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

+ RC.REV. 38/2015

MANISH KUMAR

..... Petitioner

Through Mr.Kanwal Chaudhary, Adv

versus

CHAMAN LAL & ORS

..... Respondent

Through Mr.S.R.Pandey, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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02.08.2016

CM No.9538/2016

1. By the present application the applicant/petitioner seeks direction to the Registry to release the deposited amount in favour of the petitioner. By the present petition the petitioner has impugned the order of the Rent Controller dated 10.7.2014 whereby leave to defend application of the petitioner was rejected and an order of eviction was passed.

2. When the matter came up for hearing on 20.1.2015 this Court had stayed the operation of the impugned order subject to terms and conditions as under:-

“Till the next date of hearing the operation of the impugned order dated 10th July, 2014 is stayed subject to the petitioner paying the user charges @ Rs.5,000/- per month besides electricity and water charges to the respondent from the date of eviction order till the disposal of the petition.

The accumulated amount from the date of eviction order till 31st December, 2014 would be deposited with the Registrar General of this Court within four weeks and thereafter on or before 7th of every month.”

3. Subsequently, this Court vide order dated 11.12.2015 allowed the petition and set aside the order dated 10.7.2014 passed by the Additional Rent Controller. In the light of the above, the petitioner seeks refund of the amount which is lying deposited with the Registrar General of this Court pursuant to the above noted direction dated 20.1.2015.

4. I have heard learned counsel for the parties.

5. A perusal of the order dated 20.1.2015 shows that the user charges of Rs.5,000/- per month were not directed to be paid to the respondent but were directed to be deposited with the Registrar General of this Court meaning thereby that the deposit had to be subject to final decision to be taken by this Court in the present petition.

6. It may be pointed out that the order to pay damages while enjoying the protection of this Court is in the form of an interim order pursuant to the judgment of the Supreme Court in *Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt. Ltd., (2005) 1 SCC 705*. The Supreme Court in the said judgment concluded as follows:-

19. To sum up, our conclusions are:-

(1) while passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate Court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal

being dismissed and in so far as those proceedings are concerned. Such terms, needless to say, shall be reasonable;

(2) in case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in Clause (I) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree;

(3) the doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a latter date.

7. The Supreme Court in that case approved the order of the Rent Control Tribunal which had put terms on the tenant of payment of Rs.15,000/- per month as charges for use and occupation during pendency of the appeal. The Tribunal took extra care to see that the amount was retained in deposit with it until the appeal was decided so that the amount in deposit could be disbursed by the appellate Court consistently with the opinion conveyed by it at the end of the appeal. The Supreme Court held that no fault can be found with the approach adopted by the Tribunal.

8. In the light of the above legal position and the manner in which this Court had stayed the order on 20.1.2015, in my opinion, the money deposited by the petitioner before the Registrar General of this Court is

liable to be refunded to the petitioner. Order of the ARC was set aside and the petitioner remains a protected tenant under the Delhi Rent Control Act.

9. Accordingly, the application is allowed. The Registrar General may release the amount deposited by the petitioner to the petitioner alongwith accumulated interest, if any.

JAYANT NATH, J

AUGUST 02, 2016

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