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

+ **Date of Decision: 06.01.2016**

% **RSA 381/2014**

REMAL DASS DUDEJA ..... Appellant

Through: Appellant in person.

versus

SANTOSH MEHLAWAT ..... Respondent

Through: Mr. A.K. Singla, Senior Advocate  
along with Mr. B.S. Saini &  
Mr. Abhimanyu Singh Khatri,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**VIPIN SANGHI, J. (OPEN COURT)**

1. The present second appeal under Section 100 CPC is directed against the judgment & decree dated 09.09.2014 passed by the First Appellate Court, namely the learned Additional District Judge-04, New Delhi District, Patiala House Courts, Delhi in RCA No.06/2014, whereby the first appeal preferred by the appellant/ plaintiff has been dismissed, and the judgment & decree passed by the Trial Court, namely the learned Civil Judge-16, Tis Hazari Courts, Delhi in Suit No.866/2011 – dismissing the suit of the appellant/ plaintiff for recovery of arrears of rent, has been affirmed.

2. The admitted facts are that the plaintiff is the landlord and the

defendant is the tenant in respect of the property bearing Flat No.9258, Type C-1, LIG Category, Ground Floor, Vasant Kunj Residential Scheme, New Delhi. The appellant/ plaintiff filed the suit for recovery of arrears of rent on the premise that the respondent/ defendant was the tenant in the suit property on a monthly rent of Rs.4,500/-, excluding electricity and water charges. The plaintiff claimed that a rent agreement was executed between the parties on 01.08.2000, the original whereof is with the defendant. Paragraph 1 of the plaint is relevant and the same reads as follows:

*“That the plaintiff is the landlord-owner of the property i.e. ground floor of flat bearing No.9258, Type C-1, under LIG category, situated at Vasant Kunj, Residential Scheme, New Delhi and the defendant is a tenant in respect of the said premises since November, 1999 at the rate of Rs.4500/- (Rs.four thousand and five hundred only), excluding electricity and water charges. Though rent agreement to this effect was executed on 01.08.2000 (original ... (not legible)”*

3. The plaintiff claimed that the respondent/ defendant was in arrears of rent with effect from 01.08.2000. The averments made by the plaintiff in paragraph 8 of the plaint read as follows:

*“8. That the defendant is liable to pay the arrears of rent w.e.f. 1<sup>st</sup> August 2000 and till August 2003 at the rate of Rs.4500/- (Rs. Four thousand and five hundred) per month comes to Rs.1,67,400/- till August 2003 which the defendant is liable to pay to the plaintiff”.*

4. After serving a legal notice dated 08.08.2003, since the defendant failed to comply with the notice, the plaintiff filed the suit to seek arrears of rent for the period 01.08.2000 till August 2003 @ Rs.4,500/- per month, i.e. Rs.1,67,400/-.

5. The defendant filed her written statement to defend the suit. In reply to paragraph 1 of the plaint, the defendant stated as follows:

*“That the suit is liable to be dismissed as the plaintiff has come out with the wrong facts”.*

6. In reply to paragraph 8 of the plaint, the defendant stated as follows:

*“That the contents of para no.8 of the plaint are wrong and denied specifically being false and frivolous. The complete rent till August, 2003 has been paid to the plaintiff and not a single penny is outstanding”.*

7. In the written statement, the defendant/ respondent nowhere denied the averments of the plaintiff that the rate of rent was Rs.4,500/-. Thus, the defendant despite being specifically confronted with a clear averment of the plaintiff that the monthly rent was Rs.4,500/-, did not once deny that the monthly rent was Rs.4,500/-, or that the same was Rs.1,500/- per month. (as was sought to be claimed for the first time at the stage of trial).

8. Pertinently, the defendant/ appellant did not seek framing of any issue on the aspect of the rate of rent. The Trial Court framed the following issues on 31.03.2004 in the suit:

*“1. Whether there is no cause of action in favour of plaintiff against the defendant and plaintiff is guilty of suppression and concealment of material facts? OPD*

*2. Whether the plaintiff is entitled to the decree of recovery as prayed for? OPP*

*3. Whether the plaintiff is entitled to pendente lite and future interest? If so, at what rate and for what period? OPP*

*4. Relief”.*

9. The plaintiff examined himself as PW-1. He tendered his affidavit by way of evidence towards examination-in-chief as Ex.PW-1/A. In his examination-in-chief, the plaintiff (PW-1) deposed that the rate of rent of the tenanted premises/ suit premises was fixed as agreed between him and the defendant at Rs.4,500/- per month, payable in advance, every month by the 10<sup>th</sup> of each English calendar month.

