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

+ CM(M) 912/2016

BHANU PRATAP Petitioner
Through Mr.Rajinder Mathur, Advocate

versus

VIMAL AGGARWAL Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **14.09.2016**

CM No. 33393/2016 (exemption)

Allowed subject to all just exceptions.

CM(M) 912/2016 & CM No. 33392/2016

1. By the present petition, the petitioner seeks to impugn the order dated 04.07.2016 by which an application filed by the petitioner under Order 14 Rule 5 CPC to frame an additional issue and to also change the onus of proving issue No.1 on the plaintiff was dismissed.
2. The plaintiff/respondent has filed the present suit for possession, damages and mesne profits against the petitioner. It is the contention of the plaintiff/respondent that defendant/petitioner is a tenant under the plaintiff in respect of the suit property vide lease deed dated 02.12.2009 for a period of 11 months @ rent of Rs.28,000/- per month.
3. In the written statement, the petitioner admitted that initially he came into the possession of the suit premises as a tenant. However, it is further

stated that somewhere in the month of October, 2011, the respondent and her husband came up with an idea to sell the property. The petitioner claims to have complete faith on the respondent and had paid a sum of Rs.1 lac as bayana amount. It is claimed that the petitioner has paid a sum of Rs.32 lac in cash to the respondent as part consideration of the suit property.

4. On 28.10.2015, the court framed the following issues:

“1. Whether there is any relationship of landlord and tenant between the parties? OPD

2. Whether the plaintiff is entitled for a decree of possession of suit property bearing No.(First Floor) F-10/18, Model Town-II, Delhi- 110 009 against the defendant? OPP

3. Whether plaintiff is entitled for a decree of sum of Rs.25,000/- on account of arrears of damages/mesne profits for the month of May 2015 till its realisation against the defendant? OPP

4. Whether the plaintiff is entitled for a decree of damages/mesne profits for use and occupation charges of the suit property @ 60,000/- per month from 01.05.2015 till its realisation with interest @ 18% per annum? OPP”

5. By the present application, the petitioner seeks to frame an additional issue, which is as follows:

“Whether there is relationship of Seller and Purchaser between the parties? OPD”

6. It also seeks that Issue(1) be amended to the extent that the onus of proving Issue(1) may be put on the respondent and not on the petitioner.

7. The trial court by the impugned order noted that the onus of proving Issue(1) has been put on the petitioner as the petitioner in the written statement has denied the relationship between the landlord and tenant. Hence, the onus is upon the petitioner to prove the same. On the request for

framing of an additional issue, the trial court concluded that the application has been filed to delay proceedings and there is no ambiguity in the issue framed and dismissed the application.

8. In my opinion, there is no infirmity in the impugned order. The suit is filed by the respondent for possession, damages and mesne profits stating that the petitioner is a tenant. In para 4 of the written statement, the petitioner admits that he came into the possession of the suit property in October, 2011 as a tenant. Somewhere, later it is claimed that he paid a sum of Rs.1 lac and thereafter has paid a sum of Rs.32 lac in cash to the respondent. A chart is drawn up for fifteen payments made by the petitioner to the respondent from 08.12.2011 to 30.01.2015 to claim rights to the property. The petitioner having admitted initial entry as a tenant, the onus of proving Issue(1) has rightly been placed on the petitioner.

9. Regarding the claim of the petitioner that he is now a purchaser of the suit property, the petitioner has not filed any counter claim regarding the specific performance of the alleged agreement. The suit is for eviction filed by the respondent. The issue of alleged ownership of the petitioner does not arise for consideration as no relief can be sought by the petitioner based on the same.

10. The petition is without merit and the same is accordingly dismissed.

JAYANT NATH, J.

SEPTEMBER 14, 2016/v