$~2.

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

\+ **Date of Decision: 05.08.2015**

% **<u>RSA 271/2015 and C.M. No.13014/2015</u>**

NAND KISHORE KALRA ..... Appellant
Through: Mr. Uday Gupta & Mr. M.K. Tripathi, Advocates.

versus

HARISH MATHUR ..... Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

<u>VIPIN SANGHI, J. (OPEN COURT)</u>

1. The present second appeal has been preferred by the appellant to assail the judgment dated 15.07.2015 passed by the learned Additional District Judge-02, South District, Saket Courts Complex in R.C.A. No.8/2015 titled *Nand Kishore Kalra Vs. Harish Mathur*. By the impugned judgment, the First Appellate Court has dismissed the first appeal preferred by the appellant/ defendant against the judgment passed by the learned Civil Judge-02 (South), Saket Courts Complex, New Delhi in CS No.355/2014 titled *Harish Mathur Vs. Nand Kishore Kalra*. The respondent/ plaintiff had preferred the said suit to seek possession (the same was, in fact, a suit for ejectment), recovery of Rs.2,88,600/- along with damages/ mesne profits, and future mesne profits/ damages for use and occupation of the suit property against the appellant herein.

2. The undisputed facts are that the appellant is a tenant of the respondent in a portion in property bearing No. E-38, Hauz Khas, New Delhi. The tenanted property consisted of one shop on the ground floor of the said property. The case of the plaintiff was that his father had initially let out the shop on the ground floor to the defendant vide lease deed dated 01.09.1980 at a monthly rent of Rs.130/-. After the demise of the plaintiff's father on 09.02.1995, the defendant started paying rent to the mother of the plaintiff, who also expired on 27.09.2005. The plaintiff claimed that he is the sole heir and the owner of the entire property, including the suit/ tenanted premises. The plaintiff stated that the last rent paid by the defendant was Rs.600/-, which was deposited by the defendant in the Court of the learned Rent Controller for the period January 2011 to February 2012 in a petition for deposit of rent being D.R. No.78/2012.

3. The plaintiff further stated that he desired to take back the premises from the appellant, and consequently preferred an eviction petition in the Court of learned Rent Controller under Section 14(1)(e) of the Delhi Rent Control Act (the Act). The appellant defendant filed his application to seek leave to defend the said petition and in the said leave to defend, the stand taken by the appellant/ defendant was that the rent of the tenanted premises had been increased from January 2011 onwards from Rs.600/- to Rs.11,000/-. The plaintiff claimed that he had terminated the tenancy of the defendant w.e.f 31.03.2013, however, the defendant had not vacated the suit premises, and consequently, the suit had been filed. The plaintiff also claimed arrears of rent for the period January 2011 to 31.03.2013 at the rate of Rs.11,000/- per month after granting adjustment of the amount of

Rs.8,400/- deposited by the appellant/ defendant in the Court of the learned Rent Controller. The balance amount claimed by the plaintiff was Rs.2,88,600/-.

4. The appellant/ defendant filed his written statement and took the plea that the rent was Rs.600/- per month and, therefore, the suit before the Civil Court was barred under Section 50 of the Act. The defendant/ appellant also took a plea – in paragraph 5 of the preliminary objections, that the suit is not maintainable on account of the same not being properly valued for the purpose of Court Fees and pecuniary jurisdiction. It was claimed that since the rent of the premises is Rs.600/- per month, therefore, the plaintiff is not entitled to seek recovery of possession of the suit property on the basis of the alleged rent to be Rs.11,000/- per month. It was claimed that the suit had been undervalued. The objection was that the plaintiff had to pay ad-valorem Court Fee on the market value of the property, since he was seeking possession.

5. The issues were framed by the Trial Court on the basis of the pleadings, which read as follows:

> *"1. Whether the plaintiff is entitled to decree of possession in his favour against the defendant as prayed for in prayer clause (a)? OPP*
>
> *2. Whether the plaintiff is entitled to decree of recovery of arrears of rent as prayed for in prayer clause (b)? OPP*
>
> *3. Whether the plaintiff is entitled to decree of mense profit/damages as prayed for in prayer clause (c)? OPP*
>
> *4. Whether the plaintiff is entitled to decree of any interest? If so, at what rate and from which period? OPP*

> 5. *Whether the jurisdiction of present Court is barred by the provisions of Section 50 of the DRC Act? OPD*
>
> 6. *Whether the rate of rent is Rs.11,000/- per month or Rs. 600/- per month? Onus of proof on the parties*
>
> 7. *Whether the suit of the plaintiff is valued properly for purpose of Court fees and jurisdiction? OPD*
>
> 8. *Relief, if any."*

6. The parties led their respective evidence. The plaintiff led in evidence the application seeking leave to defend filed by the appellant/ defendant in eviction petition under Section 14(1)(e) filed by him before the learned Rent Controller as Ex.PW-1/5.