10. PW-1 was cross-examined by the defendant on 01.02.2010 and 16.04.2010. During his cross-examination on 01.02.2010, the plaintiff (PW-1) stated that *“I have issued rent receipt to the defendant from November 1999 to July 2000 @ Rs.4,500/- per month”*. At that stage, it appears, that for the first time the defendant sought to set up a case that the rate of rent was Rs.1,500/- per month. A suggestion given to the plaintiff to this effect was denied by him. He was then shown a photocopy of a rent receipt dated 13.12.2001. The plaintiff (PW-1) admitted his signatures on the said photocopy at point ‘A’. The same was marked as Ex.PW-1/D-2. His cross-examination was deferred and was continued on 16.04.2010, when he was shown the original rent receipt dated 13.12.2001. The same had been filed by the defendant in another suit filed by the plaintiff to seek possession of the suit property i.e. Suit No. 1566/2006, and had been summoned during trial in the present suit. After careful examination of the said rent receipt, the plaintiff (PW-1) stated that the same is not in his handwriting, and the signatures are also not his.

11. The plaintiff moved an application under Section 151 CPC for leading additional evidence. This application was allowed by the Trial Court vide order dated 02.01.2012, subject to payment of Costs. The plaintiff then filed

his additional affidavit by way of evidence towards examination-in-chief, which was tendered in evidence on 04.04.2012 as Ex. PW-1/B. In his examination-in-chief on affidavit, the plaintiff (PW-1) deposed that, in respect of two cheques of Rs.4,500/- each, issued by the husband of the defendant, which had been dishonoured upon presentation, he had filed a Civil Suit No.199/2003 for recovery of Rs.12,375/-. The defendant's husband filed his application to seek leave to defend the said suit, i.e. Ex.PW-1/8, wherein he stated that *"the said cheques were given to the plaintiff by the wife of the defendant against rent of the premises and there is no friendly loan as alleged by the plaintiff in the suit"*. He further stated in paragraph 5 of the application seeking leave to defend (Ex.PW-1/8) as follows:

*"5. That the plaintiff has already filed another frivolous suit against the defendant which is pending before this Hon'ble Court itself and in that matter the plaintiff is seeking recovery of rent from the defendant and in that suit in para no.1 of the plaint the plaintiff is alleging that the defendant is a tenant for an amount of Rs.4,500/- per month. The defendant has already filed his written statement in that suit and has stated in the written statement that there is no locus between plaintiff and defendant of tenancy and no relationship of landlord and tenant between the plaintiff and defendant"*.

12. The plaintiff also stated in his examination-in-chief that earlier also he had rented the property in question on rent of Rs.4,500/- per month. He produced the certified copy of the rent agreement dated 01.05.1999 as Ex.PW-1/10. A perusal of Ex.PW-1/10 shows that the same is an agreement entered into between the plaintiff and one Bipin Kumar Singh in respect of the suit property, wherein the rent agreed to be paid by the tenant Sh. Bipin

Kumar Singh is recorded as Rs.4,500/- per month.

13. PW-1 was cross-examined on his additional evidence on 04.04.2012. The cross-examination of PW-1, firstly, pertained to his stand taken in his aforesaid Suit No.199/2003 that the two cheques of Rs.4,500/- were issued for returning a loan. In relation to Ex.PW-1/10 dated 01.05.1999, the only suggestion given was that the said document was forged and fabricated.

14. The defendant led her evidence towards examination-in-chief on affidavit as Ex.DW-1/A. She claimed that she was a tenant in the suit property since August 2000 on a monthly rent of Rs.1,500/-. She claimed that the plaintiff had issued a rent receipt dated 13.12.2001 in her favour after receiving rent for three months. In her cross-examination, she, *inter alia*, stated that there is no other case between the parties pertaining to the suit property, where she had disclosed that the rent was Rs.1,500/- per month. She stated that there is no other rent receipt with her besides the document mark 'A' (Ex.PW-1/D-2). She had no proof regarding payment of rent till August 2003.

