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

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Date of Decision: March 09, 2017

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RSA 233/2016

MANOJ KUMAR GARG

..... Appellant

Through: Mr.Shiv Charan Garg, Advocate.

versus

VIJAY KUMAR SHARMA

..... Respondent

Through: Mr.T.C.Sharma, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

RSA No. 233/2016

1. This Regular Second Appeal under Section 100 of Code of Civil Procedure has been filed by the appellant impugning the judgment 04th May, 2016 passed by the First Appellate Court whereby RCA No.80/2015 preferred by the respondents herein has been partly allowed.

2. Mr.Shiv Charan Garg, learned counsel for the appellant has placed on record the copy of the judgment dated 20th July, 2016 whereby RSA No.179/2016 filed by the respondent herein assailing the judgment dated 04th May, 2016 passed by the First Appellate Court in RCA No.80/2016 (which is also impugned in this appeal by the appellant herein) stands dismissed.

3. Learned counsel for the appellant has also placed on record the copy of the order dated 30th September, 2016 whereby the SLP (C) No.27944/2016 (arising out of order dated 20th July, 2016 in RSA No.179/2016) filed by the respondent herein has also been dismissed by the

Supreme Court by passing the following order:

Heard.

No ground for interference is made out to exercise our jurisdiction under Article 136 of the Constitution of India.

The special leave petition is dismissed accordingly.

Pending application(s), if any, stands disposed of.'

4. The facts as pleaded by the parties and the reliefs granted by the two Courts below have already been incorporated in the judgment dated 20th July, 2016 passed in RSA No.179/2016 and are extracted hereunder:-

'1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed against the Judgment of the First Appellate Court dated 4.5.2016 whereby the first appellate court on the appeal of the present appellant/tenant partly allowed the appeal by setting aside the money decree passed with respect to mesne profits but sustained the Judgment of the Trial Court dated 3.9.2015 decreeing the suit for arrears of rent. The original suit filed by the respondent/landlord/plaintiff was for possession, mesne profits and arrears of rent for the period from 1.5.2011 till 30.8.2011 when the tenancy was terminated. The suit was for possession with respect to the shop bearing private no.33-34, in property no. 1/1300 to 1318, Balaji Motor Market, Sultan Singh Building, Kashmere Gate, Delhi-110006.

2. The case of the respondent/plaintiff/landlord was that the suit shop/premises were taken initially at a monthly rent of Rs.11,000/- per month but since the appellant/defendant/tenant vacated half portion of the shop on 1.1.2011, a fresh Agreement was executed between the parties on 2.5.2011 whereby a new tenancy w.e.f 1.5.2011 was entered into at a rent of Rs.8,000/- per month. This fresh agreement was only for four months and therefore tenancy expired by efflux of time on 30.8.2011. The subject suit came to be filed after the appellant/defendant was served with a Legal Notice dated 14.2.2012. During the

pendency of the suit, it was found that though the suit property was outside the protection of the Delhi Rent Control Act, 1958 inasmuch as the rent was more than Rs.3,500/- per month, but the premises were found to be admittedly situated in a slum area covered by the Slum Areas (Improvement and Clearance) Act, 1956 (hereinafter referred to as „the Slum Act“). As per Section 19 of the Slum Act, before filing proceedings for eviction against a tenant, permission of the competent authority had to be taken. Accordingly, the respondent/plaintiff filed an application under Order II Rule 2 CPC seeking permission to file fresh proceedings with respect to the suit for possession after obtaining permission of the slum authority. This application under Order II Rule 2 CPC of the respondent/plaintiff/landlord was allowed by the Trial Court vide Order dated 2.4.2013 and therefore the suit continued so far as recovery of mesne profits and arrears of rent are concerned.

3. Trial Court by its Judgment dated 3.9.2015 decreed the suit of the respondent/plaintiff/landlord for arrears of rent and recovery of mesne profits in the following terms:-

“Relief. As a sequel to the discussion and decision of the issues, the suit of the plaintiff is decreed. The plaintiff is held entitled to the recovery of Rs.32,000/- towards arrears of rent for the period 01/05/2011 till 30/08/2011 and for future sum of Rs.8,000/- per month towards occupation charges for the defendant occupying the property even after the lapse of the tenancy period. The plaintiff is held entitled to the costs of the suit. Decree Sheet be prepared accordingly. File be consigned to record room after necessary compliance.

