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

+ **RFA 916/2016 and CM APPL. 43837-43838/2016**

PARVEEN KUMAR

..... Appellant

Through: Mr. Ram Kishan Saini, Advocate

versus

HAR PRAKASH

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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25.11.2016

1. The present appeal has been preferred by the appellant/plaintiff against the judgment and decree dated 19.08.2016, pronounced by the trial court in a suit for recovery of Rs.11 lacs instituted by him against the respondent/defendant alongwith interest @5% per month from the date of institution, till realisation.

2. Under the impugned judgment and decree, the trial court has partially decreed the suit in favour of the appellant/plaintiff by holding that he is entitled to recover a sum of Rs.5,50,000/- from the respondent/defendant, subject to adjustment of dues, if any, contemporaneous to handing over vacant possession of the tenanted premises to the respondent/defendant in terms of the Rent Agreement dated 19.03.2012 (Ex.PW1/1). It was further ordered that in the event the respondent/defendant fails to pay the aforesaid

amount to the appellant/plaintiff, then the latter shall be entitled to interest @ 8% per annum from the date of handing over possession, till the date of recovery of the amount. As far as the remaining claim of Rs.5,50,000/- raised by the appellant/plaintiff, the trial court held that he has not been able to prove the same and is not entitled to recover the said amount from the respondent/defendant. Aggrieved by the said finding, the appellant has filed the present appeal.

3. Before recording the submissions made by learned counsel for the appellant, a brief recapitulation of the facts of the case is considered necessary.

4. The case as set up by the appellant/plaintiff in the suit is that he is a tenant on the fourth floor of premises bearing No.11835, Gali No.7, Sat Nagar, Karol Bagh, New Delhi, under the respondent/defendant as the landlord. The suit premises was taken on rent by the appellant @ Rs.1,500/- per month for a period of two years, w.e.f. 01.04.2012 to 31.03.2014. It has been pleaded that a Rent Agreement dated 19.03.2012 was executed between the parties, which was duly registered on 23.03.2012. The appellant/plaintiff claims that he had paid a sum of Rs.5,50,000/- to the respondent/defendant as a refundable interest free security and it is for the said reason that the monthly rent was settled at a figure as low as Rs.1,500/-.

5. It has been averred in the plaint that during the tenure of the tenancy, the respondent/defendant had approached the appellant/plaintiff for a loan and the latter had agreed to advance him an interest free loan of Rs.5,50,000/-, for which a Loan Agreement dated 01.09.2013, titled as

“Security Agreement” was executed. It is the appellant’s version that in lieu of the loan of Rs.5,50,000/-, the respondent/defendant had agreed to give up the rent of the suit premises. Subsequently, the respondent/defendant had raised a fifth floor on the roof of the tenanted premises of the appellant/plaintiff and had let it out to several persons for running a *Karkhana* for manufacturing gold and silver ornaments. Due to the continuous disturbance caused by the occupants of the fifth floor, the appellant/plaintiff had approached the respondent/defendant to stop the nuisance but he was threatened and asked to vacate the suit premises. On receiving such threats, the appellant/plaintiff had demanded back the sum of Rs.5,50,000/- paid by him to the respondent/defendant towards the security deposit and the sum of Rs.5,50,000/- allegedly advanced as a friendly loan.

6. The appellant/plaintiff claims that he intended to vacate the suit premises on 28.02.2015 and had served a legal notice dated 19.02.2015 on the respondent/defendant, intimating him of his intention and demanding back the amounts paid with interest. The said notice was duly replied to by the respondent/defendant through counsel vide letter dated 24.02.2015, wherein each and every allegation made therein was denied and it was categorically stated that the document dated 01.09.2013 described by the appellant as a Loan Agreement, was actually titled as “Security Agreement” and the same had been fraudulently got executed by the appellant/plaintiff on the pretext that the previous agreement had been lost somewhere and was untraceable and he required the said agreement for completion of some formalities. Believing the said representation, the respondent/defendant

claims to have signed the second Security Agreement but denied having taken any loan of Rs.5,50,000/- from the appellant/plaintiff, as alleged. The respondent/defendant also disputed the remaining allegations made by the appellant/plaintiff in the legal notice dated 19.02.2015 and claimed that the agreed rent of the suit premises was Rs.15,000/- per month and not Rs.1,500/- per month as alleged. He also asserted having received only a sum of Rs.55,000/- from the appellant/plaintiff as interest free security, as against a sum of Rs.5,50,000/- stated by the appellant/plaintiff.

7. After the appellant/plaintiff instituted the suit and the respondent/defendant was served with the summons therein, he failed to file his written statement. As a result, his defence was struck off on 07.07.2015. An application filed by the respondent/defendant for seeking recall of the order dated 07.07.2015 was rejected subsequently on 28.03.2016. Thereafter, the respondent/defendant had been appearing in person and was duly afforded an opportunity to cross-examine the appellant/plaintiff's witnesses.

8. To substantiate his case, the appellant/plaintiff had examined himself as the solitary witness and had filed his affidavit by way of evidence (Ex.PW1/A). He had filed a copy of the Rent Agreement dated 19.03.2016 (Ex.PW1/1), copy of the Security Agreement dated 01.09.2013 (Ex.PW1/2), legal notice dated 19.02.2015 (Ex.PW1/3) and the reply dated 24.02.2015 given by the respondent/defendant to the legal notice dated 19.02.2015 (Ex.PW1/4).