15. DW-1/defendant during the course of her cross examination stated in relation to Ex. PW-1/D2 as follows:

*"It is correct that Ex. PW1/D2 which is also mark A is of Rs.4,500/-. Vol. It is for three months from December, 2001 to February 2002. I signed in English and always signed in the same manner. It is wrong to suggest that rent receipt produced by me is forged and fabricated".*

16. The defendant examined Lt. Col. Jawaharlal as DW-2, who claimed that he was a neighbor of the defendant in the year 2000. He stated that at

the request of the plaintiff, he filled up the rent receipt dated 13.12.2001(Ex.PW1/D2) in his own handwriting. The said rent receipt was issued by the plaintiff for three months for an amount of Rs.4,500/-. He stated that the plaintiff and the husband of the defendant had informed him that the suit property had been let out on a monthly rent of Rs.1,500/-. He identified his handwriting on the rent receipt.

17. DW-2 was cross examined by the plaintiff. He stated that he did not know the plaintiff and he met the plaintiff only once at the house of the defendant. He stated that he used to visit the house of the defendant. He knew the defendant for about a year at the time of filling up the rent receipt dated 13.12.2001 (Ex.PW1/D2). He stated that the receipt Ex.PW1/D2 had been filled at the request of the defendant. He stated that he had been shown the receipt (Ex.PW1/D2) by the counsel for the defendant in his office at the time of preparation of his affidavit. It was suggested to him that he was acting in collusion with the defendant and had cooked up a false story of the rent being Rs.1,500/- p.m. I may observe that the affidavit of DW2 towards examination-in-chief i.e. Ex.DW2/A is dated 18.08.2012.

18. The defendant also examined one Sh. Sudhir Kumar as DW-3, who stated that he is doing the business of property dealing. He stated that the plaintiff came to him in July 2000. He stated that one months' rent was given as security by the defendant to the plaintiff and that the rate of rent was Rs.1,500/-. He stated that he had not taken any commission from the parties as it was a very small transaction. In his cross examination, it was suggested to DW-3 that he was acting in collusion with the defendant and had cooked up a false story of the rent being Rs.1,500/-.

19. The defendant also examined the Asst. Ahlmad in the court of Sh. Vijay Shankar, CCJ cum ARC (Central), Tis Hazari Courts, Delhi. He examined Sh. Naveen Saini as DW-4, who produced the summoned record pertaining to File No.471/2009, titled Remal Dass v. Santosh Mehlawat, which contained the original receipt Ex. PW-1/D2. I may observe that file pertains to Suit No. 1566/2006.

20. He exhibited the certified copy of the plaint, written statement, issues and a few orders passed in File No.471/2009 as Ex. DW-4/P1 Colly. A perusal of the plaint filed in File No.471/2009, which bears Civil Suit No.1566/2006 shows that the same is a suit for recovery of possession filed by the plaintiff herein against the defendant herein in respect of the suit property. As in the present suit, in para 2 of the plaint, in Suit No.1566/2006, the plaintiff categorically stated that the rate of rent was Rs.4,500/- p.m. excluding electricity and water charges. The plaintiff disclosed the filing of the present suit in para 9 of the said plaint.

21. In response to para 2 of the said suit, the defendant in her written statement in the said suit stated as follows:

*“2. That the contents of para no.2 of the plaint are wrong and denied specifically being false and frivoulous. It is specifically denied that the rent is at the rate of Rs.4,500/- excluding electricity and water charges. It is also denied that the rent agreement to this effect was also executed on 01<sup>st</sup> August, 2000. It is further denied that the original of the same is with the defendant as he had taken the same from the plaintiff on the pretext of applying for telephone connection. It is submitted that all the averments are piece of false statement on the part of the plaintiff”.*

Thus, it would be seen that though the defendant denied the rate of rent as Rs.4,500/- p.m. excluding electricity and water charges, pertinently she did not make any averment that the rate of rent was only Rs.1,500/- p.m.

22. The plaintiff had valued the suit for possession for purpose of court fee, jurisdiction and reliefs at Rs.54,000/- on the basis of the yearly rent of Rs.4,500/- p.m. in para 15 of the plaint. Even in response to the said paragraph, all that the defendant stated was that the content of the said paragraph is legal and the same is denied. There was no denial to the valuation on the premise that the annual letting value was not Rs. 54,000/-, because the rent was not Rs. 4,500/- per month.