4. The first appellate court held that since prior permission was required before eviction of the appellant/defendant/tenant

under Section 19 of the Slum Act, therefore, only arrears of rent could be granted and not mesne profits which are granted when a person is an unauthorized occupant of the property. The operative portion of the Judgment of the First Appellate Court dated 4.5.2016 is contained in para 10 of the judgment and which reads as under:-

“10. I have perused the record and heard the arguments and I may observe that the appellant has not brought on record any proof whatsoever as regards the payment of rent amount which is due to the respondent. The issue as regards the rate of rent has been duly considered by the Trial Court and evidence has been led by the appellant who has failed to discharge the onus upon him to show that the rate of rent was Rs.2,000/- per month. Further, as regards the order directing the payment of Rs.8,000/- regarding the occupation charges from the date of termination of the tenancy till the date of the possession, the Ld. Trial Court had itself vide order dated 2.4.2013 directed “suit to be proceeded henceforth only for recovery of arrears of rent”, upon allowing the application under Order 2 Rule 2 CPC for abandoning the relief claimed for recovery of possession and mesne profits. Thus the order of Ld. Civil Judge dated 3.9.2015 does not suffer from any infirmity, except to the limited extent of directing the appellant towards the occupation charges (same as rental amount), which has been awarded without prayer. Thus the judgment and the decree viz-a-viz the recovery of arrears of rent to the tune of Rs.32,000/- in favour of the plaintiff is uphold. However, award for the future sum of Rs.8,000/- per month towards the occupation charges against

the defendant is set aside. The appeal is accordingly allowed in aforesaid terms. Decree sheet be prepared accordingly. Trial Court record be sent back along with copy of the order.”

5. The judgment dated 4th May, 2016 impugned by the respondent herein in RSA No.179/2016 has been impugned by the appellant herein in this Regular Second Appeal being aggrieved to the extent that though he paid the Court fee on his claim of ₹96,000/-, the First Appellate Court modified the decree passed by the learned Trial Court reducing the award of arrears of rent only to the tune of ₹32,000/- i.e. for four months only @ ₹8000/- per month.

6. Mr.Shiv Charan Garg, learned counsel for the appellant has submitted that the suit property being situated in slum area and permission from the competent authority was not obtained before filing of the suit, by filing an application under Order II Rule 2 CPC part of the claim was abandoned. However, so far as his claim towards recovery of arrears of rent was concerned, it could not have been reduced by the First Appellate Court restricted to four months only i.e. ₹32,000/- for a period of four months though he has claimed ₹96,000/-.

7. Mr.T.C.Sharma, learned counsel for the respondent though submitted that once claim was abandoned by the appellant herein, the First Appellate Court has rightly decreed the suit to the extent of ₹32,000/- only, he conceded that the rate of rent finally stands determined @ ₹8000/- per month. Learned counsel for the respondent did not dispute that after service of the legal notice terminating the tenancy of the respondent herein, tenancy came to an end on 16th April, 2012. He fairly conceded that after the expiry of period of tenancy as per the rent agreement, the tenancy continued to be

from month to month which has been terminated by serving a legal notice and came to an end on 16th April, 2012.

8. In view of the above admitted factual and legal position, the respondent herein was liable to pay rent upto the period he remained as tenant in the suit property i.e. upto 16th April, 2012. Learned counsel for the respondent does not dispute that the appellant was entitled to seek recovery of arrears of rent till 16th April, 2012 i.e. the date when after service of the notice terminating the tenancy, the tenancy came to an end.

9. The learned Trial Court awarded ₹32,000/- to the appellant/landlord towards recovery of arrears of rent and ₹8000/- per month towards occupation charges. The First Appellate Court while holding that the award of future sum towards occupation charges was beyond prayer, hence to that extent the order of learned Trial Court was set aside.

10. It being an admitted position that till the date the respondent enjoyed the status of tenant, he was liable to pay the rent @ ₹8000/- per month and in this case his status as tenant was upto 16th April, 2012. Thus, the respondent was liable to pay arrears of rent upto 16th April, 2012.

11. The impugned judgment dated 4th May, 2016 passed by the First Appellate Court in RCA No.80/2015 is modified to the above extent. The Appellant/plaintiff is entitled to recovery of arrears of rent upto 16th April, 2012 @ ₹8000/- per month.

12. The amount already paid/deposited by the respondent shall be subject to adjustment towards above arrears of rent.

13. The appeal stands disposed of in above terms.

PRATIBHA RANI
(JUDGE)

MARCH 09, 2017/ 'st'