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

+ RSA 347/2016

YASH PAL BATRA

..... Appellant

Through: Ms.Amita Singh Kalkal &
Mr.Prashant Singh, Advocates

versus

SANJAY SETHI

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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21.11.2016

CM No.42924/2016

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

RSA No. 347/2016

1. Learned counsel for the appellant has submitted that a substantial question of law is required to be formulated in this case as the First Appellate Court has not appreciated the evidence of the parties in correct legal perspective.

2. Learned counsel for the appellant has drawn the attention of this Court to the finding of the learned trial Court that the photographs exhibit PW1/D1 and PW1/D2 established that the signboard of the appellant/defendant was existing when the suit property was purchased by the respondent herein in the year 1987. Since no objection was taken about the size of the board of the shop being extended beyond the front portion of

the shop in tenancy, the claim of the respondent/plaintiff herein seeking decree of mandatory injunction for removal of the board of shop from in front of staircase was rightly held to be time barred.

3. The legality of the decision of the First Appellate Court has been questioned contending that the order was passed on the assumption that at the most the appellant/tenant could be a licensee in respect of the front portion of staircase upto which board of the shop was extended, the license was terminated by the landlord in the year 2012 by directing him to remove the board from in front of the staircase which was not part of his tenancy. Learned First Appellate Court failed to appreciate that this board existed in the same condition right from the inception.

4. This is a second appeal which is maintainable only if substantial question of law arises. During the course of hearing learned counsel for the appellant has been specifically asked to show from the record that the front portion of the staircase formed part of tenancy so as to confer a right on the appellant to put the board of the shop extending upto the staircase. Learned counsel for the appellant though contended that it formed part of the tenancy, failed to point out any documentary evidence in the form of rent note or rent receipt or any other authorization in favour of the appellant permitting him to extend the size of the board of the shop upto front of the staircase.

5. In the absence of any such evidence it is not open to the appellant to contend that the First Appellate Court failed to appreciate the evidence in correct legal perspective. The First Appellate Court has rightly held the extension of the board upto front of staircase by the tenant to be a mere licence by the previous owner/landlord which was terminated by the present

owner/landlord by asking the tenant to restrict the size of the board only upto the front of the shop in his tenancy.

6. In view of the above no substantial question of law arises before this Court so as to exercise its power under Section 100 of the Code of Civil Procedure.

7. The Regular Second appeal is dismissed.

8. No costs.

CM No.42923/2016

Dismissed as infructuous.

PRATIBHA RANI, J.

NOVEMBER 21, 2016

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