23. The Trial Court dismissed the suit of the appellant/plaintiff by returning the finding that no cause of action had arisen in favour of the appellant/plaintiff, as the plaintiff had not been able to establish that arrears of rent were due for the period 01.08.2000 to August 2003. Pertinently, the Trial Court held in favour of the plaintiff that the rent of the suit premises was Rs.4,500/- p.m. However, the same was inclusive of water and electricity charges. The Trial Court rejected the reliance placed by the defendant on Ex. PW-1/D2 on the premise that there was no pleading of the defendant disputing the claim of the plaintiff that the rate of rent was Rs.4,500/- p.m. It was only during the course of evidence that the defendant had sought to built up a defence that the rate of rent was Rs.1,500/- p.m. and not Rs.4,500/- p.m. by placing reliance on Ex. PW-1/D2. So far as Ex. PW-1/D2 is concerned, the Trial Court observed that though PW-1 had admitted his signatures on the photocopy of Ex. PW-1/D2, he denied his signatures and his handwriting on Ex. PW-1/D2 upon seeing the original. Since a

photocopy is not the best evidence, and upon seeing the best evidence, i.e. the original of Ex. PW-1/D2, PW-1 had denied the same, the Trial Court held that Ex. PW-1/D2 was not duly proved by the examination of PW-1. The Trial Court also disbelieved DW-2, who claimed to have filled up Ex. PW-1/D2, on the premise that while in his examination in chief DW-2 had deposed that Ex. PW-1/D2 was filled up by him at the instance of the plaintiff, however, during his cross examination he stated that the same was filled up at the instance of the defendant. Apart from this contradiction, it was also highlighted that DW-2 had stated that he has seen the original of Ex. PW-1/D2 in the office of the learned counsel for the defendant at the time of preparation of his affidavit by way of evidence towards examination in chief on 18.08.2012. However, a perusal of the record of File No.471/2009 (Suit No.1566/2006) brought by DW-4 – summoned witness from the Court of Sh. Vijay Shankar, revealed that the original rent receipt dated 13.12.2001 was lying in the File No.471/2009 (Suit No.1566/2006), and thus there was no occasion for DW-2 to see the said document in the office of the defendants counsel at the time of preparation of his affidavit by way of evidence. DW-2 was, therefore, discredited and was disbelieved. However, since the plaintiff was not able to establish the non-payment of rent upto August 2003, the Trial Court held that there was no cause of action in favour of the plaintiff.

24. The plaintiff then preferred the first appeal which has been dismissed by the impugned judgment and decree. A perusal of the impugned judgment shows that in the initial part, the learned ADJ proceeded on the basis that since the plaintiff had not specifically denied the rate of rent as being

Rs.4,500/- p.m., the same stands admitted by the defendant under Order 8 Rule 5 CPC. However, the learned ADJ then proceeded to contradict himself, and on the basis of Ex. PW-1/D2, which was held to be not proved by the Trial Court, proceeded to conclude that the rent was Rs.1,500/- p.m., and not Rs.4,500/- p.m.

25. The relevant discussion in the impugned judgment, which brings out the contradiction in the impugned judgment read as follows:

“6. ....

*It is settled proposition of law as held by the Hon'ble Supreme Court of India in 2008 (2) RCR (Civil) 879, Anathula Sudhakar vs. P. Bushi Reddy (Dead) by LRs & Ors. that any amount of evidence beyond pleadings is not to be considered. In view of this law laid down by the Hon'ble Supreme Court of India, it is clear that any sort of evidence beyond pleadings is not liable to be considered. Further as per Order 8 Rule 5 CPC, any denial which is not specifically amounts to admission on the part of opposite party and no evidence is required to be proved that fact. This legal proposition has been laid down by the Hon'ble Supreme Court of India in JT 1993 (5) SC 223 and Hon'ble High Court of Delhi in 1998 IV AD Delhi 1. As per pleadings of the parties, the appellant had alleged that the rate of rent of the premises was Rs.4500/- per month and respondent herein did not pay the rent w.e.f. 01.08.2000 to 01.08.2003. On the other hand, the defendant therein did not comment upon the rate of rent but denied the outstanding rent for the period w.e.f. 01.08.2000 to 01.08.2003 and alleged that the rent had already been paid. From the pleadings, it is clear that the rate of rent was no disputed, however, it was appellant who was to prove that the respondent was liable to pay the rent for the period as demanded by the appellant. To allow the claim of the appellant, it was necessary to establish the relationship of landlord and tenant between the parties, rate of rent and period of non payment of rent ....*

