

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

% *Date of Judgment: 17.01.2011*

+ **RSA No.7/2011 & CM No.660/2011**

NEELAM RATHORE Appellant
Through: Mr. J.P.Jain, Advocate.

Versus

SURENDER MOHAN SHARMA 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)

CM No.661/2011 (for exemption)

Allowed subject to just exceptions.

CM No.662/2011(for delay in refilling)

In view of the averments made in the application, the delay of 22 days in refilling the appeal, is condoned. Application is disposed of.

RSA No.7/2011 & CM No.660/2011(for stay)

1. This appeal has impugned the judgment and decree dated 21.09.2010 which has endorsed the findings of the trial Judge dated 13.05.2010 whereby the suit of the defendant/ respondent had been decreed. The plaintiff Mr.Surender Mohan Sharma had filed his suit for possession and recovery of arrears of rent as also arrears of electricity and water charges.

2. The plaintiff claims to be the owner of property No. J-70, 2nd Floor, Gali No. 4, Laxmi Nagar, Delhi comprising of two rooms. The defendant had taken the premises on rent @ ₹ 4,000/- per month. This was in terms of an agreement dated 27.07.2007. The defendant was defaulting in payment of rent. Notice was served upon the defendant. The suit was thereafter filed for recovery of possession of the suit property as also arrears of rent.

3. Written statement was filed contesting the suit. Contention was that the amount of ₹4,000/- per month was inclusive of electricity and water charges and the amount has been paid till January, 2009. On the pleadings of the parties, following four issues were framed:-

1. Whether the plaintiff is entitled to receive arrears of rent as prayed? OPP.

2. Whether the plaintiff is entitled for electricity and water charges as prayed? OPP

3. Whether the suit of the plaintiff is not property valued? OPD.

4. Any other relief.

4. The plaintiff led evidence but the defendant did not produce any evidence. His defence was struck off on 20.04.2010. On the basis of oral and documentary evidence, suit of the plaintiff was decreed. This judgment was affirmed by the impugned judgment.

5. On behalf of the appellant, it has been vehemently urged that the findings in the impugned judgment are perverse as the document dated 27.07.2007 (Ex.PW-1/G) which is an admitted document between the parties had clearly in Clause 13 stated that electricity and water charges shall be paid by the landlord. It is

pointed that the decretal amount includes electricity and water charges which could not have been decreed keeping in view Clause 13 of the rent agreement. This is perversity and the impugned judgment is liable to be set aside.

6. This is a second appeal. The hands of this Court are tied. It can interfere with findings of fact of the courts below only if the same are perverse.

7. The rent agreement dated 27.07.2007 is an admitted document between the parties; Clause 2 specifically recites that the tenant would pay the rent @ ₹ 4,000/- per month to the respondent; tenancy was for a period of 11 months. While dealing with this contention of the defendant that the electricity and water charges were to be paid by the landlord, the trial Judge had recorded as under:-

“The argument of learned counsel for the defendant is based on para 13 of rent agreement as he claimed that as per this para, the liability to pay electricity and water charges was upon the landlord. Plaintiff during his evidence was put specific question that at the time of rent agreement one month rent was paid in advance by the defendant which fact was admitted by the plaintiff. The rent agreement Ex. PW-1/G at page 2 of para 3 find mentions that defendant (tenant) deposited a sum of ₹4,000/- a security in advance. The above question clarifies the entire issue. Had any amount qua electricity and water connection was to be paid inclusive of ₹4,000/- which was fixed as rent as is claimed by the defendant, there was no occasion for the defendant to pay this amount in advance at the stage of taking premises on rent as security for rent exclusively. It be observed that after making payment of ₹ 4,000/- as advance rent, defendant is now estopped to claim otherwise. During the cross-examination of plaintiff, he specifically denied that electricity and water charges were included in rent of ₹4,000/- per month. Subsequent to this the onus

to prove that the above amount was inclusive in rent was upon the defendant. Another relevant circumstances which is to be considered while deciding this issue is the fact that the defendant alone was enjoying the entire property and no part of the same was retained and/or kept by the plaintiff. In such circumstance, where the plaintiff was not enjoying any portion or any part of the rented property, the probabilities of plaintiff to bear any expenses for water and electricity charges which are apparently admitted not consumed by him appears to be farfetched. For want of any material being produced by the defendant, the plaintiff succeeded to prove that rate of rent was ₹4,000/- per month and was exclusive of water and electricity charges.”

8. This was affirmed by the first appellate Court. Relevant extract qua this issue reads as under:-

“I have perused the rent agreement Ex PW-1/G. The execution of this document is admitted by the appellant. The clause 2 shows that rate of rent is ₹4,000/- per month. PW-1 in his affidavit Ex. PW-1/1 has categorically alleged that rate of rent is ₹4,000/- per month excluding electricity and water charges. In the cross-examination he stated that electricity and water charges are included in the rent as per Clause 13 of the rent agreement. There is no question or suggestion to PW-1 that he used to pay the rent inclusive of electricity and water charges. Moreover, the rent agreement Ex. PW-1/G shows that he has paid a sum of ₹4,000/- as an advance. The question of giving an advance a sum of ₹4,000/- does not arise until or unless the rent of ₹ 4,000/- per month. Moreover the entire suit property is in the exclusive possession of the appellant so the question of paying the electricity and water charges by the respondent does not arise at all. Annexures A & B are annexed with the appeal. Annexure A shows that a bill of ₹ 7,000/- was raised by the BSES with respect to the suit property which was payable by 14.06.2010. Annexure B shows that monthly bill for the month of July, 2008 is ₹1,919/-. Both these bills are placed on record by the appellant but bill of one month is around ₹1,913/-. Keeping in view the amount of bill, the rent cannot be

inclusive of electricity and other charges. It appears that there is some typographical mistake in clause 13 of the rent agreement Ex. PW-1/G otherwise all these facts show that the rent is exclusive of electricity and water charges. The argument does not hold water."

9. These are fact findings returned by two fact finding courts below. Both the Court had examined this contention now raised before this Court and drawn a conclusion that the very fact that the rent was to be paid in advance, it could not have visualized a situation whether the electricity and water charges would be paid by the landlord. Further since the property was in occupation and use of the tenant, the question of payment of electricity and water charges by the landlord did not arise. The Court had returned a finding that there appears to be typographical mistake in Clause 13 of the rent agreement. This fact finding is based on fair and a judicious probability. It does not call for any interference as it in no manner amounts to a perversity.

The appeal also the application is dismissed in limine.

INDERMEET KAUR, J.

JANUARY 17, 2011

a