7. The Trial Court decreed the suit after returning findings on all the issues in favour of the plaintiff. Consequently, apart from ejectment of the appellant/ defendant, money decree was also passed in respect of arrears of rent for the period 01.01.2011 to 31.03.2013 for Rs.2,88,700/-, apart from mesne profits/ damages @ Rs.11,000/- per month from the date of termination of tenancy, i.e. 01.04.2013 till vacation of the suit premises. Interest was also granted @ 12% per annum on the mesne profits/ damages from the date of filing of the suit till realization. Costs were also awarded to the respondent/ tenant.

8. In the first appeal preferred by the defendant/ appellant, the said findings were affirmed. Both the Courts below have held that the rent, as admitted by the appellant/ defendant himself in his application to seek leave to defendant (Ex.PW-1/5), was Rs.11,000/- per month.

9. At the appellate stage, it appears that the appellant herein raised an

objection to the pecuniary jurisdiction of the Trial Court, by claiming that the aggregate value of the reliefs sought were in excess of Rs. 3 Lakhs, which is the limit of pecuniary jurisdiction of the learned Civil Judge. This was on the premise that the annual letting value of the suit premises – on the basis of rent of Rs.11,000/- came to Rs.1,32,000/-, and the claim for arrears of rent was Rs.2,88,600/-. Consequently, the aggregate of value of the claim came to Rs.4,20,600/-.

10. In view of the said objection raised by the appellant, the respondent plaintiff moved an application under Order VI Rule 17 CPC seeking to amend the plaint, and thereby give up a part of his claim. Paragraph 2 of the said application reads as follows:

> *"2. That the suit filed by the Respondent/ Plaintiff had been decreed qua possession and arrears of rent for the period January 2011 to march, 2013 amounting to Rs.2,88,600/- (Rupees two lakhs eighty eight thousand and six hundred only) from the defendant. However, there is a technical issue regarding the adjudication of the present suit by the Court of the Ld. Civil Judge as the claims of the Respondent in the suit oust the pecuniary jurisdiction of the Ld. Civil Judge. The respondent/ plaintiff therefore, seeks leave of this Hon'ble Court to suitably amend the original plaint and abandon part of his claim towards arrears of rent and is only now claiming a sum of Rs.1,66,700/- (Rupees one lakh sixty six thousand and seven hundred only) from the appellant/ defendant towards arrears of rent and is abandoning his claim of Rs.1,25,000/- (Rupees one lakh and twenty five thousand only)"*

11. This application was allowed by the First Appellate Court on 15.07.2015 itself. Learned counsel for the appellant submits that the said order has been assailed by the appellant by filing a petition under Article

227 of the Constitution of India being CM(M) No.428/2015. However, learned counsel for the appellant has made his submissions on this aspect as well, being fully conscious of the fact that the findings returned by this Court on the said aspect shall also have a bearing on the pending CM(M) No. 428/2015.

12. The first submission of learned counsel for the appellant is that even though the appellant/ defendant had stated, that in January 2011, the parties had compromised their disputes and differences, and on the demand of the respondent herein to increase the rent to Rs.11,000/- per month, the same was so increased by the appellant/ defendant, the plaintiff in his cross-examination in the present suit had admitted that the rent was Rs.600/- per month at the time of filing of the present eviction petition.

13. Learned counsel for the appellant further submits that the mere tendering in evidence of the petition seeking leave to defend filed by the appellant/ defendant in the eviction petition, i.e. Ex.PW-1/5 was not sufficient, and it was necessary for the respondent/ plaintiff to confront the appellant with the said application to seek leave to defendant (Ex.PW-1/5) so as to give an opportunity to the appellant to explain the said admission. In this regard, reliance has been placed by learned counsel on ***Udham Singh Vs. Ram Singh & Another***, (2007) 15 SCC 529, and in particular on the following extract from paragraph 9 of the said judgment.

