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

+ CM(M) 64/2017 and CM Nos. 2092-94/2017

PUSHPA

..... Petitioner

Through Mr.Bidit Kumar Deka and Mr.Bharat
Sharma, Advocates.

versus

MEENU ARORA & ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

18.01.2017

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1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 17.11.2016 of the appellate court whereby the appeal filed by the petitioner was dismissed.
2. The petitioner has filed the suit for permanent injunction. In the suit, it is stated that the petitioner is a tenant under the tenancy of respondent No.2 on a monthly rent of RS. 7,000/- per month. A decree of permanent injunction is sought to restrain the respondents from disposing or transferring the possession of the suit property.
3. The trial court by its order dated 11.07.2013 while dealing with an application filed by respondent No. 1 under Order 39 Rule 10 CPC noted that the petitioner has admitted that the rent has not been paid since November 2011. However, it noted that the contention of the petitioner is

that he had deposited Rs. 2, 25,000/- with respondent No.2 in a Chit Fund which was not refunded by respondent No.2 to the petitioner and the same is liable to be adjusted against the rent. The respondent has denied the said contention stating that the petitioner used to take loans from respondent No.2 and the payments made by the petitioner were in respect of the loans taken by him. The trial court directed the petitioner to pay the arrears of rent from December 2011 to June 2013 and to pay the monthly rent since July 2013 regularly.

4. The petitioner filed an appeal. The appellate court vide its order dated 08.10.2016 modified the order and directed that to protect the respective interest of the parties, instead of making payment to the respondents, the petitioner shall deposit the amount in the form of FDR.

5. The petitioner thereafter filed an application for review of the order dated 08.10.2016 before the appellate court which was also dismissed on 17.11.2016

6. Before this court, learned counsel for the petitioner submits that the landlord of the petitioner is respondent No.2 and not respondent No.1. He further submits that there is no unequivocal admission made by the petitioner which would warrant the trial court passing the said orders. He relies upon the judgment of this court in the case of ***Sh.Harish Ramchadani vs. Mr.Manu Ramchandani & Ors., 91 (2001) DLT 480*** to support his said contention.

7. A perusal of the plaint shows that the petitioner admits his tenancy and also the rent. He also admits the period from which the rent has not been paid. The defence is that Rs.2,25,000/- has been paid to respondent No.2 pursuant to a chit fund. This receipt of this amount is categorically denied by

the respondents. Hence, in the light of these facts and the fact that the petitioner continues to occupy the premises in the capacity of a tenant, in my opinion, there is no error in the orders passed by the trial court or by the appellate court.

8. Regarding the submission of the petitioner that respondent No.2 is his landlord and not respondent no.1 who has moved the application under Order 39 Rule 10 CPC, in my opinion, this contention is misplaced. There is no dispute that the respondents are husband and wife and there is no conflict of interest between the two.

9. There is no merit in the petition and same is dismissed. All pending applications also stand dismissed.

JAYANT NATH, J

JANUARY 18, 2017

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