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

+ **RSA 96/2016**

Date of Decision: 27.04.2016

SMT.HEMLATA

..... Appellant

Through: Mr.Gurmit Singh Hans &
Ms.Arati Manchanda,
Advocates.

versus

SH.TAJENDER SINGH (SINCE DECEASED)

THR HIS WIDOW

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

CM Appln.12213/2016

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

RSA 96/2016

1. The suit preferred by the respondent/plaintiff for recovery of possession of property bearing No.B-4/32A, Ground Floor, Lawrence Road, Keshav Puram, Delhi as well as for damages/mesne profits and arrears of rent along with interest and permanent injunction as against appellant/defendant was decreed by judgment dated 23.05.2013 passed by the Civil Judge (North), Rohini Courts, Delhi in Suit No.221/2013.

2. The respondent/plaintiff was held to be entitled to recovery of possession of the suit property, arrears of rent to the tune of Rs.1,17,200/- for the period between 22.06.2007 to 30.11.2009; damages/mesne profits to the tune of Rs.4000/- per month with effect from 1.12.2009 till handing over the possession of the suit property with simple interest at the rate of 7% per annum on the damages from the date of the institution of the suit till its realisation. The appellant/defendant was asked to hand over the possession of the suit premises within 45 days of passing of the decree.

3. The appellant/defendant was also restrained from creating any third party interest in the suit premises in whatsoever manner without the due process of law.

4. The aforesaid judgment of the Trial Court was affirmed and upheld in RCA No.36/2014 by judgment dated 24.02.2016 passed by ADJ-04 (North-West) Rohini District Courts, Delhi.

5. Hence the present second appeal on behalf of the appellant/defendant.

6. The case of the respondent/plaintiff is that the appellant/defendant was inducted as a tenant in the suit property for a monthly rental of Rs.3500/- per month which was increased to Rs.4000/- with effect from 22.03.2007, excluding electricity and water charges. Since the appellant/defendant defaulted in making payments regularly, the tenancy was terminated by a legal notice dated 28.10.2009.

7. Suit No.221/2013 was preferred by the respondent/plaintiff on the appellant/defendant not vacating the suit property or paying the

damages as demanded.

8. The aforesaid suit was contested by the appellant/defendant on the ground that her husband and not her was the tenant and that the suit was barred under Section 50 of the Delhi Rent Control Act for the rent of the demised premises was only Rs.2400/- per month.

9. Based on the pleadings of the parties, the following issues were framed:-

- i. Whether there exist any landlord tenant relationship in between the parties? Onus on both the parties.*
- ii. Whether the rate of rent is Rs.4,000/- p.m.? Onus on both the parties.*
- iii. Whether this court has no jurisdiction to try this case, as per section 50 DRC Act? OPD*
- iv. Whether the plaintiff is entitled for decree for ejectment and entitled for possession bearing no.B-4/32-A, Ground Floor, Lawrence Road, Keshav Puram, Delhi from the defendant? OPP*
- v. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
- vi. Whether the plaintiff is entitled for recovery of Rs.1,17,200/- towards arrears of rent w.e.f. 22.06.2007 till 30.11.2009 along with interest? OPP*
- vii. Whether the plaintiff is entitled for decree of damages/mesne profit for use of occupation of the tenanted premises @ Rs.15,000/- p.m. w.e.f. 01.12.2009 as well as recovery of electricity charges,*

as per the consumption till handing over the possession?

viii. Relief.

10. Four witnesses were offered on behalf of the respondent/plaintiff and two on behalf of the appellant/defendant.

11. The respondent/plaintiff, in order to prove his case, offered rent receipts (Ex.PW-1/5-A to PW-5/X) in which the appellant/defendant was shown as the tenant. Exhibit PW-1/4, the tenant verification report, which was offered on behalf of the respondent/plaintiff contained the photograph of the appellant/defendant. The respondent/plaintiff (PW-1) reiterated the cause for filing the suit and relied upon the averments made in the complaint as well as various documents showing that the appellant/defendant was the tenant.

12. Sub Inspector Prem Pal Singh (PW-2) of police station Keshavpur proved the tenant verification register (Ex.PW-2/A). Bhaskar Singh (PW-3) proved the authority letter of the manager of the Gas service (Ex.PW-3/1 and PW-3/2). Anand Kumar (PW-4), a property dealer, testified that the appellant/defendant along with her husband had approached him for taking the suit premises on hire.

13. As against the aforesaid evidence, no substantive proof was brought on record by the appellant/defendant to rebut the contention of the respondent/plaintiff.

14. On the basis of the aforesaid documents and the deposition of the witnesses on behalf of the parties, the Trial Court returned the findings that there was relationship of landlord and tenant between the

appellant/defendant and the respondent/plaintiff. The aforesaid finding was affirmed and upheld by the First Appellate Court.

15. The rent receipts (Ex.PW-1/5-A to PW-5/X) clearly indicate that the rent of the suit premises was initially Rs.3500/- which was increased to Rs.3800/- with effect from 22.02.2007 to 30.11.2009 and lastly an amount of Rs.4000/- per month was being paid by the appellant/defendant to the respondent/plaintiff. On the basis of the aforesaid documents, the Trial Court as well as the First Appellate Court were of the view that the suit was triable by Civil Courts and the bar of Section 50 of the DRC Act did not apply.

16. Once the aforesaid two issues namely the relationship of landlord and tenant between the parties and bar of Section 50 of the DRC Act not being applicable, were decided in favour of the respondent/plaintiff, the only corollary was that the appellant/defendant was a trespasser in the property and an unauthorised occupant. Hence the Trial Court and the First Appellate Court are justified in directing for recovery of possession, arrears of rent and mesne profits for the unauthorised use and occupation of the tenanted premises.

17. The appellant/plaintiff has challenged the concurrent judgments of the Courts below on the grounds that both the judgments do not evince application of mind; the rent receipts which were relied upon by both the Courts did not bear the signature of the appellant/defendant and that they are forged and fabricated documents; the last renewal of the monthly rental on which the damages and mesne profits have been fixed was not proved; the

handwriting over the tenant verification form was not recognised by PW-2 who proved the tenant verification register and that PW-4, the property dealer, in his examination-in-chief indicated the husband of the appellant/plaintiff to be the appellant.

18. These are factual issues which do not give rise to any substantial question of law.

19. There is no reason for this Court to interfere with the concurrent findings of fact by the Courts below.

20. In the absence of any special reason for interfering with the concurrent judgments of the Courts below, the present second appeal is dismissed but without costs.

Caveat No.299/2016

1. Since the second appeal has been dismissed, the caveat petition has become infructuous.

2. Dismissed as infructuous.

ASHUTOSH KUMAR, J

APRIL 27, 2016

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