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

+ RFA 390/2015 & CM No. 10591/2015

SHAHIN AKHTAR

..... Appellant

Through: Mr Anil Sharma & Mr Rishi Vadhera,
Advs.

versus

SHYAM SUNDER SINGH

..... Respondent

Through: Mr R.P. Shukla & Mr Dhananjay Singh,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **09.09.2015**

1. This is an appeal preferred, by the appellant/defendant, against the judgement and decree dated 11.02.2015, passed in Civil Suit No. 33/2015.

1.1 To be noted, the respondent/ plaintiff had preferred an appeal against the very same judgement and decree, which was numbered as: RFA No. 530/2015. The said appeal was dismissed by me vide order dated 11.08.2015.

1.2 In so far as the appellant/ defendant is concerned, the grievance in respect of the impugned judgement and decree, is confined to one aspect, which is, that, during the occupation of the suit premises, the area under tenancy was reduced from 300 sq. ft. to 200 sq. ft.

1.3 It is thus the contention of the appellant/ defendant, before me, that there ought to have been a pro-rata adjustment of rent in view of the reduction in the area under occupation. This contention was evidently raised by the appellant/ defendant before the trial court.

2. Learned counsel for the appellant/defendant in order to demonstrate

that this aspect was raised with the respondent/ plaintiff, has drawn my attention to letters dated 30.05.2008 (Ex. DW1/2) (see page 128 of the paper book), and a letter dated 30.06.2008 (Ex. DW1/3) (see page 133 of the paper book).

2.1 My attention has also been drawn by the learned counsel for the appellant/ defendant to the letter dated 08.05.2008 (see page 125 of the paper book), evidently issued by the respondent/ plaintiff, to the appellant/ defendant. In respect of this letter the learned counsel for the appellant/ defendant seeks to place stress on the note written by the appellant/ defendant wherein, it is stated that the reduction in area is agreed to, albeit, under protest. Pertinently, there is no reference to proportionate reduction in rent.

3. To be noted, by letter dated 08.05.2008 the respondent/ plaintiff had informed the appellant/ defendant that there was a “sealing drive” by the municipal corporation in the C.R. Park area (that is a place where the suit premises are located), and therefore, construction work may have to be carried out, so that, the suit property was brought in conformity with the then prevailing municipal regulations.

3.1 The protestation referred to by the counsel for the appellant/ defendant was made in this context.

4. It is in this background, that the learned counsel for the appellant/ defendant says that this aspect of the matter has not been dealt with by the trial court.

5. I have heard the learned counsel for the appellant/ defendant as well as the counsel for the respondent/ plaintiff. Learned counsel for the appellant/ defendant does not dispute that despite, the appellant/defendant, having issued the letters dated 30.05.2008 and 30.06.2008, wherein it was

indicated that there shall be a pro-rata reduction in rent, on account of reduced area under occupation, he continued to pay rent at the agreed rate. The agreed rate of rent was Rs. 26,000/- per month, which, the appellant/ defendant sought to reduce to Rs. 17,333/- per month on account of reduction in the area from 300 sq. ft. to 200 sq. ft.

6. The obvious inference in these circumstances is that, despite the stand taken by the appellant/ defendant that the rent ought to be reduced, the respondent/ plaintiff did not agree to the same; a situation which resulted in the appellant/ defendant paying the rent at the rate of Rs. 26,000/- per month. The trial court has dealt with this aspect of the matter in the impugned judgement. The relevant part is extracted hereinafter:

“..... Admittedly, the lease in question was for a period of three years. It was given under a registered lease deed in view of Section 107 of Transfer of Property Act as it is the requirement of the law that any lease of immovable property for any terms exceeding one year can be made only by a registered instrument. Therefore, if the said lease deed was to be modified with respect to any of its terms, the same could have been done by way of an agreement in writing and not orally. The act of paying full rent to the plaintiff for the entire lease period without asking for any refund or adjustment, raises only an inference that parties had not modified their agreement with respect to reduction of rate of rent. Hence defendant was liable to pay the rent @ Rs. 26,000/- p.m. till the expiry of lease i.e. 31.08.2010....”

(emphasis is mine)

7. Having regard to the above, I find no infirmity in the impugned judgement. The appeal being without merit is, accordingly, dismissed. Consequently, the interlocutory application also stands dismissed.

RAJIV SHAKDHER, J

SEPTEMBER 09, 2015/kk