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

+ **CM(M) 870/2016**

GURMEET SINGH WADALIA (SINCE DECEASED)

THR HIS LEGAL HEIRS

..... Petitioner

Through Mr.Sanjiv Bahl, Mr.Eklavya Bahl &
Mr.Pawas Aggarwal, Advocates

versus

V N BEHAL (SINCE DECEASED)

THR HIS LEGAL HEIRS

..... Respondent

Through Mr.A.K.Singla, Sr.Advocate with
Mr.K.K.Khurana, Mr.A.K.Mehra,
Mr.Rohit Khurana & Mr.Adbhut
Pathak, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **05.09.2016**

CVEAT 788/2016

Since, the learned counsel has entered appearance for the respondent,
the caveat stands discharged.

CM. No.32435/2016(exemption)

Allowed subject to all justice exceptions.

CM(M) 870/2016 & CM. No.32434/2016(stay)

1. By the present petition, the petitioner seeks to impugn the order dated 20.08.2016 by which an application filed by the predecessor of the petitioner/defendant(before the trial court) under Section 151 CPC seeking modification/clarification of orders dated 08.12.2006 and 26.07.2007 was

dismissed.

2. The respondent/plaintiff has filed the present suit for possession, permanent injunction and recovery of arrears of rent regarding the property bearing Plot No.49, Ring Road, Lajpat Nagar-III, New Delhi- 110 024. It was contended that vide lease agreement dated 18.01.2003, the suit property was let out to M/s Tanya Export and Import Firm, which is an independent proprietorship concern of defendant/petitioner at a monthly rent of Rs.1,50,000/-. The petitioner/defendant in the written statement had contended that the lease dated 18.01.2003 was subsequently modified on 13.02.2003 and thereafter on 20.02.2003 when a new lease agreement was executed. It was contended that the petitioner/defendant had paid a sum of Rs.65 lacs in cash to the plaintiff/respondent towards interest free security deposit and on account of the same, the agreed rent was reduced from Rs.1,50,000/- to Rs.15,000 per month.

3. On an application filed by the plaintiff/respondent under Section 151 CPC, this court where the matter was pending then passed a direction on 08.12.2006 directing the petitioner/defendant to deposit arrears of rent in court w.e.f. 01.07.2003 till date and to continue to deposit for future months @ Rs.1,50,000/- per month. Against the said order, an appeal was filed by the petitioner which was dismissed on 20.02.2007. The Division Bench noted that the learned Single Judge of this court had noted that the case set up by the petitioner does not appear to be prima facie plausible. The entire circumstances set up by the petitioner/defendant gives rise to grave suspicion about the genuineness of the lease deed dated 20.02.2003 relied upon by the petitioner/defendant. In view of the various lacunae and gaps, the Division Bench further concluded that the petitioner is a tenant and is

liable to pay rent and it is difficult to accept that rent of the property would have been reduced from Rs.1,50,000/- to barely Rs.15,000 per month. It also held it difficult to accept that Rs.65 lacs as security deposit would have been paid in cash and that further even reasonable interest on Rs.65 lacs would not match and cover up the monthly rent of Rs.1,50,000/-. The Division Bench recorded these findings as tentative and prima facie and dismissed the appeal.

4. By order dated 13.03.2007, the trial court directed that the original documents filed by the petitioner be sent to the Central Forensic Science Laboratory (*hereinafter referred to as the 'CFSL'*). It is the stand of the petitioner that CFSL report dated 30.05.2007 and 01.06.2007 held that the documents are genuine and the signatures of the respondent on the said documents are genuine. Based on the said contention, the petitioner filed the present application seeking modification of earlier orders of this court dated 08.12.2006 and 26.07.2007.

5. The trial court has dismissed the said application relying on the order of the Division Bench of this court dated 20.02.2007. The trial court also noted that the petitioner has failed to comply with the orders dated 08.12.2006 and 20.07.2007. It also noted that in the contempt petition filed by the respondent, the High Court had on 24.02.2014 framed a notice of contempt. Further, the High Court vide order dated 17.04.2015 made a direction that the petitioner should clear the entire arrears of rent @ Rs.1,50,000/- per month and in case of failure the court will be compelled to appoint a receiver to take possession. The trial court further held that the report of CFSL is yet to be proved and has to withstand the test of the cross-examination. The respondent has placed on record the opinion of a

handwriting expert in their favour and therefore, at this stage, it cannot be concluded only on the basis of the CFSL report that the lease deed dated 20.02.2003 relied upon by the petitioner, was executed between the parties.

6. I have heard the learned counsel for the parties.

7. The learned counsel for the petitioner has reiterated the above contentions pointing out that in view of the report of CFSL prima facie the contention of the petitioner stands proved and in view thereof there are sufficient reasons to modify the orders dated 08.12.2006 and 26.07.2007.

8. The learned senior counsel for the respondent has relied upon the contempt proceeding to show that despite the directions passed by this court, the petitioners are in wilful disobedience of the order of this court and this petition/application has been filed only for the purpose of evading the contempt order.

9. In my opinion, there is no equity in favour of the petitioner. He is occupying a prime valuable property of approx. 1000 sq.yds. on the main ring road, which is now a commercial property and is not willing to pay any meaningful rent for the same.

10. A perusal of the order of the Division Bench dated 20.02.2007 would show that there are number of lacunae on the basis of which the lease deed relied upon by the petitioner dated 20.02.2003 was disbelieved. The genuineness of the signatures of the petitioner/defendant was not the only grounds stated by the Division Bench. It also noted that it was difficult to accept that the rent of the property would have been reduced from Rs.1,50,000/- to barely Rs.15,000 per month on payment of alleged Rs.65,00,000/-. It was also difficult to accept that Rs.65 lacs as security deposit would have been paid in cash and even reasonable interest on Rs.65

lac would not compensate for the alleged reduction of rent by Rs.1,35,000/- as claimed. On the basis of that the Division Bench had dismissed the appeal.

11. In the light of the above finding of the Division Bench, in my opinion, there are no grounds made out to modify/clarify the orders date 08.12.2006 and 26.07.2007. Further the order passed by this court in contempt dated 24.02.2004 and subsequent order dated 17.04.2015 also show that the petitioners are not entitled to any relief as claimed.

12. Further, the petitioner contends that Rs.65 lac was paid in cash. In my opinion, the person who makes payment in cash cannot claim equity in his favour when the other side has denied the receipt of such amount.

13. There is no merit in the petition and the same is accordingly dismissed. All the pending applications are also dismissed.

JAYANT NATH, J.

SEPTEMBER 05, 2016/v