7. The main plea is about the rate of rent and period of outstanding rent. On the basis of Order 8 rule 5 CPC, the rate of rent was not disputed from the side of the defendant, however the appellant was required to prove that the respondent was under obligation to pay the rent amount claimed in the suit on the basis of same rate of rent. Though the respondent took a new plea during evidence that the rate of rent of the premises was @ Rs.1,500/- per month, but it was well declined and not considered by Ld. Trial Court. ....

**The mainly case of the parties before Ld. Trial Court rested upon the document Ex. PW1/D2 which was the main document and even relied by Ld. Trial Court but disputed by the appellant.** It was stand of the respondent in the written statement filed before Ld. Trial Court that she had already paid the rent of the premises upto August 2003. To substantiate this defence DW1 has led oral evidence to this effect. DW1 has deposed that she used to pay the rent of the premises in cash but plaintiff was not regular in issuing the rent receipts and last rent receipt issued by the plaintiff was dated 13.12.2001. This fact was also repeated by DW1 during her examination in chief, but plaintiff did not put any cross examination to this effect. The original rent receipt dated 13.12.2001 was well produced before Ld. Trial Court. Initially, the photocopy was put to the witness and PW1 accepted his signature on the document but denied the content, however on production of original PW1 denied his signature as well as contents of document. The sudden change of stand taken by the PW1 between two dates of cross examination makes it clear that the PW1 denied the existence of the document deliberately. Rather this document was put to DW1 by the appellant himself during cross examination which suggests that the document was well relied by the appellant himself during cross examination and if both the parties have relied upon the same document then document ought to be considered by Ld. Trial Court. The document Ex. PW1/D2 was a rent receipt and it has prved the payment of rent upto 13.12.2001. During cross examination, PW1 has well deposed that he used to issue rent receipts as and when rent was being paid by the respondent. PW1 has further deposed

*that he had issued the rent receipts to the defendant from November 1999 to July 2000 @ Rs.4,500/- per per month, but no such counterfoil of rent receipts have been placed on record to prove that the rate of rent of the premises was Rs.4,500/- per month or the respondent had been paying rent at the same rate of rent. Even otherwise after the admission of the PW1 that he had been issuing the rent receipt to the respondent as and when rent was paid, there was no occasion to the appellant to break this practice and to issue rent receipt Ex. PW1/D2 without payment of any rent. Recent receipt Ex. PW1/D2 is well bearing the signature of plaintiff as admitted initially, but suddenly denied, and during cross examination of DW1, this receipt was well put to her which amounts to admission of document including contents and no oral evidence could be led to contradict the contents of this document. As per this document Ex. PW1/D2, the rate of rent of premises was Rs.1500/- per month and defendant has paid the rent upto February 2002 against the said rent receipt”.*

(Emphasis supplied)

26. Thus, it would be seen that the First Appellate Court proceeded on the basis that even the Trial Court relied on Ex. PW-1/D2 – which is factually not the case. As noticed above, the Trial Court held that Ex. PW-1/D2 could not be read in evidence, since on the production of the said document-in original, the plaintiff had denied his signatures and hand writing on the said document. The defendant had not led any other cogent evidence to prove the said document and even DW-2, who had claimed to have filled up the said receipt, was disbelieved on account of contradictions in his testimony. Pertinently, the First Appellate Court has not considered the testimony of DW-2 at all in its aforesaid discussion, qua Ex. PW-1/D2.

27. The first appellate court, however, set aside the finding of the trial court that no arrears of rent were payable, and held that arrears of rent were

payable with effect from 01.03.2002 to 31.08.2003 and Rs. 1,500/- per month. Thus, the suit of the appellant/plaintiff was partially decreed.

