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

+ CM(M) 659/2016 & CM No.24284/2016

HARJINDER SINGH ..... Petitioner  
Through Dr.R.S.Sasan, Adv.

versus

RAJWANT SINGH ..... Respondent  
Through None

**CORAM:**  
**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**

% **22.09.2016**

1. Respondent has been served but none is present on behalf of the respondent.
2. By the present petition the petitioner seeks to impugn the order dated 26.5.2015 by which application filed by the petitioner under Order 39 Rule 10 CPC was dismissed.
3. The suit is filed by the petitioner for possession, recovery of arrears and mesne profits. It is urged that the petitioner is the owner of the suit property i.e. WZ-14, Gali No.16 Upper Ground Floor, Sant Garh, MBS Nagar, New Delhi-110018 and on 15.9.2012 it was let out to the respondent on a monthly rent of Rs.8,500/-. A notarised rent agreement is stated to have been drawn and executed. On the expiration of the original lease respondent is stated to have requested for extension of a lease for another period of 11 months. Thereafter a request was made to the respondent to vacate the premises but he has not done the needful and has also not paid rent since

January 2015.

4. The trial court by the impugned order noted that there is no admission by the respondent that he holds any money as a trustee for the petitioner or it belongs to the petitioner. Trial court also noted the defence of the respondent that he was induced to enter into a mortgage with the petitioner and he paid Rs.4 lacs in July 2014 to the petitioner and became a mortgagee. The order accepts that no proof of any alleged payment of Rs.4 lac has been placed on record. Accordingly, the trial court dismissed the application under Order 39 Rule 10 CPC.

5. A perusal of the written statement filed by the respondent shows that a bald plea is sought to be taken accepting that the respondent came as a tenant in the premises. Execution of the Rent Agreement is also denied. It is stated that the defendant had agreed to vacate the premises and that the petitioner induced the respondent for the mortgage of the property demanding Rs.4 lacs and that now the respondent is not a tenant and is living in the premises as a mortgagee. Needless to say it is admitted in the written statement that the petitioner never gave any receipt for the payment of Rs.4 lacs.

6. The written statement shows a clear admission on the part of the respondent that his initial entry into the property is as a tenant. Subsequent alleged development of claiming to be a mortgagee is admittedly based on the documents. It is obvious that the defence sought to be raised is completely moonshine and an attempt to evade payment of the agreed monthly rent. It is clear that the order of the trial court suffers from material irregularity. As per order 39 Rule 10 CPC when the defendant admits that he holds such money or other things as a trustee for another party or that it

belongs or is due to another party, the court may direct that the same be deposited in court or delivered to the party with or without security subject to further direction of the court. In the present case in view of the categorical assertion that the respondent entered into possession as a tenant the application ought to have been allowed.

7. Petition is allowed. The respondent will deposit in court the unpaid rentals w.e.f. January 2015 uptill date. In case any such deposit, is made, the petitioner shall be at liberty to move an application for release of the said amount. Subsequent monthly payment @Rs.8,500/- shall also be made by the respondent directly to the petitioner. All pending applications also stand disposed of accordingly. Petition stands disposed of.

**JAYANT NATH, J**

**SEPTEMBER 22, 2016**

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