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

+ **RFA 772/2016 & CMs No.36310-13/2016**

JAGDISH

..... Appellant

Through : Mr. Javed Ashraf Khan, Advocate with
appellant in person.

versus

PANCHDASH NAM JUNA AKHARA

..... Respondent

Through : None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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11.11.2016

1. The appellant (defendant) is aggrieved by the impugned judgment and decree dated 23.4.2016 passed in a suit for possession, recovery of rent, mesne profits, etc., instituted against him by the respondent (plaintiff) in respect of a shop situated in Seelampur Market, Delhi.
2. Counsel for the appellant states that the respondent had filed an execution petition for seeking execution of the impugned judgment and decree and in the said proceedings, the appellant had handed over the vacant peaceful possession of the subject shop to the respondent, through the Bailiff, in the month of September, 2016.
3. The limited grievance raised in the present appeal is in respect of the relief of arrears of rent, which have been assessed by the trial court at Rs.12,000/- p.m., from 14.10.2013 onwards along with interest.

4. Counsel for the appellant contends that the trial court had failed to consider the submission of the appellant that the rent that was being tendered to the respondent/plaintiff was @ Rs.1500/- p.m. and not Rs.12,000/- p.m. He concedes that though the appellant/defendant had not specified the rate of rent in the written statement filed in the suit, but he had taken a plea to this effect, that the rate of rent was Rs.1500/- p.m., in a previous suit instituted by him against the respondent.

5. This Court has perused the impugned judgment and decree. Issue No.2 and 3 were framed by the trial court on the aspect of entitlement of the respondent/plaintiff to recover the rent and mesne profit along with interest, if any. It has been observed by the learned ADJ that as per the Rent Agreement (Ex.PW-1/1), the rent of the suit premises was fixed at Rs.12,000/- p.m. Though the appellant/defendant denied the said rate of rent, but he failed to disclose the actual rate of rent that was being tendered by him to the respondent/plaintiff. It has also been observed in the impugned judgment that PW-1 had admitted in his cross-examination that no rent receipt was issued to the appellant/defendant, but he mentioned the amount received as rent in the copy of the appellant/defendant. However, the appellant/defendant did not make any suggestion to the contrary, to counter PW-1 on this aspect during his cross-examination.

6. As for the plea taken by the appellant/defendant that in the previous suit instituted by him against the respondent/plaintiff, the rent was specified by him as Rs.1500/- p.m., the trial court had rightly declined to accept the said plea in the light of the fact that the Rent Agreement (Ex.PW1/1) had been duly proved and it contained a clause to the effect that the rent would be @ Rs.12,000/- p.m. Observing that the appellant/defendant had not

succeeded in proving that he had paid the rent of four months for the period from 14.10.2013 to 13.2.2014, the trial court was justified in holding that the respondent/plaintiff is entitled to recover the arrears of rent of Rs.48,000/-, @ Rs.12,000/- p.m. from the appellant/defendant.

7. As for the relief of mesne profits granted in favour of the respondent/plaintiff under issue No.3, a perusal of the grounds taken in the appeal reveals that no challenge has been laid to assail the findings returned by the trial court on this aspect.

8. The appellant/ defendant cannot be permitted to argue against a written contract between the parties (Ex.PW1/1) which mentions the rate of rent as Rs.12,000/- p.m. Having perused the impugned judgment, this Court is of the opinion that there is no error in the appreciation of the evidence, the reasoning and the conclusion arrived at in respect of issue No.2, for this court to interfere with the same. Accordingly, the present appeal is dismissed *in limine* along with the pending applications, as being devoid of merits.

HIMA KOHLI, J

NOVEMBER 11, 2016

sk/ap