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

+ CM(M) 1054/2016

GAJANAND CHAUHAN Petitioner
Through Dr.L.S.Chaudhary, Mr. Ajay
Chaudhary and Ms.Reema Bhola, Advocates.

versus

DEEPAK HARI Respondent
Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **21.10.2016**

CM No. 38789/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 1054/2016 and CM No. 38788/2016 (stay)

1. By the present petition, the petitioner seeks to impugn a part of the order dated 06.09.2016 by which his application under Order 12 Rule 6 CPC was partially allowed.
2. Learned counsel for the petitioner submits that the trial court has erroneously made two errors in the impugned order. Firstly, the trial court did not decree the suit for the relief of mesne profits/damages/admitted rent while decreeing the suit for possession. He submits that there is no dispute about the rent. He relies upon the reply to the legal notice issued by the counsel for the respondent dated 21.04.2015 wherein in para 2 an admission has been made by the respondent that he has been paying rent @ Rs.20,000/- per month. He further submits that he confines his relief to payment of unpaid arrears of rent of Rs.20,000/- per month.

3. Advance copy of the petition has been sent to the respondent by speed post but none has appeared on his behalf.

4. A perusal of the impugned order would show that the trial court has gone on the averment of the defendant/respondent that he has been paying Rs. 13,000/- to 14,000/- per month ignoring the said reply dated 21.04.2011 to the legal notice.

5. In view of the above, it is appropriate that the petitioner files a review petition before the concerned trial court to bring to the notice of the trial court this fact. In case such a review is filed, the trial court may deal with the same as per law.

6. Learned counsel for the petitioner has also submitted that the second error in the impugned order is that the trial court has wrongly directed the petitioner to return the security amount of Rs.1,27,000/- to the respondent/defendant at the time the suit property is vacated since the alleged liability of the respondent to pay the mesne profits/damages/arrears of rent is yet to be determined by the court. In view of the unpaid dues he submits that the security should for the time being be not refunded.

7. It is in common knowledge that security amount usually is refunded only after the dues of the tenant have been cleared. In the present case, there is no doubt some issue about the payment of rent but that would not mean that the petitioner should refund the security amount at the time of receiving the possession of the property without adjudication of his dues. The security amount should be adjusted at the time when the final decree is passed regarding the rent/arrears. The impugned order to the extent, it direct that the petitioner shall refund the security amount of Rs.1,27,000/- when he received possession of the property pursuant to the decree of possession is

erroneous. The issue of security amount shall be gone into by the trial court and the directions for adjustment/refund should be made after adjudication of the claim of the petitioner for unpaid arrears of rent.

8. With the above observations, the petition is disposed of.

9. Copy of the order be given Dasti under the signatures of the Court Master.

JAYANT NATH, J

OCTOBER 21, 2016/rb