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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA No. 23/2016

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4th October, 2016

SMT. SANGEETA

..... Appellant

Through: Mr. Kushbir Singh and Ms. Shaiza,
Advocates.

versus

SMT. ANITA ARORA

..... Respondent

Through: Mr. Rajat Aneja, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RSA No. 23/2016 and C.M. Appl. No. 2323/2016 (under Order XLI Rule 5 read with Section 151 CPC for suspension of impugned order) and C.M. Appl. No. 2325/2016 (for condonation of delay of 21 days in re-filing the appeal under Section 5 of the Limitation Act)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/defendant/tenant against the concurrent Judgments of the courts below; of the Trial Court dated 6.5.2014 and the First Appellate Court dated 19.8.2015; by which the suit for possession and mesne profits filed by the respondent/plaintiff/landlady against the appellant/defendant has been decreed. The suit has been decreed after issues were framed and evidence was led by both the parties.

2. The following aspects are undisputed as appearing from the record of the trial court, as also the judgments of the courts below; and also as per the arguments before this Court:-

(i) That there is relationship of landlady and tenant between the parties and the respondent/plaintiff is the landlady and appellant/defendant is the tenant.

(ii) The suit premises do not have protection of the Delhi Rent Control Act, 1958, inasmuch as, rate of rent is Rs.5,500/- per month i.e above Rs.3,500/- per month.

(iii) Tenancy of the appellant/defendant has been terminated in terms of the Legal Notices dated 3.9.2012 and 5.10.2012 and, the latter notice was duly replied to by the appellant/defendant vide her Reply dated 17.10.2012.

3. The only dispute is that whether the appellant/defendant is a tenant in the property no. J-5/49, 1st floor back portion, Rajouri Garden, New Delhi or she is a tenant in the property no. J-5/49A, 1st floor back portion, Rajouri Garden, New Delhi. I may note that the appellant/defendant is a tenant in a two room set on the back portion of the first floor of the property, and which area of tenancy is also not in dispute. The appellant/defendant claims that property number is not J-5/49, but J-5/49A. In fact, now even the respondent/plaintiff admits that the property is J-5/49A and which number was originally wrongly

written as J-5/49 in the plaint as also in the rent agreement which was executed between the parties, the rent agreement being proved on record before the trial court as Ex.PW1/1. I may note that respondent/plaintiff at the conclusion of arguments before the trial court had moved an application for amending the plaint as also taking the evidence to be read as not being with respect to the property no. J-5/49, 1st floor back portion, Rajouri Garden, New Delhi as the tenanted premises but the tenanted premises being property no. J-5/49A, 1st floor back portion, Rajouri Garden, New Delhi, but that application was dismissed by the trial court.

4. Counsel for the appellant/defendant has very vehemently argued before this Court that the entire pleadings and the entire evidence led by the respondent/plaintiff is with respect to the suit property being the two rooms set on the back portion of first floor of property no. J-5/49, Rajouri Garden, New Delhi, whereas now it is admitted that the property is J-5/49A, Rajouri Garden, New Delhi, and therefore, the suit was liable to be dismissed.

5. In my opinion, the argument urged on behalf of the appellant/defendant is a totally frivolous argument to say the least and this argument wrongly seeks to take benefit of an inadvertent mistake committed by the respondent/landlady in mentioning the wrong municipal number of the suit property. In fact, I must note that if a suit is contested to the hilt on a particular municipal number being taken as the number of the suit property, and it is

decided accordingly, but later it is found that the suit property municipal number is wrong, then even at that stage the judgment and decree already passed can be amended under Section 152 CPC, i.e, an issue of just administrative or clerical or inadvertent mistake as to a municipal number of a suit property cannot hit the substance of the disputes and the decision on merits already passed. Therefore, if once after the judgment and decree is passed the municipal number of the suit property can be corrected under Section 152 CPC, then there is no reason why the respondent/plaintiff cannot say even before the final judgment was passed by the trial court, and now before this Court also, that the suit be treated not with respect to the two rooms set on the back portion of first floor of property no. J-5/49, Rajouri Garden, New Delhi, but for the two rooms set on the back portion of first floor of property no. J-5/49A, Rajouri Garden, New Delhi.

6. I fail to understand any prejudice whatsoever to the appellant/defendant by the correct description being given of the property, inasmuch as, the appellant/defendant admits to be a tenant of the respondent/plaintiff/landlady, admits paying rent at Rs.5,500/- per month to the respondent/plaintiff/landlady and also the factum with respect to receiving of the Notice dated 5.10.2012 terminating the tenancy sent by the respondent/plaintiff/landlady under Section 106 of the Transfer of Property Act, 1882 and which notice with the courier receipt was proved before the trial court

as Ex.PW1/7 and Ex.PW1/8 respectively and the reply of the appellant/defendant to this legal notice was proved as Ex.PW1/9.

7. In view of the above, this second appeal is totally frivolous and without any merit, and is therefore dismissed with costs of Rs.50,000/-. Costs of Rs.50,000/- shall be paid by the appellant/defendant/tenant to the respondent/plaintiff/landlady within a period of four weeks from today.

8. C.M. Appl. No. 2325/2016 is allowed by condoning the delay of 21 days in re-filing the appeal and accordingly disposed of. Since the Regular Second Appeal is dismissed therefore C.M. Appl. No. 2323/2016 is also dismissed.

OCTOBER 04, 2016

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VALMIKI J. MEHTA, J