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

+ RSA 23/2018 & CAV 119/2018, CM APPL. 5656/2018, CM APPL. 5657/2018

SANJAY KAPOOR Appellant

Through: Mr. J.K. Sharma, Advocate.

Versus

COLONEL DALJIT SINGH MADAN Respondent

Through: Mr. Piyush Sharma and Mr. Rajeev L. Mahunta, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **19.02.2018**

The appellant has impugned two orders; one decreeing the suit on 03.10.2017 and the other passed by the appellate Court.

The respondent claims to be the owner of the property no. C-90, Defence Colony, New Delhi alongwith first and second floor of its Annexe Block. The second floor annexe consists of a self contained studio apartment having an AC room, a kitchenette and an attached bath, the same being fully furnished. This studio apartment was leased out on 01.04.2012 to the appellant at a monthly rent of Rs.14,000/-. The lease was not extended and came to an end on 31.03.2013. The appellant was asked to vacate the tenanted premises. He refused to do so. A suit for recovery of possession, arrears of rent, damages, mesne profits and for mandatory injunction to restrain him from entering the premises in future was filed. During trial, the appellant did not comply with certain directions and procedural

requirements; hence his defence was struck off. Despite having been given sufficient opportunities, he chose not to appeal against the same. It is not in dispute that the Trial Court had jurisdiction to pass a decree of possession. Its pecuniary jurisdiction was Rs.3.00 lacs. The suit was decreed apropos the possession only. But before the decree was passed the plaintiffs had curtailed his reliefs to the pecuniary limit of the Court, i.e. within Rs.3.00 lacs on which requisite Court fee had been paid.

The learned counsel for the appellant contends that the Court fees etc. was paid only after it was so pointed out by the appellant and if this anomaly had been cognised at the appropriate time, it would have ousted the jurisdiction of the Trial Court. The learned counsel for the respondent submits that when the decree was passed in terms of the reliefs forgone, the Court was vested with requisite jurisdiction i.e. it could have passed the order of possession and since the relief was restricted to the pecuniary jurisdiction of the Court i.e. Rs.3.00 lacs and requisite Court fee had been paid thereon, there could not be any doubt about the jurisdiction of the Trial Court to pass the decree of possession. The Court is of the view that before a relief sought is granted, the requisite Court fee ought to have been deposited.

During the course of arguments the learned counsel for the parties sought a passover to obtain instructions. After consultations, they state that the parties have discussed the matter among themselves and have settled the lis as under:

At the appellant's request, the respondent/landlord has agreed to permit the appellant to stay in the leased premises till 30.09.2018,

however, his stay in the premises is conditional upon his payment of an amount of Rs. 25,000/- per month on or before the 15th day of each Gregorian calendar month directly into the bank account of the respondent i.e., HDFC Bank A/c No. 01341560002227, Defence Colony Branch, New Delhi. This amount of Rs. 25,000/- includes the occupation charges and part of the decretal amount. Any infraction in terms of this payment and the quantum of time shall automatically be visited with cost of Rs. 15,000/- to be paid into the said account within two weeks thereafter.

The appellant is present in the Court and has been identified by his counsel. The latter states that the appellant undertakes to abide by the terms of this settlement. His undertaking is accepted. Additionally, the appellant shall file an affidavit of undertaking within two weeks, with an advance copy to the learned counsel for the respondent.

The electricity charges shall be paid each month directly to the utility provider. In the event of default of payment of utility charges, it will be open to the respondent landlord to have the electricity disconnected.

In case of non-compliance of this order, the Registry is directed to list the case for directions.

The appeal is disposed-off in the above terms.

NAJMI WAZIRI, J

FEBRUARY 19, 2018/acm