28. The appellant, who appears in person, has submitted that the judgment of the First Appellate Court is completely perverse qua the finding returned on the aspect of rate of rent. He submits that the First Appellate Court has set aside the finding returned by the Trial Court on the issue of admissibility of Ex. PW-1/D2, without dealing with the reasoning of the Trial Court. He further submits that the reliance placed by the First Appellate Court on Ex. PW-1/D2 is misplaced, since on being confronted with the original of the said document, the plaintiff PW-1 had denied the signatures and writing on the said document. He further submits that the respondent was barred from raising an issue with regard to the rate of rent in the face of her own written statement and the rate of rent as Rs. 4,500/- per month was deemed to be admitted by virtue of Order 8 Rule 5 CPC. He submits that in the suit for possession i.e. suit No. 1556/2006, the defendant had sought to amend the written statement to claim that the rate of rent was Rs. 4,500/- per month, but the said application was rejected. He submits that the defendant had sought to incorporate by way of amendment, the plea that, *“the property was let out on the monthly rent of Rs. 1,500/- and the plaintiff had never issued any receipt for the same since the inception of the tenancy”* (Emphasis supplied). He submits that this stand-which the defendant sought to incorporate, is contrary to the stand sought to be taken by the respondent by producing the receipt (Ex.PW1/D2). If no receipt had ever been issued by the appellant, then from where did the respondent produce the said receipt (Ex.PW1/D2)?

29. The court had admitted the appeal on 07.05.2015 and the substantial question of law framed by the court was whether the finding returned by the First Appellate Court with regard to the rate of rent and the admissibility of Ex. PW-1/D2 suffers from any perversity? and, if so, what are its effect? The Court also directed that the Trial Court Record of the suit for possession be requisitioned at the time of hearing of the present appeal. I may observe that the suit for possession appears to have been further re-numbered from Suit No.1566/2006 as Suit No.624/2014.

30. The submission of learned senior counsel for the respondent Mr.Singla, firstly, is that Ex.PW-1/D2 was a document whereon the appellant had admitted his signatures. A perusal of the said document shows that the same is a rent receipt dated 13.12.2001 for Rs.4,500/-. The same clearly mentions that the monthly rent was Rs.1,500/- and the said rent receipt was for the period December 2001 to February 2003. He submits that in the face of the admission of the appellant/ plaintiff with regard to his signatures on Ex.PW-1/D2, it stood established that the rate of rent was Rs.1,500/- per month, and not Rs.4,500/- per month.

31. Mr. Singla further submits that the appellant/ plaintiff had himself confronted DW-1/ defendant during her cross-examination with Ex.PW-1/D2. The relevant extract from the cross-examination of DW-1/ defendant has been set out hereinabove in paragraph 15 of this judgment. He submits that this clearly shows that the appellant/ plaintiff had admitted the said document.

32. He also places reliance on the testimony of DW-2 and DW-3, wherein they have deposed that the rate of rent was Rs.1,500/- per month. Mr.

Singla submits that, admittedly, in the suit for possession (Suit No.1566/2006, now re-numbered as Suit No.624/2014), the respondent/defendant specifically denied that the rate of rent was Rs.4,500/- per month. as noticed hereinabove in paragraph 21. Mr. Singla submits that the said denial can be read as a part of the pleadings in the present suit to seek recovery of arrears of rent, firstly, because the written statement in the said suit for possession was exhibited in the present suit as Ex.DW-4/P1 (Colly.), and secondly, because this Court has summoned the record of the said suit for possession, to look into the record of the said case.

33. Mr. Singla has also sought to place reliance on the order dated 17.08.2012 passed by the learned Additional District Judge in MCA No.1/2012. The said miscellaneous appeal had been preferred by the respondent/ defendant to assail the order dated 16.03.2012 passed by the learned Trial Court. The Trial Court had, by the order dated 16.03.2012, directed the defendant to deposit arrears of rent @ Rs.4,500/- per month with effect from 01.09.2003, and to pay the future rent at the same rate by invoking Order XXXIX Rule 10 CPC. The First Appellate Court had allowed the said appeal and directed the respondent/ defendant to pay the arrears of rent @ Rs.1,500/- per month from 01.09.2003 till August 2012, and to pay the future rent as well at the same rate.