9. After examining the evidence, the trial court arrived at the conclusion

that the respondent/defendant had not denied execution of the Rent Agreement dated 19.03.2012 (Ex.PW1/1), which it was held that the appellant/plaintiff had duly proved. A finding was returned that a security amount of Rs.5,50,000/- had been given to the respondent/defendant at the time of executing the said Agreement and the same was refundable without interest at the time of vacating the suit premises. However, the trial court proceeded to disbelieve the version of the appellant/plaintiff that subsequently, he had extended a loan of Rs.5,50,000/- to the respondent/defendant through a second agreement dated 01.09.2013. The court held that the plaintiff had successfully proved having given a sum of Rs.5,50,000/- to the respondent/defendant as security deposit but he had failed to place on record any receipt of the payment of the loan of Rs.5,50,000/-, allegedly extended to the respondent/defendant, nor had he placed on record any material to demonstrate the source from where the said amount had been arranged by him. Nor had any bank statement showing withdrawal of the said amount been filed by the appellant/plaintiff. He had not even named any person from whom the said amount was arranged.

10. The only two documents relied upon by the appellant/plaintiff to prove that a loan of Rs.5,50,000/- was extended to the respondent/defendant are the legal notice dated 19.02.2015 and the Security Agreement dated 01.09.2013. Taking note of the fact that the nature of dispute between the parties is of a tenant and landlord and it had arisen on account of the fact that the respondent/defendant had constructed a floor above the fourth floor of the suit premises, where a factory/*Karkhana* was being run, it was

observed in the impugned judgment that the appellant/plaintiff had instituted the suit only for recovery of Rs.11 lacs and not for removal of the said nuisance, if any, that was being faced by him. On a conspectus of the evidence placed before the trial court, it was held that the appellant/plaintiff was only entitled to seek recovery of Rs.5,50,000/- from the respondent/defendant contemporaneous to handing over vacant possession of the suit premises. It was further held that the appellant/plaintiff had failed to prove extending a loan of Rs.5,50,000/- to the respondent/defendant and therefore, he could not claim entitlement to retain possession of the premises in question till the said amount is refunded by the respondent.

11. The sole argument advanced by learned counsel for the appellant to assail the impugned judgment is that the trial court had failed to take note of the subsequent Agreement dated 01.09.2013 (Ex.PW1/2) and the reply dated 24.02.2015 of the respondent/defendant to the legal notice sent by the appellant (Ex.PW1/4) and had erred in concluding that the appellant/plaintiff had not filed any document to prove the subsequent agreement.

12. On a reading of the so called Loan Agreement, which learned counsel for the appellant states has been wrongly described as a “Security Agreement”, it is revealed that it is not a case of incorrect nomenclature as sought to be urged. The said Agreement nowhere refers to any loan having been extended by the appellant/plaintiff to the respondent/defendant. Instead, the Agreement specifically refers to the appellant as a tenant of the fourth floor of the suit premises and describes the respondent as the owner of the suit premises. All the terms and conditions contained in the said

Agreement are related to the lease including payment of security deposit. In fact, clause 1 of the said Agreement which refers to security deposit, is relevant and is reproduced hereinbelow for ready reference:-

“1. That the second party has deposited and first party has received a sum of Rs.5,50,000/- (Rupees Five Lacs Fifty Thousand Only) as Security Deposit, for the above said premises and the receipt of which is hereby admitted and acknowledged by first party by signing this Agreement. This sum of Security Deposit will be refundable by the First Party to the Second Party at the time of vacation of the said premises by the Second Party.”

13. The remaining clauses of the Agreement refer to the rate of rent, the consequence of non-payment of rent in respect of the suit premises, the manner in which the premises is required to be maintained by the appellant as a tenant and the manner in which the parties would extend the agreement on mutual terms.

14. There is not a whisper in the Security Agreement about any loan having been extended by the appellant/plaintiff to the respondent/defendant, for this Court to accept the submission made by learned counsel for the appellant that there has been an error in appreciation of the said document by the trial court. In fact, this Court is inclined to agree with the observations made in the impugned judgment that the appellant has failed to place on record any document to establish that he had paid a sum of Rs.5,50,000/- to the respondent either by producing a separate receipt in that regard or by showing issuance of a cheque for the said amount or for that matter, by placing on record his bank statement which would have reflected that such an amount had been withdrawn by him from his account for

payment to the respondent, as alleged. Nor has the appellant produced any witness to prove that the said amount was arranged by him from a third party and extended as a loan to the respondent.

15. As for the contents of the reply dated 24.2.2015 issued on behalf of the respondent to the appellant's legal notice dated 19.2.2015, this court is of the opinion that the trial court has prudently sifted the truth from the falsity of the said reply. While accepting the version of the appellant/plaintiff that the respondent/defendant had wrongly denied the rate of rent and receipt of security deposit for a sum of Rs.5,50,000/- from him, the Court had held that the appellant had successfully proved having paid a sum of Rs.5,50,000/- to the respondent as security deposit. However, the learned Judge has gone on to reject the claim of the appellant that he had subsequently extended a loan of Rs.5,50,000/- to the respondent as he had miserably failed to prove extension of any such amount to him. In fact, the document sought to be described by the appellant as a Loan Agreement is nothing but a reiteration of the terms and conditions of the Rent Agreement executed between the parties earlier, thus giving credence to the version of the respondent/defendant that he did not receive any amount from the appellant as loan on a later date and the said document had been executed by the respondent once again at the request of the appellant who has sought to misuse it by describing it as a Loan Agreement. Ultimately, it is not the title of the document, but the contents that must be examined and on doing so, it is apparent that by no stretch of imagination can the said document be described as a Loan Agreement.

16. No other ground has been taken by learned counsel for the appellant to assail the impugned judgment. Given the facts and circumstances of the case, this Court is not inclined to entertain the present appeal, as it is of the opinion that the impugned judgment does not suffer from any illegality, infirmity or mis-appreciation of evidence. The appeal is accordingly dismissed in *limine*, alongwith the pending applications.

NOVEMBER 25, 2016
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HIMA KOHLI, J

