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

+ CM(M) 281/2016 & C.M. No.10784/2016

MAMTA GOEL @ MAMTA RANI GOEL

..... Petitioner

Through Mr. V.K. Mishra, Mr. Purushottam
Kumar and Mr. Hitesh Pandey, Advs.

versus

DHANRAJ MITTAL & ORS

..... Respondents

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **22.03.2016**

The petitioner is aggrieved by the impugned order dated 04.01.2016 vide which the Appellate Court i.e. the Court of Additional District Judge had endorsed the findings returned by the Civil Judge on an application filed by the petitioner/plaintiff under Order XXXIX Rule 10 of the CPC in a pending suit (for possession and mesne profits) wherein he had sought rent at the rate of Rs.3,600/- per month. His contention was that this is the admitted rate of rent; candidly he has admitted before this Court that this admission was not made in the course of the pending suit but in some other ancillary proceedings i.e. the proceedings before the Rent Controller where the petition filed under Section 14 (1)(e) of the DRCA had been dismissed vide judgment dated 09.07.2009; submission being that this was premised largely on the fact that the suit property is not covered by the Rent Act. Accordingly, the suit for possession had been filed. The language of Order XXXIX Rule 10 of the CPC is clear and unequivocal. It is only when the subject matter of suit is money or something which is capable of delivery and there is

an admission that this money is being held by the other party as a trustee and it is an amount due to other party, the Court may make such an order that the money be deposited in the Court. Admittedly there is no such admission made by the defendant that the rate of rent was Rs.3,600/- in the present suit. The rate of rent as per the averments made in the plaint was based on a rent note dated 20.11.1974 wherein the rate of rent claimed by the plaintiff qua defendant No. 4 was Rs.12/- per month. The contention of the learned counsel for the petitioner is that this property had been leased out by the original tenant to the sub-tenant and from the sub-tenant, this sum of Rs.3,600/- per month was being drawn and as such the suit property was fetching Rs.3,600/- per month, the petitioner is entitled to this sum of money. This Court is not in agreement with this submission of the learned counsel for the petitioner as this is wholly opposed to the language contained in under Order XXXIX Rule 10 of the CPC. There is no admission made by the defendant qua which the Court may pass a direction for opposite party to deposit this sum of money as admittedly even as per the plaintiff, the rate of rent as per the rent note (supra) was only Rs.12/- per month.

In this background, the impugned order calls for no interference. Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

MARCH 22, 2016

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