

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.396/2014**

Decided on : 7th January, 2015

PUSHPINDER KAUR Appellant

Through: Ms. Neha, Advocate.

Versus

TARA ATRI Respondent

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant against the order dated 11.8.2014 and 30.9.2013 passed by the learned Additional District Judge dismissing the appeal as well as the review application with regard to payment of arrears of rent and damages.

2. I have heard the learned counsel for the appellant and have also gone through the record.

3. The contention of the learned counsel for the appellant, in the instant case, is that the learned trial court as well as the first appellate court had failed to appreciate that the appellant had handed over the vacant and peaceful possession of the suit premises to the respondent on

7.9.2009 by filing an application seeking withdrawal of his suit and, therefore, the appellant ought not to have been saddled with the payment of rent by the learned trial court as well as the first appellant court upto 27.4.2010 when the suit of the appellant was dismissed in default.

4. I have carefully considered the submissions made by the learned counsel for the appellant and have also gone through the record. Suffice it would be here to say that the appellant had filed the present appeal initially as a Civil Miscellaneous (Main) under Article 227 of the Constitution of India against the order dated 30.9.2013 and the rejection of review application dated 11.8.2014 upholding the judgment of the learned single judge passing a decree of eviction against the present appellant as well as directing him to pay arrears of damages/mesne profits upto 27.4.2010.

5. Feeling aggrieved, the appellant had preferred first appeal before the court of learned Additional District Judge which upheld the order of the learned Additional Senior Civil Judge. A subsequent review application was also dismissed on 11.8.2014.

6. The controversy which has arisen in the instant appeal is on account of the fact that it is not disputed by the appellant that she was a

tenant in respect of a premises bearing No.D-63B, 1st Floor, Hauz Khas, New Delhi. The appellant was threatened with forcible dispossession which necessitated filing of a suit bearing No.750/2009 against the respondent. In the said suit, the appellant had been able to get a restraint order against the respondent that appellant shall not be dispossessed except in accordance with due process of law which order continued to be in existence till dismissal of the said suit on account of application seeking withdrawal having been taken up by the court on 27.4.2010. As the appellant did not even appear on the said date, the suit filed by the appellant was dismissed. However, in the meantime, the respondent herein had filed a suit bearing No.103/10 for possession, injunction and recovery of rent/damages from the appellant. This suit came to be decided after dismissal of the suit filed by the appellant. The said suit was decided on merits on 29.11.2012.

7. The appellant in her examination as well as in written statement had stated that she had left the rented accommodation on 7.9.2009 and, therefore, the rent was paid to the respondent upto 7.9.2009 when she alleged to have vacated the suit premises; however, when the appellant was cross-examined, she admitted in her cross-examination that she had

handed over the vacant possession to the respondent/plaintiff on 8.2.2010. It is only on this admission made by the appellant in the cross-examination, the court came to the conclusion that the statement purported to have been made by the appellant in the examination-in-chief that she had handed over the possession to the respondent on 7.9.2009 was not correct.

8. The court as a matter of fact did not accept the statement made by the appellant in her cross-examination also that she had vacated the premises on 8.2.2010 to be correct because of the fact that there was a restraint order operating in favour of the appellant in a suit filed by her. That restraint order continued despite the fact that the appellant had filed an application seeking withdrawal of her suit and thereafter, she absented as a consequence of which the matter kept on being adjourned from time to time. It is only on 27.4.2010 that the suit of the appellant was dismissed in default on account of her non-appearance as a consequence of an application seeking withdrawal of the suit having been filed by the appellant. Therefore, while analyzing the evidence, the court had come to the conclusion that the appellant was in possession of the tenanted premises in question till 27.4.2010 and accordingly, directed payment of

damages/rent/mesne profits upto 27.4.2010. It is on account of this holding by the learned trial court and upheld by the first appellate court that the appellant is feeling aggrieved and has assailed the same in the present regular second appeal.

9. It is the case of the appellant that this holding of the Supreme Court is not in line with the evidence. As has been observed hereinabove that the question as to whether the rent was paid by the appellant upto a particular date on the assumption as to when she had vacated the premises in question, is essentially a question of fact and not a question of law and, there being a concurrent finding recorded by the two courts below that the appellant had not vacated the premises on 7.9.2010 but continued to occupy the premises till 27.4.2010 clearly fastens the liability rightly on her to pay the rent/damages till the time she continued to be in occupation of the premises. This, in any case, is a question of fact and not a question of law, much less a substantial question of law.

10. On account of the aforesaid reasons, the present regular second appeal is dismissed as it does not involve any substantial question of law.

V.K. SHALI, J.

JANUARY 07, 2015/‘AA’