

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

+ **RFA No. 704/2017**

% **9th August, 2017**

PRITI SHARMA Appellant

Through: Ms. Bhavya, Advocate.

versus

JATINDER KAUR Respondent

Through: Mr. Rajesh Yadav, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This fresh RFA is coming up for hearing today for admission. On the first call it was passed over as this Court declined the request of the appellant for adjournment on the ground that appellant's counsel is busy in the Supreme Court. In my opinion, seeking adjournment in admission matters is not justified on the ground that counsel for the appellant is busy in another Court because it is easy not to get a case listed on a particular date if the Advocate is not available. Also, it is seen that actually the appeal has no merits and in my opinion therefore unnecessary adjournment is sought. Even

after pass over and the matter being called out after two hours it is stated that counsel for the appellant will not be available and this Court refuses to accept that for two hours counsel for the appellant will be consistently and continuously on his legs in the matter in the Supreme Court and had no time to appear in this Court.

2. It is seen that the present first appeal is against the judgment of the trial court dated 31.5.2017 decreeing the suit for possession under Order XII Rule 6 CPC filed by the respondent/plaintiff/landlord against the appellant/tenant/defendant.

3. In Delhi, a suit filed for possession in a civil court by a landlord against the tenant is decreed once relationship of landlord and tenant is admitted, and the rate of rent is above Rs.3500/- per month. The service of notice under Section 106 of the Transfer of Property Act, 1882 terminating tenancy helps the respondent/plaintiff, but this is not a *sine qua non* as service of summons in the suit have to be taken as service under Section 106 of the Transfer of Property Act in view of the judgment of this Court in the case of ***Jeevan Diesels and Electricals Limited Vs. Jasbir Singh Chadha (HUF) & Anr., (2011) 183 DLT 712.***

4. It is seen that the relationship of landlord and tenant between the parties is admitted. It is also admitted that the rate of rent was Rs.90,662/- in terms of the registered lease deed dated 16.5.2011 and which was for a period of five years. Therefore, the relationship of land and tenant being admitted and rate of rent being above Rs. 3500/-, the appellant/defendant had no defence to the suit. The only defence of the appellant/defendant was that she had incurred Rs.10,89,000/- for renovation of the suit property and which had to be repaid by the respondent/plaintiff before the appellant/defendant vacated the suit property. In my opinion, even if this defence is correct, at best it will entitle the appellant/defendant to recovery of money for which a counter-claim had to be filed in the present suit and admittedly no counter-claim is filed in the present suit. In fact, appellant/defendant has filed subsequent suit for recovery of this amount, and this aspect therefore will be decided in the other suit and therefore the same cannot be a reason to decline the relief of possession under Order XII Rule 6 CPC. Admittedly, there is no written agreement with respect to any alleged entitlement of the appellant/defendant to continue to be in possession of the suit property

on the alleged ground that renovation expenditure of Rs. 10,89,000/- has to be first paid by the respondent/plaintiff to the appellant/defendant.

5. I would also note on record that appellant/defendant has not paid rent from the month of August 2015 till date.

6. Since counsel appearing for the appellant/defendant refuses to argue the matter as the main counsel is not available, this appeal is therefore dismissed in default and for non-prosecution in view of the aspects and facts detailed above.

7. No application for recall of this order or for restoration of this appeal be entertained by the Registry of this Court unless costs of Rs.30,000/- are first paid to the counsel for the respondent/plaintiff.

AUGUST 09, 2017/ib

VALMIKI J. MEHTA, J