34. Having heard the appellant, who appeared in person and the learned senior counsel for the respondent and perused the entire record, I am of the considered view that the impugned judgment passed by the First Appellate Court, namely the Additional District Judge in RCA No.06/2014, insofar as it placed reliance on Ex.PW-1/D2, and on that basis, set aside the finding of

the Trial Court that the rate of rent was Rs.4,500/- per month, and held that the rate of rent was Rs.1,500/- per month, is completely perverse and cannot be sustained.

35. As noticed hereinabove, firstly, the defendant/ respondent, in her written statement, not once denied the categorical and specific averment of the plaintiff that the rate of rent was Rs.4,500/- per month. On two occasions in the plaint, the appellant/ plaintiff averred that the rate of rent was Rs.4,500/- per month. Neither in the reply to paragraph 1, nor in the paragraph 8 of the plaint, as extracted above, the defendant pleaded that the rate of rent was Rs.1,500/- per month, and not Rs.4,500/- per month. In fact, since there was no dispute with regard to the rate of rent, no issue was sought to be framed on the said aspect at the instance of defendant or by the Court on its own.

36. Pertinently, the First Appellate Court in the impugned judgment itself has referred to Order VIII Rule 5 CPC as well as the decision of the Supreme Court in *Anathula Sudhakar* (supra), that no amount of evidence beyond pleadings could be considered. Reference has also been made to another decision of the Supreme Court, namely *Lohia Properties (P) Ltd., Tinsukia, Dibrugarh, Assam Vs. Atmaram Kumar*, (1993) 4 SCC 6, as well as that of this Court, namely *Sapna Singh Pathania Vs. Shri Jagdish Chander Mehta & Others*, 1998 IV AD (Delhi) 1, on the said aspect in the extract from the impugned judgment as quoted in paragraph 25 above. Thus, the evidence sought to be led by the defendant at the stage of trial to, for the first time, set up a defence that the rate of rent was Rs.1,500/- per month and not Rs.4,500/- per month, could not have been looked into at all.

Yet, the First Appellate Court proceeded to rely upon Ex.PW-1/2 to ultimately conclude that the rate of rent was Rs.1,500/- per month and not Rs.4,500/- per month. Clearly, while doing so, the First Appellate Court has not even correctly read and understood the judgment of the Trial Court. The First Appellate Court proceeded on the assumption that the Trial Court had relied upon Ex.PW-1/D2, which is clearly not the case.

37. The Trial Court, in fact, rejected the reliance placed by the defendant/respondent on Ex.PW-1/D2 for good reasons. Firstly, the admission of Ex.PW-1/D2 was only with regard to the signatures attributed to the appellant/plaintiff, when he was shown the photocopy of the said document. However, when the original of the said receipt Ex.PW-1/D2 was produced, the plaintiff denied his signatures, as also his writing on the said document. His admission of signatures by the plaintiff in the photocopy of Ex.PW-1/D2 was of no relevance, since he had denied his signatures upon seeing the original of the document, which was the best evidence.

38. Moreover, the author of the said document (Ex.PW-1/D2), namely DW-2 Lt. Col. Jawahar Lal was disbelieved by the Trial Court on account of two serious contradictions in his evidence taken note of by the Trial Court. Firstly, he contradicted himself by claiming in his examination-in-chief that he had filled up the rent receipt in his handwriting at the instance of the plaintiff, while in his cross-examination, he had stated that he had filled the said receipt at the instance of the defendant. Secondly, he claimed that he had seen the original of the said receipt in the office of the counsel for the defendant at the time of preparation of his affidavit (Ex.DW-2/A) by way of evidence, i.e. on 18.08.2012. The Trial Court observed that this statement

could not be believed, as the original of Ex.PW-1/D2 had already been filed in the possession suit, i.e. Suit No.1566/2006. The plaintiff had, during the cross-examination of DW-2 and DW-3, accused them of setting up a false defence in collusion with the defendant.

39. The emphasis laid by the First Appellate Court on the fact that the plaintiff had himself, during the course of cross-examination of DW-1/ defendant, referred to the said disputed document (Ex.PW-1/D2), is completely misplaced. What has been omitted from being noticed, is the context in which the said document was put to DW-1 in her cross-examination. The relevant extract from the cross-examination of DW-1 clearly shows that the purpose of putting the said document to DW-1 was to put to the said witness the case of the plaintiff that the said receipt (Ex.PW-1/D2) was forged and fabricated. Certainly, it cannot be said that the plaintiff/ appellant had sought to place reliance on the said document while confronting DW-1/ defendant with the said document. It is clear that the First Appellate Court has proceeded to hold the factum of DW-1 being confronted with Ex.PW-1/D2 as a circumstance against the appellant/ plaintiff in a mechanical manner, without appreciating the purpose for which the said document was put to the said witness DW-1/ defendant.

