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

Date of decision: 12.10.2023

+ CM(M) 1574/2018, CM APPL. 53375/2018

NARESH CHITKARA Petitioner

Through: Mr. Tushar Pahwa and Mr. Ashutosh
Ranjan, Advs.

versus

LALIT BABBAR Respondent

Through: Mr. Mohit Monga, Adv.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 05.12.2018 passed by the SCJ/RC, West District, Tis Hazari Courts, Delhi ('Trial Court') in C.S. No. 699/2016 titled as "**Lalit Babbar v. Naresh Chitara**" whereby, the Trial Court disallowed the prayer made by the Petitioner for examining a handwriting expert for proving the handwriting and signatures on the pagri receipt dated 02.09.2023 (EX. DW-1/2) ('said pagri receipt') alleged to have been issued by the Respondent in favour of the Petitioner.

1.1. The Petitioner is the defendant and the Respondent is the plaintiff in the civil suit filed for possession in respect of the property bearing No. B-1,



Babbar Market, Sultanpuri Road, Nangloi, Delhi ('suit property') as well as arrears of rent and injunction.

1.2. For the sake of convenience, the parties are being referred to by their rank and status before the Trial Court.

1.3. The Trial Court *vide* impugned order dated 05.12.2018 while allowing an application dated 03.08.2018 filed under Order XVI Rule 1 and 2 Code of Civil Procedure, 1908 ('CPC') permitted the defendant to lead evidence of four (4) additional witness. It, however, declined permitting leading evidence of the handwriting expert.

1.4. This Court while issuing notice in the present petition on 18.12.2018 has observed that the proceedings before the Trial Court will be subject to the outcome of the present petition.

1.5. During the pendency of this proceedings, the trial stands concluded and the Trial Court *vide* judgement dated 07.03.2022 has decreed the suit for possession and awarded mesne profits @ Rs. 16,000/- per month in favour of the Respondent herein.

2. The learned counsel for the plaintiff states that the arrears of mesne profits due and recoverable from the defendant as on date stands at Rs. 15,00,000/- and the defendant has unilaterally stopped making payment of the rent.

3. The learned counsel for the defendant states that though the Trial Court has pronounced the final judgement and order dated 07.03.2022, in view of the order dated 18.12.2018 passed by this Court; he is entitled to pursue the present petition.

3.1. He states that since the said judgement is subject to the outcome of this petition; the defendant is pressing for the relief of leading evidence of



the handwriting expert to prove the signatures of the plaintiff on the pagri receipt. He states that the pagri receipt shows that the plaintiff herein agreed to receive a sum of Rs. 4,30,000/- in cash from the defendant.

4. In reply, the learned counsel for the plaintiff states that issues were framed in the suit on 18.03.2014 and the defendant filed list of witnesses on 25.05.2018. He states that in this list of witness, the defendant did not propose leading evidence of handwriting expert for proving the handwriting and signatures on the alleged pagri receipt dated 02.09.2023 (EX. DW-1/2).

4.1. He states that subsequently, in fact, a Coordinate Bench of this Court *vide* order dated 01.12.2021 passed in CM(M) No. 1092/2021 has upheld the order dated 15.11.2021 passed by the Trial Court holding that the pagri receipt is an unlawful document in view of the Section 5(2)(a) of the Delhi Rent Control Act, 1958 ('DRC Act, 1958').

4.2. He states that therefore, the pagri receipt is inadmissible in evidence and therefore, no evidence of handwriting expert can be led in respect of said pagri receipt.

4.3. He states that in any event, the Trial Court in the final judgement and order dated 07.03.2022 has duly considered the pleas raised by the defendant relying upon the said pagri receipt and has categorically rejected the said defence.

4.4. He states that therefore, the impugned order dated 05.12.2018 does not suffer from any infirmity.

5. In rejoinder, the learned counsel for the Petitioner states that he admits that the transaction recorded in the pagri receipt is illegal and therefore, the receipt is inadmissible in evidence.

5.1. He states that the defendant herein is aggrieved of the fact that the



plaintiff failed to disclose the existence of the said document at the time of filing of the plaint. He states that the plaintiff should be non-suited for suppressing the said document.

6. This Court has heard the counsel for the parties and considered their submissions.

7. The final judgement and order dated 07.03.2022 passed by the Trial Court has been challenged by the Petitioner herein by filing a statutory first appeal.

8. Therefore, this Court is not concerned with the merits of the dispute and the limited issue arising for consideration before this Court is the challenge to the order dated 05.12.2018 passed by the Trial Court refusing the relief of leading evidence of handwriting expert with respect to the pagri receipt dated 02.09.2023 (Ex. DW-1/2).

9. The Trial Court by its subsequent order dated 15.11.2021 has opined that the alleged transaction recorded in the said pagri receipt is unlawful in view of the Section 5(2)(a) of the DRC Act, 1958 and held the said documents be inadmissible in evidence. The said observations were made by the Trial Court while deciding an application filed by the defendant herein for impounding of the said receipt. The said order of the Trial Court has been upheld by the Coordinate Bench of this Court in CM(M) No. 1092/2021 vide order dated 01.12.2021.

10. In the opinion of this Court, once the pagri receipt has been held to be inadmissible in law, no permission can be granted to the Petitioner herein to lead evidence of handwriting expert to prove the signatures on the said receipt. The defendant has fairly admitted during the cross of the arguments that the payment of pagri is unlawful under the DRC Act, 1958.



11. This Court, therefore, is of the opinion on these findings; the present petition deserves to be dismissed.

12. Further, the Trial Court in its final order and judgement dated 07.03.2022 has in any event, dealt with the defence raised by the defendant on the basis of the said pagri receipt at paragraph '22' and '23' of its judgement and rejected it. The relevant portion of the judgment reads as under:-

"22 In order to establish his defence, the defendant has relied upon the photocopy of the rent agreement dated 01.10.2013 Ex. PW2/D1 to submit that the rent of the premises was fixed @ Rs. 3000/- per month which was to be increased 10% after two years. Further, the defendant has relied upon one hand written document dated 02.09.2003 Ex. DW1/2 to submit that the premises was taken on pagri for a sum of Rs. 4,30,000/-. The said document has been objected to by the Counsel for the plaintiff as being inadmissible in evidence as it is unregistered and with insufficient stamp. An application was moved by the defendant to get the said document registered. However, the same was dismissed as giving or receiving pagri is illegal and allowing the said document to be stamped would have amounted to perpetuation of illegality. Hence, the said document is found to be inadmissible in evidence.

23. Moreover, even if presumed that the said document would have been admissible then also though the defendant stated that the suit property was taken on pagri, however, the alleged document Ex. DW1/2 nowhere shows payment of the said amount of Rs. 4,30,000/- It only shows amount received as Rs. 1 lakh and balance of Rs. 3,30,000/-. Hence, the defendant is not able to establish payment of any alleged amount of Rs. 4,30,000/-, though even if paid the same would have been illegal."

(Emphasis Supplied)

12.1. The Trial Court vide judgment dated 07.03.2022 after perusing the contents of the said pagri receipt as prayed for by the defendant has held that even if the contents of the receipt are read in evidence, the same does not offer any plausible defence for the claims of the plaintiff and has rejected the defence raised by the defendant on this basis. The defendants have therefore



not suffered any prejudice due to non-leading of the evidence of the hand-writing expert.

13. This Court, therefore, does not find any infirmity in the impugned order dated 05.12.2018 passed by the Trial Court.

14. The present petition is accordingly dismissed. Pending application, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 12, 2023/rhc/asb

Click here to check corrigendum, if any