> *"9. … … … … … It is a question which needs to be considered as to what weight is to be attached to an admission and for that purpose it is necessary to find out as to whether it is clear, unambiguous and a relevant piece of evidence, and further it is proved in accordance with the provisions of the*

Evidence Act. It would be appropriate that an opportunity is given to the person under cross-examination to tender his explanation and clear the point on the question of admission. In our view, the High Court was again wrong in attaching much weight to the averments made in the earlier plaint and coming to the conclusion that the defendants were admitted to be the tenants by the plaintiff on the land in question."

14. Learned counsel for the appellant further submits that, firstly, the mere amendment of the plaint at the appellate stage would not confer pecuniary jurisdiction on the learned Civil Judge when he did not have the said jurisdiction at the time when the suit was filed, or when the suit was decreed. He further submits that the amendment was unjustifiably granted by the First Appellate Court.

15. Having heard learned counsel for the appellant, I am of the view that there is absolutely no merit in this appeal and no question of law, much less a substantial question of law arises for consideration of this Court. There is absolutely no perversity, or illegality in the approach of the Courts below, and none has been pointed out by learned counsel.

16. The admission made by the appellant/ defendant in paragraphs 8 & 9 of the application to seek leave to defend (Ex.PW-1/5) in the earlier eviction petition preferred by the respondent/ landlord may be extracted. The same reads as follows:

"8. That in Jan.2011, the Petitioner also compromised his dispute and differences with the Respondent and he demanded increment in rent to Rs.11,000/- which was accepted by the Respondent, who has paying the rent to the Petitioner at the said rate. Hence, the current rate @ Rs.11,000/- (Eleven Thousand Only) p.m. is being charged by

> ***the Petitioner from the Respondent since January 2011, but no rent receipt has been issued by the Petitioner, despite request and demands of the Respondent. The rent of Rs.11,000/- has been increased by the Respondent in good faith on the demand of the Petitioner.*** *However, the rate of Rs.600/- per month has been shown tendered and got deposited in the Court of Ld. Rent Controller, Delhi, to avoid any kind of dispute and harassment to the Respondent, so much so that the Petitioner had assured and promised the Respondent as such. But the Petitioner has backed out from his promises and assurances, which is misuse of faith and trust of the Respondent.*
>
> *9. That the Petitioner is also received a sum of Rs.4,60,000/- from the Respondent besides the increment of rent @ Rs.11,000/- per month but no receipt was issued by the Petitioner except one receipt of Rs.10,000/- (Rs. Ten Thousand only) was issued by the wife of the Petitioner. Hence, the Petitioner had resolved all the disputes and differences with the above understanding and that he did not make any demand of increment rent from the Respondent, which has proved futile."*

(emphasis supplied)

17. From the above, it would be seen that the positive and categorical case of the appellant/ defendant was that on account of a compromise arrived at between the parties, and to meet the demand of the respondent/ plaintiff, the appellant/ defendant had agreed to increase the rent of the said premises to Rs.11,000/- per month and that he *"has been (sic) paying the rent to the Petitioner at the said rate. Hence, the current rate @ Rs.11,000/- (Eleven Thousand Only) p.m. is being charged by the Petitioner from the Respondent since January 2011, but no rent receipt has been issued by the Petitioner, despite request and demands of the Respondent. The rent of Rs.11,000/- has been increased by the Respondent in good faith on the*

demand of the Petitioner". He also stated that the rent at the rate of Rs.600/- per month has been shown to have been tendered and got deposited in the Court of learned Rent Controller, Delhi to avoid any kind of dispute and harassment to the appellant/ defendant herein. Pertinently, the said eviction petition under Section 14(1)(e) was withdrawn by the respondent herein on account of the stand taken by the appellant/ defendant that the rent was Rs.11,000/- per month.

18. The statement made by the respondent/ plaintiff in his cross-examination- to the effect that the rate of rent on the date of filing the above said petition, (namely, the eviction petition), was Rs.600/- per month, is of no avail for several reasons. Firstly, the said statement pertains to the period prior to the filing of the eviction petition. However, thereafter the appellant had filed his application to seek leave to defend (Ex.PW-1/5), thereby setting up a defence that the rent was Rs.11,000/- per month since January 2011. Secondly, in answer to the suggestion that the rent for the month of January 2011 was not Rs.11,000/-, the respondent/ plaintiff had stated that on mutual agreement between the parties, the rate of rent has been increased from Rs.600/- to Rs.11,000/- directly. However, he did not remember when the said increase was effected. Lastly, the appellant himself having categorically stated that the rent had been increased to Rs.11,000/- per month from January 2011 upon mutual agreement of the parties, is bound by his admission. This admission of the appellant/defendant had been accepted and acted upon by the respondent/plaintiff, who withdrew lies eviction petition under Section 14(1)(e) of the Act. The endeavour of the appellant to wriggle out of his said admission, and to blow hot & cold could not have

been countenanced.

