

\$~1.

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

+ RSA 4/2016 & C.M. Nos.283-84/2016

ASHOK KUMAR

..... Appellant

Through: Mr. G.S. Sandhu, Advocate

versus

AMARPREET SINGH

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

11.01.2016

%

The deficiency in court fee has been made up.

I have heard learned counsel for the appellant. Since I am not inclined to issue notice on the appeal, I see no purpose in issuing notice on the application seeking condonation of delay i.e. C.M. No.284/2016.

The present appeal is directed against the judgment and decree dated 04.06.2015 passed by the First Appellate Court, namely, ADJ-06 (West), Delhi in RCA No.74/2014. The First Appellate Court has dismissed the said first appeal preferred by the appellant/defendant with costs and upheld the judgment and decree dated 18.10.2014 passed by the Trial Court, namely, Commercial Civil Judge cum ARC-1 (Central), Tis Hazari Courts, Delhi in Suit No.167/13/07 filed by the respondent/plaintiff.

It is not in dispute between the parties that the respondent/plaintiff was the landlord and the appellant/defendant was the tenant in the suit property. The only dispute between the parties was with regard to the rate of rent. Whereas the plaintiff claimed that the rent was Rs.4,000/- p.m. excluding electricity charges, the defendant claimed that the rent was Rs.2,500/- p.m.

The parties led their respective evidence on the said issue. The plaintiff produced the cheque no.558512 for Rs.4,000/- payable on ICICI Bank, Janakpuri Branch dated 20.03.2007 as well as a separate cheque whereby electricity bill was paid for Rs.380/-. To establish the payment of rent @ Rs.4,000/- p.m., the witness from the said bank was produced by the plaintiff as PW-2, who established the payment of the said amounts by the defendant to the plaintiff. The defendant claimed that he had taken a loan of Rs.12,000/- from the plaintiff, which was repaid in three instalments. However, the defendant could not establish taking of the said loan by producing any cogent evidence. The defendant also did not produce any rent receipt of Rs.2,500/-, which he claimed to have paid either to the plaintiff or to the erstwhile owner.

In these circumstances, the Trial Court held that the rate of rent was established by the plaintiff as being Rs.4,000/- and, consequently, decreed the suit. The first appeal preferred by the appellant has met the same fate.

Learned counsel for the appellant has once again sought to urge that the rent was Rs.2,500/- p.m. Additionally, it is submitted that the suit was filed in respect of a different premises from the one of which the appellant/defendant was the tenant. I may note that the aforesaid second plea was not even taken before the Trial Court.

In second appeal, this court cannot interfere with the concurrent findings of fact returned by the Trial Court and which was affirmed by the First Appellate Court, unless the appellant is able to point out perversity in the said finding. The appellant has completely failed to point out any perversity in the concurrent findings of fact returned by the two courts below. The findings with regard to the rate of rent being Rs.4,000/- p.m. is premised on cogent evidence, which the appellant/defendant has not been able to rebut.

Consequently, I find no merit in the present second appeal and dismiss the same. The application seeking condonation of delay is also dismissed.

VIPIN SANGHI, J

JANUARY 11, 2016

sr