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

+ RSA 397/2015

DEEPAK GOYAL

..... Appellant

Through: Mr. Ranjan Mukherjee & Mr. Amit
Kumar, Advocates.

versus

TARUN CHADHA

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
04.10.2016

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C.M. No.36566/2016

Exemption allowed, subject to all just exceptions. The application stands disposed of.

Review Petition No.447/2016 and C.M. Nos.36563-565/2016 & 37198/2016

The appellant has preferred the review petition along with the aforesaid applications to seek stay of the execution proceedings vide C.M. No.36563/2016; condonation of delay vide C.M. No.36564/2016; leave to lead additional evidence vide C.M. No.36565/2016; and, impleadment of necessary party vide C.M. No.37198/2016.

The submission of Mr. Mukherjee, learned counsel for the review petitioner/ appellant is that the Samaj Kalyan Cooperative Group Housing Society had issued a certificated dated 31.03.2012 to state that the tenant, namely the appellant, had vacated the premises in question and had paid the maintenance charges till March 2012. Thus, the society had no claim against the tenant of any nature. Mr. Mukherjee submits that this document was not read in evidence. He submits that the records of the society be called for which could bear out that the appellant had indeed vacated the premises on 31.03.2012.

Though an application under Order XLI Rule 27 CPC being C.M. No.36565/2016 has been moved, however, the documents sought to be produced at this stage have not been set out in the application itself.

I do not find any merit in this submission of Mr. Mukherjee. The Courts below have examined the evidence led by the parties. This Court while scrutinising the judgment of the First Appellate Court, vide order dated 09.12.2015 has also referred to the evidence brought on record. Paragraphs 3 & 4 of the impugned order dated 09.12.2015 of which review is sought, read as follows:

“3. The appellant/defendant in his defence stated that he had already vacated the premises and handed over the keys of the suit property to its caretaker-Mr. Mohan Lal Kashyap, and also obtained a No Objection Certificate from the office bearer of the Society before vacating the suit property. He claimed to have informed the plaintiff telephonically of the same. Since a dispute was raised with regard to the factum of the suit property being vacated by the appellant/defendant, the trial court framed the issues whether the defendant has already handed over possession of the suit property to the plaintiff and whether the plaintiff is entitled to possession of the suit

property. An issue was also framed with regard to the entitlement for recovery of Rs.71,250/- towards arrears of rent and mesne profit. An issue with regard to the permanent injunction was also framed.

4. The parties led their evidence. The defendant sought to produce the rent agreement as Ex.DW1/1, emails as Ex.DW1/2. He also produced his bank account as Ex.DW1/3 and No Objection Certificate as Ex.DW3/1. The trial court returned findings on issues Nos. 1 and 2 aforesaid in favour of the plaintiff on the premise that DW2 stated that tenanted premises was still in possession of the defendant. Similarly, DW3 Mohan Lal Kashyap, in his examination-in-chief, stated that the tenanted premises is lying locked under the lock and key of the defendant for the last three years. In his cross-examination, he also stated that the suit property is still in possession of the defendant. DW4-Jagan Nath Mahendroo, in his examination-in-chief, stated that he did not remember if he had issued any No Objection Certification either to Sh. R.C.Gupta or to Sh. Deepak Goyal, i.e. defendant regarding the suit property. Consequently, it was held that the defendant had not handed over the possession of the suit property to the plaintiff. The trial court also held that the plaintiff is entitled to possession of the suit property. Since the defendant was held to be in continuous possession of the suit property, the plaintiff was held entitled to recovery of monthly rent @ Rs. 13,500/- per month for April and May, 2012 and @ Rs. 14,500/- per from with effect from June, 2012, till possession of the suit property is handed over to him towards arrears of rent/mesne profits along with Rs. 27,000/- i.e. the cheque amount of the two cheques which had been dishonoured upon presentation. Pendente lite and future interest was also awarded @ 6% per annum.”

Thus, the grievance of the appellant/ petitioner that the Courts below erred in not relying upon the certificate issued by Samaj Kalyan Cooperative Group Housing Society Limited, has no merit. The three witnesses

produced by the appellant/ defendant did not support the case of the defendant. DW-4/ Jagan Nath Mahendroo, the author of the certificate relied upon by the appellant as issued by the Samaj Kalyan Cooperative Group Housing Society Limited, stated that he did not remember if he had issued any no objection certificate either to Sh. R.C. Gupta or to Sh. Deepak Goyal, the appellant. On the basis of the evidence brought on record, the Courts below returned the consistent finding that the possession of the premises had not been returned by the appellant/ defendant to the complainant/ landlord on 31.03.2012, as claimed, and decreed the suit.

I do not find any reason to review the order.

Dismissed.

Dasti.

VIPIN SANGHI, J

OCTOBER 04, 2016

B.S. Rohella