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

+ CM(M) 920/2016

PANKAJ KUMAR

..... Petitioner

Through Ms.Rita Rana and Mr.Vishwas Ahuja,
Advocates.

versus

JASPREET SINGH BHATIA

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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16.09.2016

CM No. 33677/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 920/2016 and CM No. 33676/2016 (stay)

1. By the present petition, the petitioner seeks to challenge the order dated 20.10.2015 of the trial court passed under Order 39 Rule 10 CPC and subsequent order dated 19.07.2016 dismissing the application under Section 114 CPC. The respondent filed the present suit for possession, permanent injunction and for recovery of Rs.4,90,000/- towards arrears of rent. It was contended that the respondent is the owner of the property bearing No. 2830/18, Gali No. 18, Shop No.13, Beadonpura, Karol Bagh, New Delhi and the premises had been let out to the petitioner from 27.02.2014 to 26.01.2015 on the lease charge of Rs. 50,000/- per month. It was further

stated that the defendant had failed to pay the rent immediately thereafter from March 2014.

2. The trial court in its order dated 20.10.2015 noted that the defendant/petitioner has denied default in payment of rent since March 2014 claiming that he has paid rent up January 2015 in cash and that it is the respondent/plaintiff who has not issued rent receipts to the petitioner/defendant. It also noted the submission of the petitioner that the respondent refused to accept the rent from the petitioner. The trial court noted that if the version of the petitioner were to be believed, the petitioner ought to have made payment by cheque or deposited the rent in court. However, the needful was not done. Accordingly, the trial court noted that the petitioner would be liable to pay arrears of rent @ Rs.50,000/- per month for the period starting from 27.03.2014 till 26.12.2014 i.e. the date of termination of tenancy vide notice. For the period subsequent thereto, the trial court noted that as per Clause 18 of the lease deed, the petitioner shall be liable to pay damages @ Rs. 10,000/- per day for the period of possession of the property which is beyond the terms of the lease. Hence, this figure comes to Rs.3lacs per month. Taking judicial notice of the fact that the suit premises is a shop located in the prime commercial area of the Karol Bagh, the trial court ordered that under Order 15A CPC, the petitioner shall pay Rs.1 lac per month w.e.f. January 2015 onwards.

3. Learned counsel appearing for the petitioner has made two submissions strenuously. She firstly submits that there is a serious dispute about the non-payment of rent for the period 27.03.2014 to 26.12.2014. It is urged that the petitioner has made necessary rent payment in cash and no receipt was given by the respondent. Hence, it is averred that there is no

admission of non-payment of rent and that the petitioner ought to have been given an opportunity to lead evidence to prove his contention before any such order could have been passed. She secondly submits relying upon certain observations made in the order dated 19.07.2016 that the claim of the respondent was only for Rs.10,000/- per month and not Rs.1 lacs per month and the trial court has wrongly granted to the respondent damages @ Rs. 1 lac per month.

4. As far as the first contention is concerned, the same is prima facie not acceptable. The petitioner is obviously a seasoned businessman and it cannot be expected that he would be making a payment of rent of Rs.50,000/- in cash and not taking receipts from the respondent knowing the legal consequences of such an action. The version of the petitioner lacks bona fide and cannot prima facie be believed for the purpose of this application.

5. As far as the reliance of the petitioner on the order dated 19.07.2016 is concerned, there is a stray observation in internal page 10 of the order that the respondent has sought damages @ Rs.10,000/- per month. This is obviously a typographical error. A perusal of the plaint would show that the claim is for Rs.1 lac per month and not Rs.10,000/- per month. There are no reasons to interfere with the impugned order. There is no merit in the petition.

6. The petition is dismissed.

JAYANT NATH, J

SEPTEMBER 16, 2016
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