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

+ **Date of Decision: 13.10.2015**

% **RSA 364/2015**

CHANDA Appellant

Through: Mr. Abhay Pandey, Advocate.

versus

RAJESH SAXENA Respondent

Through:

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

VIPIN SANGHI, J. (OPEN COURT)

C.M. No. 23263/2015

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

RSA 364/2015 and C.M. No. 23264/2015

3. The present second appeal is directed against the judgment/ order and decree dated 08.09.2015 passed by the First Appellate Court, namely the ADJ-04 (North-West), Rohini Courts, Delhi in RCA No.83/2014 preferred by the appellant/ defendant, whereby the said first appeal had been dismissed by the First Appellate Court. The said appeal had been preferred

by the appellant/ defendant to assail the order/ judgment and decree dated 31.10.2014 passed by the Trial Court, namely JSCC/ASCJ/GJ (North-West), Rohini Courts, Delhi, whereby the application under Order XII Rule 6 CPC moved by the respondent/ plaintiff had been allowed, and a partial decree for possession had been passed in favour of the respondent/ plaintiff and against the appellant/ defendant.

4. The case of the respondent/ plaintiff was that he is the owner/ landlord of Shop No.B-780, Sector-I, Rohini, Delhi – 110085, which had been let out to the appellant/ defendant on 17.08.2009 through a registered agreement on a monthly rent of Rs.4,500/-. An amount of Rs.10,000/- was given by the appellant/ defendant as interest free refundable security. The plaintiff stated that the said rent agreement expired by efflux of time on 19.08.2012. After the expiry of the tenancy, the defendant sought some time to vacate the tenanted premises. Accordingly, the tenancy was orally extended for a further period of four months and the rent was increased to Rs.6,000/- per month. Subsequently, the defendant again requested that he would vacate the suit premises on 30.04.2013. He also signed an undertaking to this effect. The defendant again approached the plaintiff and assured the plaintiff that he would vacate the tenanted premises on 30.09.2013. He also gave an undertaking.

5. On 04.09.2013, the plaintiff requested the defendant to vacate the suit property and pay the outstanding rent for the months of July, August and September 2013. The plaintiff claimed that the defendant took an acknowledgement of payment of rent and subsequently added an entry into the receipt to the effect that Rs.5 Lakhs had been given by the defendant to

the plaintiff as security. The plaintiff stated that he terminated the tenancy of the defendant vide legal notice dated 26.10.2013. Since the defendant did not vacate the premises, the plaintiff filed the said suit to seek possession of the suit property, damages and mesne profits along with pendente lite and future interest.

6. In his written-statement, the appellant/ defendant pleaded that the plaintiff demanded Rs.5 Lakhs as security for renewing the lease agreement after the expiry of the previous agreement. He claimed that the said amount was paid to the plaintiff on 04.09.2013. He further pleaded that the agreement between the parties was that the rent shall not be increased in future, as the defendant had paid a high amount of security to the plaintiff. He further pleaded that the plaintiff had agreed to allow the defendant to enjoy the tenanted premises as per his requirement with no period of limitation fixed for tenancy of the defendant.

7. The Trial Court, while considering the plaintiff's application under Order XII Rule 6 CPC, observed that the relationship of landlord and tenant was admitted between the parties. It was also admitted that the rate of rent was Rs.6,000/- per month. The legal notice dated 26.10.2013, whereby the tenancy of the appellant/ defendant was terminated, was also admitted. Consequently, the Trial Court proceeded to pass partial decree for possession. The Trial Court also considered the defence of the appellant/ defendant that as an amount of Rs.5 Lakhs was paid by the defendant to the plaintiff, the plaintiff was disentitled from seeking a partial decree without a trial. The Trial Court, *inter alia*, observed that as per Section 107 of the Transfer of Property Act, 1882, lease of immovable property for any term

exceeding one year could be made by a registered instrument. The defendant has failed to place on record any such registered instrument. Consequently, the tenancy was on month-to-month basis and could be terminated by the landlord/ plaintiff.

8. The First Appellate Court has concurred with the said findings of the Trial Court while passing the impugned judgment and decree. The First Appellate Court has also taken note of the judgment of the Supreme Court in *Nopany Investment (P) Ltd. Vs. Santokh Singh (HUF)*, (2008) 2 SCC 728, followed by this Court in *Jeevan Diesel and Electrical Ltd. Vs. Jasbir Singh Chhadha (HUF) & Another*, RFA No.179/2011 decided on 25.03.2011, wherein it has been held that it is not necessary for the plaintiff to terminate the monthly lease prior to filing of the suit as the filing of the suit itself is sufficient notice to the defendant for termination of lease.

9. The submission of learned counsel for the appellant/ defendant/ tenant is that the Courts below have not appreciated the fact that the appellant/ defendant had paid Rs.5 Lakhs to the respondent/ plaintiff as security for extension of the lease.

10. I do not find any merit in the aforesaid submission of learned counsel for the appellant. As observed by the Courts below, the only mode and manner known to law for grant of leasehold rights for a period of more than eleven months is by a registered instrument. It is not the appellant's case that a registered lease was executed between the parties when the alleged amount of Rs.5 Lakhs was paid by the appellant/ defendant to the plaintiff. As to whether, or not, the said amount was actually paid, would be a matter

of trial and the suit is still pending consideration of such issues. However, it cannot be said that the defendant/ appellant acquired a right to continue in occupation as a lessee/ tenant, which could not be terminated by the respondent/ plaintiff. The tenancy of the appellant/ defendant was on month-to-month basis, which stood terminated by the legal notice aforesaid and, in any event, by the filing of the suit.

11. No substantial question of law arises for consideration in the present appeal and I find no merit in the present appeal.

12. Dismissed.

OCTOBER 13, 2015

B.S. Rohella

VIPIN SANGHI, J