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

+ **RFA 827/2017**

LT COL A P SINGH (RETD.) Appellant
Through: Mr. T. K. Joseph, Advocate with
Appellant/applicant in person.

versus

MASTER DEVESH & ANR. Respondents
Through: Mr. Sabsachi Mishra, Mr. Mayank
Goswami and Mr. Bikash
Vishwakarma, Advocates for
Respondents/Applicant.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **22.01.2018**

CM APPL. 1409/2018 (vacation of stay) in RFA 827/2017

1. This is an application seeking vacation of stay filed by the Respondents on the ground that:

(a) The Appellant made incorrect submissions on the last date of hearing before this Court in respect of the rent which was being paid by him.

(b) Even admitted rent has not been deposited.

2. Arguments have been heard on this application. A perusal of the order dated 26th September, 2017 reveals that the Respondent was a caveator but did not appear before the Court. This Court, therefore, recorded the submission of the Appellant that the admitted rent was Rs.5,000/- per month. The Court had granted the Appellant time till 31st December, 2018 to vacate the suit premises. However, the Appellant was directed to continue

paying rent at the admitted rate till he remains in the possession. The undertaking in compliance of the order dated 26th September, 2017 has been filed on 9th October, 2017.

3. The impugned order records that during pendency of the suit before the Trial Court the Appellant was paying a sum of Rs.7,500/- per month as directed vide order dated 16th May, 2012, which was thereafter enhanced to Rs.12,000/- vide order dated 17th March, 2016. The Respondents succeeded before the Trial Court. However, the Appellant has been given time by this Court to vacate the suit premises till 31st December, 2018.

4. Mr. T. K. Joseph, learned counsel for the Appellant, submits that the submission made by him on the last date of hearing was not misleading, inasmuch as the admitted rent was Rs.5,000/-, though the amounts of Rs.7,500/- and Rs.12,000/- per month were paid vide interim orders.

5. Irrespective of whether the Appellant has made an incorrect submission or not on the last date, the Respondent who has succeeded before the Trial Court, cannot be worse off than the position which prevailed during the pendency of the suit.

6. In view thereof, the Appellant is directed to pay a sum of Rs.12,000/- per month on or before 10th of every month to the Respondents as rent for the premises.

7. Insofar as non-compliance of the order dated 26th September, 2017 is concerned, the Appellant has handed over the banker's transaction slips dated 29th November 2017, 8th December 2017, 7th January 2018 and 21st January, 2018. All these are for Rs.5,000/-. Admittedly, the order of this Court is dated 29th September 2017 and the first payment has only been made on 29th November, 2017 i.e. after a period of two months. Going by

the Appellant's remittance, there has been non compliance of the order of this Court. Accordingly, it is directed as under:

(i) The Appellant shall pay a sum of Rs.12,000/- per month with effect from 13th July, 2017 till January, 2018. The arrears will be cleared within two weeks.

(ii) The continued payment of Rs.12,000/- per month shall be made every month on or before 10th of the month.

8. The above payments shall be without prejudice to the rights and contentions of the parties in this appeal and shall be subjected to the final orders in this appeal. Any adjustments, if needed, shall be made at the time of passing of the final orders in the appeal.

Application is, accordingly, disposed of.

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9. The counsel for the Respondents submits that insofar as, the amount to the tune of Rs.5,40,000/-, which is claimed to have been paid by the Appellant to the Respondents is concerned, the Respondents are willing to return the said amount to the Appellant.

10. Learned counsel for the Respondents further submits that the suit premises is lying locked and no one is residing in the premises. However, upon instructions from the Appellant, he submits that the son of the Respondent would be living in the premises as currently the same is being whitewashed. It is submitted that the Respondents need the premises and hence the date for handing over of the suit premises be advanced to a date prior to 31st December 2018, which has been already permitted. Learned counsel for the Appellant does not dispute this position. Since this Court has

already granted time to the Appellant for handing over possession till 31st December 2018, the same is not interfered with. No further orders are called for.

PRATHIBA M. SINGH, J.

JANUARY 22, 2018/dk