has been created no oral evidence can be led which is contrary to its terms. The registered rent agreement dated 21.11.2008 is an admitted document. There is no mention of any such security of Rs.10 lakhs deposited in the aforementioned document.

5. The admissions in the written statement are otherwise clear and categorical. Neither is the rent agreement in dispute nor is

the receipt of legal notice nor is rate of rent; relationship of landlord-tenant is admitted. Submission now raised is untenable. The course adopted by the courts below was legally sound and calls for no interference. Admissions in the written statement were clear, unambiguous, cogent and categorical. Decree for possession had to follow. There is no merit in the appeal; appeal as also the pending application is dismissed in limine.

INDERMEET KAUR, J.

NOVEMBER 24, 2010

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