19. The findings returned by the Trial Court as well as the First Appellate Court on the issue of rate of rent, are findings of fact arrived at upon appreciation of evidence led by the parties, and it cannot be said that the said findings are perverse, or arrived at on the basis of no evidence, or wrong appreciation of evidence. It also cannot be said that the Courts below have misdirected themselves in law, in returning the said findings. In these circumstances, this Court would not interfere with the consistent findings of fact in second appeal.

20. The submission that the appellant should have been confronted with Ex.PW-1/5, has no merit. The extract quoted above from ***Udham Singh*** (supra) shows that it is only where the admission sought to be relied upon is not clear, or unambiguous, "*it would be appropriate that an opportunity is given to the person under cross-examination to tender his explanation and clear the point on the question of admission*". Firstly, the Supreme Court could not be said to have laid down a rule of evidence while making the said observation. Secondly, in the present case, the admission of the appellant/ defendant was as clear as day light. It was categorical, that the rent had been increased to Rs.11,000/- per month from January 2011 in view of the compromise arrived at between the parties. It was for the appellant/defendant to establish his defence on his own, and it was sufficient for the respondent/plaintiff to establish on record the clear and unambiguous admission of the appellant/defendant.

21. The submission that the learned Civil Judge did not have pecuniary

jurisdiction to try the suit, and that the amendment application moved by the respondent/ plaintiff at the appellate stage, firstly, could not have been allowed; and secondly, would not vest jurisdiction in the Trial Court, also has not merit. Pertinently, the preliminary objection raised by the appellant, as extracted above, in substance is an objection to the valuation of the reliefs and payment of Court Fees by the plaintiff. Though the said objection was that the suit is not maintainable on account of the same not being properly valued for the purposes of pecuniary jurisdiction, a complete reading of paragraph 5, as extracted above, shows that the said preliminary objection is to the non-payment of Court Fees on the basis of market value of the suit property. It is well-settled that a suit for ejectment of a tenant, or an erstwhile tenant is valued for the purpose of Court Fees and jurisdiction on the basis of annual letting value. It is not to be valued on the market value of the suit property. Reference in this regard may be made to Section 7 of the Court Fees Act, 1870.

22. In any event, no issue was pressed by the appellant/ defendant to say that the reliefs sought were beyond the pecuniary jurisdiction of the Civil Court. Issue No.7 framed by the Court at the behest of the appellant was: "*Whether the suit of the plaintiff is valued properly for purpose of Court fees and jurisdiction*". From the judgment of the Trial Court, it appears that it was not even the case of the appellant that the reliefs sought were beyond the pecuniary jurisdiction of the Civil Court. Thus, by virtue of Section 21(2) CPC, the said objection could not have been raised at the first appellate stage, and cannot be raised now before this Court. In ***Subhash Mahadevasa Habib vs. Nemasa Ambasa Dharmadas & Others,*** (2007) 13

SCC 650, in para 34, the Supreme Court has considered the said provision. Moreover, the respondent/ plaintiff upon becoming conscious of the said objection at the appellate stage, moved the amendment application, as aforesaid, to obviate the said technical objection. It is open to a plaintiff, at any stage of the proceedings, to give up a part of his claim unconditionally. Therefore, prima-facie, it appears that there could be no justification to deny the amendment application moved by the respondent/ plaintiff to seek amendment of the plaint, so as to give up a part of his claim to obviate the objection with regard to the pecuniary jurisdiction of the Civil Judge. The amendment, having been allowed, relates back to the original filing of the plaint. Consequently, for all purposes and intents, the amended suit was maintainable before the learned Civil Judge, and fell within the pecuniary jurisdiction of the said Court, at all material times.

23. For all the aforesaid reasons, I find absolutely no merit in this petition and dismiss the same.

VIPIN SANGHI, J

AUGUST 05, 2015
B.S. Rohella