40. Pertinently, the First Appellate Court has not even considered the merit of the reasoning adopted by the Trial Court for rejecting the reliance placed on testimony of DW-2 by the defendant. A perusal of the impugned judgment shows that the First Appellate Court has also failed to take into consideration the additional evidence led by the plaintiff. The plaintiff had established that he had entered into a previous rent agreement dated

01.05.1999 (Ex. PW-1/10) with one Sh. Bipin Kumar Singh in respect of the suit property which showed that the same had been let out in the year 1999 for Rs.4,000/- per month. This evidence of the plaintiff really went un rebutted, since the only suggestion was that the said document was forged and fabricated. However, the defendant did not seek to lead any expert evidence to substantiate the plea that Ex.PW-1/10 was indeed forged or fabricated.

41. The First Appellate Court also did not apply its mind to the stand taken by the defendant's husband in Civil Suit No.199/2003, which was a suit for recovery of Rs.12,375/- filed by the appellant/ plaintiff. In the said suit, the defendant's husband in his application seeking leave to defend stated that the cheques in question in that suit were given to the plaintiff by the wife of the defendant against rent of the premises. He had denied that there was a loan transaction between the plaintiff and him. Pertinently, the said suit pertained to dishonour of two cheques of Rs.4,500/- each. The husband of the defendant set out in his application seeking leave to defend, i.e. Ex.PW-1/8, that the plaintiff had already filed *"another frivolous suit against the defendant ... .. seeking recovery of rent from the defendant and in that suit in para 1 of the plaint the plaintiff is alleging that the defendant is a tenant for an amount of Rs.4,500/- per month. The defendant has already filed his written statement in that suit that ... .. there is no locus standi between plaintiff and defendant of tenancy and no relationship of landlord and tenant between the plaintiff and defendant"*. Thus, even the husband of the defendant, when confronted with the averment that the rate of rent was Rs.4,500/- per month, did not controvert the same. In respect of

the two cheques for Rs.4,500/- produced by the plaintiff in the said suit (which were the basis of the said suit), the stand of the husband of the defendant was that they had been issued towards rent of the premises.

42. The submission of Mr. Singla premised on the stand taken by the defendant in the possession suit is of no avail. All that the defendant/respondent stated in response to paragraph 2 of the plaint in the possession suit was to deny the rate of rent as being Rs.4,500/-, excluding electricity and water charges. Pertinently, the defendant, even in the said suit, did not claim that the rate of rent was Rs.1,500/- per month. Moreover, there was no denial to the valuation of the possession suit, which was valued on the basis of the annual letting value arrived at by considering the monthly rent as Rs.4,500/-. Even otherwise, the present suit has to be decided on the basis of the pleadings of the parties contained in the present suit, and not those set up in another suit.

43. For all the aforesaid reasons, I am of the view that the impugned judgment insofar as it places reliance on Ex.PW-1/D2 to return the finding that the rate of rent was not Rs.4,500/- per month, and that the same was Rs.1,500/- per month, cannot be sustained. The same is, accordingly, set aside and the finding returned by the Trial Court that the same was Rs.4,500/- per month, is restored.

44. The respondent has not filed any cross-objections, and no argument has been advanced by learned senior counsel for the respondent with regard to the finding returned by the First Appellate Court that arrears of rent were due and payable for the period from 01.03.2002 to 31.03.2003.

45. Accordingly, the present appeal is allowed and a money decree is passed in favour of the plaintiff and against the defendant in respect of arrears of rent from 01.03.2002 to 31.03.2003 @ Rs.4,500/- per month. The plaintiff shall also be entitled to interest on the arrears of rent from the date of filing of the suit till realization @ Rs.1,500/- per month. The plaintiff shall be entitled to costs throughout.

46. The appeal stands allowed in the aforesaid terms.

**VIPIN SANGHI, J**

**JANUARY 06, 2016**

*B.S. Rohella*