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

+ RFA 509/2011

MELA RAM AGGARWAL

..... Appellant

Through: Mr Sudhir Naagar & Mr Mohit Singh,
Advs.

versus

INDU DEVI

..... Respondent

Through: Mr Pradyumna Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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13.08.2015

1. This is an appeal preferred against the judgement and decree dated 04.02.2011. The appellant/ plaintiff had filed a suit for possession and permanent injunction against the respondent/ defendant. The trial court, in the course of the proceedings, before it, framed the following issues:

- “.... i. Whether the plaintiff is the owner of the property in dispute? OPP
- ii. Whether the defendant is a Licensee as alleged by the plaintiff? OPP
- iii. Whether the license of the defendant was properly terminated by the plaintiff? OPP
- iv. Whether the defendant is tenant in the premises on monthly rent of Rs. 225/- excluding water and electricity charges as claimed by the defendant? OPD
- v. Relief....”

2. By virtue of the impugned judgement, the trial court found issue no. (i) in favour of the appellant/ plaintiff. In so far as issue no. (ii) was concerned, the trial court ruled against the appellant/ plaintiff. As regards issue no. (iii), it came to the conclusion that in view of the findings returned

qua issue no. (ii), the said issue had become redundant. Quite curiously, in so far as issue no. (iv) was concerned, in respect of which onus was placed on the respondent/ defendant, the trial court came to the conclusion that the appellant/ plaintiff had failed to prove the said issue.

2.1 The result of the findings returned by the trial court was that the status of the respondent/ defendant was not ruled upon by the trial court. Ordinarily, in these circumstances, the respondent/ defendant ought to have been declared as a trespasser.

2.2 What has compounded the problem are the observations made by the trial court while deciding issue no. (ii), which are suggestive of the fact that there was some kind of an admission by the appellant/ plaintiff that the respondent/ defendant was his tenant. For the sake of convenience, the said observations are extracted hereinbelow:

“... During cross-examination he has then also deposed that he had demolished the rooms except remaining seven rooms which were let out by his father and that they were living in the same rooms and when he wanted to demolish the said seven rooms, they all tenants filed against him for injunctions. During cross he has admitted it to be correct that after they filed suit against him, he had filed the suit against the defendant. By his such deposition, he acknowledges that it were the tenants, who were occupying the rooms. His such deposition contradicts his own case. Defendant who appeared as DW1 in her deposition by way of affidavit Ex. D1 has categorically deposed that the deceased father of the plaintiff used to issue rent receipts and she was in possession of one of the rent receipts, the photocopy whereof is Mark-A. During cross, plaintiff has given a suggestion to her that she had easy access to the temple being the pujari and the procured the blank receipt lying in the temple and fabricated the same as rent receipt. Though, such a suggestion is denied to by the defendant, the suggestion given bringsforth the fact that the receipts towards rent were being

issued. In the given facts and circumstances, the bald and the contradictory deposition of PW-1 plaintiff that the defendant's husband was inducted in the premises as a licensee and after his demise, the defendant was residing in the premises as licensee, I have no hesitation to reject....”

(emphasis is mine)

3. Based on the aforesaid findings, as noted above, the suit of the appellant/ plaintiff was dismissed.

4. Strangely enough, the respondent/ defendant has not filed any cross-objections in respect of finding returned by the trial court qua issue no. (iv) that she had been unable to prove that she was a tenant in the suit property.

4.1 Mr Singh, learned counsel for the respondent/ defendant, concedes that there was an error made in that behalf.

4.2 In so far as counsel for the appellant/ plaintiff is concerned, he cannot but submit that there is a patent contradiction in the observations and findings returned by the trial court.

5. In these circumstances, both counsels agree that the impugned judgement be set aside and the matter be remitted to the trial court for fresh arguments based on the evidence already placed on record by both sides.

6. Accordingly, the impugned judgement and decree is set aside. The case is remitted to the trial court for fresh arguments. Since, this is a suit of 2008, the trial court, will endeavour to hear the parties and their counsels and deliver judgement within the next four (4) months. Parties and their counsels shall appear before the trial court on 31.08.2015, for the said purpose. It is made clear, the trial court will re-hear the arguments on issue no. (ii) to (v) and the observations made vis-a-vis the said issues in the impugned judgment will not come in the way of the trial court in returning

fresh findings with respect to the same.

7. Before I conclude, I must also point out that on 08.12.2014, in CM No. 14495/2014, this court, had passed the following operative directions:

“.... Accordingly, during the pendency of appeal respondent is directed to pay Rs. 7500/- per month to appellant with effect from August, 2014, that is, date of filing of this application on the 7th day of each English calendar month. Arrears be cleared within four weeks and current occupation charges be paid every month....”

8. To be noted, notice in the said application was issued on 03.09.2014. Furthermore, the order which was passed on 08.12.2014 records that respondent was served via counsel, despite which, she remained unrepresented. There has been no compliance in respect of the said order passed by this court. Pertinently, after 08.12.2014, the matter has been fixed on at least four dates. The appellant/ plaintiff, however, has taken no steps to seek enforcement of the order.

8.1 In these circumstances, it would be open to the appellant/ plaintiff to take appropriate steps for seeking enforcement of the order dated 08.12.2014, passed by this court, albeit in accordance with law.

9. The appeal is, accordingly, disposed of with the aforesaid directions.

10. The registry will dispatch a copy of this order to the trial court. The registry will also remit the trial court record with due expedition.

RAJIV SHAKDHER, J

AUGUST 13, 2015

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