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

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Date of Decision: 01st August, 2017

+ **FAO 565/2016 & CM No.45097/2016**

TARNEET SINGH CHAWLA Appellant

Through: **Mr. Ramesh K. Sharma, Adv.**

versus

SEVA SINGH Respondent

Through: **Mr. Manjeet Singh Sharma and Ms.
Nidhi Gupta, Advs.**

Mr. Ajjay Aroraa, Adv. for SDMC.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the order dated 08th September, 2016 whereby the learned Trial Court has allowed the respondent's application under Order XXXIX Rule 10 of Code of Civil Procedure by directing the appellant to pay Rs.22,000/- per month w.e.f. from March, 2010 along with interest @ 6% per annum to the respondent.

2. The respondent instituted a suit for possession and mesne profits against the appellant in respect of the shop bearing No.3 on the ground floor in property No.13, NWA Road, Punjabi Bagh Extension, New Delhi-110026. The cause of action pleaded in the said suit is that the respondent is the owner of the aforesaid shop and he let out the same to the appellant by a unregistered lease deed dated 25th January, 2003; the rent was increased to

Rs.22,000/- w.e.f. 01st February, 2006; and the respondent terminated the lease by notice dated 09th September, 2009. The respondent filed an application under Order XXXIX Rule 10 of Code of Civil Procedure for seeking direction to the appellant to pay rent @ Rs.22,000/- per month from September, 2009.

3. The appellant contested the application on the ground that that the respondent made a false complaint dated 10th September, 2010 to the Municipal Corporation whereupon MCD issued show cause notice and in pursuance to MCD Tribunal order for demolition on 12th March, 2012, the appellant had to demolish the front of the shop. The appellant claimed suspension of rent.

4. Learned counsel for the appellant urged at the time of hearing that the Municipal Corporation sealed the suit property on the ground of unauthorised construction on 03rd May, 2017 and the suit property is lying sealed at present.

5. Learned counsel for the respondent urged at the time of hearing that the front portion of the suit shop has not been demolished by the Municipal Corporation but by the appellant. It is submitted that the appellant himself demolished the front portion of the suit property which has been admitted in para 5 of the appeal and para 2 of the reply to the application.

6. Learned counsel for the appellant submits that the appellant was compelled to demolish the portion of the shop on account of demolition notice given by the Municipal Corporation.

7. Section 108 (e) of the Transfer of Property Act provides that if the lease premises are destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall at the option of the

lessee be void. In that view of the matter, the appellant had the option to surrender the lease when a portion of the suit property was demolished. However, since appellant chose to continue the possession, the liability to pay the rent would continue.

8. There is no infirmity in the impugned order dated 08th September, 2016. However, it is clarified that the amount directed to be paid by the appellant in terms of the impugned order shall be subject to final outcome of the suit.

9. At this stage, the appellant present in Court submits that he is willing to surrender the suit property to the respondent without prejudice to his rights and contentions.

10. Learned counsels for the parties submit that there is no impediment in the handing over of the possession by the appellant to the respondent.

11. Since the suit property is lying sealed, SDMC is directed to de-seal the suit property on 10th August, 2017 at 11:00 am to enable the appellant to remove his articles from the shop. The appellant shall handover the keys of the suit property to respondent after removing his articles whereupon MCD shall re-seal the property on 11th August, 2017 at 05:00 pm. It is clarified that this order shall not in any manner affect the statutory or other order passed by the Corporation with respect to the suit property and this order is being passed merely to enable the appellant to remove his articles from the suit property and handover the legal possession to the respondent.

12. The appeal is disposed of in the above terms.

13. The Trial Court record be returned back forthwith.

14. Copy of this judgement be given *dasti* to learned counsels for the parties as well as Mr. Ajjay Aroraa, learned Senior Standing Counsel for

SDMC under signature of Court Master.

AUGUST 01, 2017
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J.R. MIDHA, J.

