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

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Date of Decision: 17th July, 2017

+ RFA 433/2017

SURAJ DEO PARSAD Appellant
Through: Mr. Jagdish Singh Rajput, Adv.

versus

PREM LATA Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the judgment dated 17th December, 2016 whereby the appellant's suit for possession has been dismissed by the Trial Court.
2. The respondent is holding *Tehbazari* rights with respect to the site/shop measuring 6'x 4' at the foot path of Old Lajpat Rai Market, Opposite Gauri Shankar Mandir, Delhi-110006. The terms of the *Tehbazari* are recorded in the letter dated 27th March, 2003 issued by Municipal Corporation of Delhi in favour of the respondent. The appellant claims to have entered into a partnership with the respondent on 05th May, 2003 according to which each party would be entitled to 50% share in the profits and losses. The appellant claims to have jointly carried out the partnership from 2003 to 06th February, 2009 when the respondent and her husband

broke open the lock on the appellant's counter and committed theft of the electronic accessories including two C.D. players whereupon the appellant reported the matter with the police on 07th February, 2009. According to the appellant, the respondent threatened the appellant on 16th February, 2009 and attempted to throw the appellant's counter on 21st April, 2009. The appellant instituted a suit, for mandatory and permanent injunction. During the pendency of the said suit, the respondent removed the appellant's counter in the intervening night of 12th and 13th July, 2009 whereupon the appellant reported the matter with the police on 22nd July, 2009. The appellant amended the suit and substituted the prayer of mandatory and permanent injunction with the prayer for possession of *Tehbazari* site/shop.

3. The Ld. Trial Court held the suit to be barred by Section 69 of the Indian Partnership Act, 1932 as the alleged partnership firm was unregistered. The Ld. Trial Court examined the appellant's case on merits and held that the alleged partnership deed does not bear the signatures of the respondent. The Ld. Trial Court further held that the *Tehbazari* rights cannot be let out or sublet as per the terms of the letter dated 27th March, 2003 and, therefore, appellant cannot claim any right for *Tehbazari*. The Trial Court further held that the appellant's entitlement to half of the site would have arisen after dissolution of the firm in terms of clause 10 of the partnership deed but the alleged partnership has not been dissolved and, therefore, appellant has no claim even if the partnership deed was held to be genuine.

4. Learned counsel for the appellant urged at the time of hearing that the appellant originally filed a suit for mandatory and permanent injunction which was converted into a suit for possession. It is submitted that the suit for mandatory and permanent injunction was not hit by Section 69 of the

Indian Partnership Act, 1932 and, therefore, the subsequent amendment of the suit would not bar the prayer of possession. It is further submitted that the defendant's defence was struck-off by the Trial Court by order dated 16th October, 2012 and, therefore, Trial Court ought to have decreed the appellant's suit. It is further submitted that the findings of the Trial Court holding that Ex.PW1/1 did not bear the signature of the respondent is based on the report of the handwriting of respondent which is disputed by the appellant.

5. Vide order dated 28th April, 2017, this Court requisitioned the Trial Court record which has been received and seen by the Court.

6. There is no merit in this appeal. The appellant's prayer for possession is clearly barred by Section 69 of the Indian Partnership Act, 1932. There is no infirmity in the finding of Trial Court that Ex.PW1/1 does not bear the signature of the respondent. The finding of the Trial Court is based on the comparison of the admitted and disputed signatures of the respondent as well as statement of PW-3 who deposed that Ex.PW1/1 was not executed in her presence. This Court agrees with the Trial Court that even if the partnership deed is held to be genuine, the appellant cannot claim any right till the dissolution of the firm. This Court also agrees with the Trial Court that the respondent has no right to let out or sublet the *Tehbazari* rights.

7. The appeal is dismissed.

8. Copy of this judgment be sent to the respondent.

JULY 17, 2017
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J.R. MIDHA, J.