

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA No.202/2017 and C.M. No.6560/2017(stay)**

% **6th August, 2018**

DARSHAN LAL Appellant
Through: Appellant in person.

versus

AMIT DHIGANI & ANOTHER Respondents
Through: Mr. Raj Kumar, Advocate for
respondent no.1 with
respondent no.1 in person.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908(CPC) is filed by the defendant no.1 in the suit impugning the Judgment of the Trial Court dated 21.10.2006 by which trial court has decreed the suit for possession and *mesne* profits filed by the respondent no.1/plaintiff with respect to the suit property being one shop bearing no.488/12/13-B situated at R Block Market,

Dilshad Garden, Delhi-95 shown in red colour in the site plan Ex.PW1/1. The following is the relief/operative para of the impugned judgment dated 21.10.2006:-

“Relief:-

23. In view of the aforesaid discussions and findings, this court is of the considered opinion that plaintiff has proved his case and therefore, he is entitled for the following relief:-

- (i) Decree of possession is passed in favour of the plaintiff and against the defendants in respect of suit property i.e. one shop No.488/12/3-B situated at R Block Market, Dilshad Garden, Delhi-95 admeasuring 12.5x7 Sq. feet as shown in red colour in the site plan Ex.PW1/1.
- (ii) Decree of permanent injunction is passed in favour of the plaintiff and against the defendants. Defendants, their agents, assigns, associates are restrained from subletting, assigning or parting with possession of the suit property i.e. shop No.488/12/13-B, Situated in R Block Market, Dilshad Garden, Delhi-95 with roof right measuring 12.5 x 7 Sq. feet as shown in red colour in the site plan Ex.PW1/1 except without due process of law.
- (iii) Decree of mandatory injunction is passed in favour of the plaintiff and against the defendant no.1. After payment of Rs.3,00,000/- to the defendant No.1, defendant No.1 is directed to return three post dated cheques bearing No.010591, 010595 and 010596, drawn on ICICI Bank Ltd., Lajpat Nagar Branch, New Delhi-110024 to the plaintiff.
- (iv) The plaintiff is entitled for the decree of damages/mesne profits against the defendant No.1 @ Rs.5,000/- per month from filing of this suit till handing over the possession of the suit property alongwith interest @ 8% per annum.
- (v) The plaintiff is also entitled for cost of the suit.”

2. The only issue which arises for determination before this Court, and which was argued on behalf of the counsel for the appellant/defendant no.1, was that the appellant/defendant no.1 is

entitled to the sum of Rs.3 lacs which was given as security, and only on such amount being returned to the appellant/defendant no.1 would the respondent no.1/plaintiff be entitled to possession and with the consequence that the *mesne* profits would not be payable till the amount of Rs.3 lacs is paid by the respondent no.1/plaintiff to the appellant/defendant no.1. To this extent, the relief para 23(iv) of the impugned judgment is prayed to be set aside and it was stated by the counsel for the appellant/defendant no.1 that appellant/defendant no.1 will hand over physical possession of the suit property to the respondent no.1/plaintiff on the amount of Rs.3 lacs being paid to the appellant/defendant no.1 and simultaneously the appellant/defendant no.1 will return the three post dated cheques which were issued by the respondent no.1/plaintiff to the appellant/defendant no.1 and as stated in para 23(iii) of the impugned judgment.

3. At this stage, it is required to be noted that counsel for the appellant/defendant no.1, after arguing the appeal took a pass over, and after pass over, counsel for the appellant/defendant no.1 has not appeared. Appellant/defendant no.1 however appears in person and states that he wants to change his counsel. I fail to understand as to

why there arises a need to change the counsel after hearing has been completed and more so when there is no dispute as regards the fact that there exists a relationship of landlord and tenant between the parties being appellant/defendant no.1 and respondent no.1/plaintiff, the rate of rent was the interest payable on the security deposit of Rs.3 lacs paid by the appellant/defendant no.1 to the respondent no.1/plaintiff (which is above Rs.3500/- per month so premises are outside the protection of Delhi Rent Control Act, 1958), and that when possession had to be returned, the appellant/defendant no.1 was entitled to be paid a sum of Rs.3 lacs which was paid by the appellant/defendant no.1 to the respondent no.1/plaintiff as security.

5. Accordingly, this appeal is allowed only to the limited extent that para 23(iv) of the impugned judgment is set aside while maintaining a decree with respect to possession and return of three post dated cheques given by the respondent no.1/plaintiff to the appellant/defendant no.1 and as stated in para 23(iii) of the impugned judgment. In any case, respondent no.1/plaintiff is entitled to inform his bank that the three cheques stated in para 23(iiii) of the impugned judgment have become null and void and need not be acted by the bank alongwith a copy of the present judgment. It is ordered that the

appellant/defendant no.1 will hand over possession to the respondent no.1/plaintiff on or before 31.8.2018 through the counsel for the respondent no.1/plaintiff who is appearing in this case and on the physical possession of the suit property being handed over by the appellant/defendant no.1 to the respondent no.1/plaintiff, the respondent no.1/plaintiff or his counsel will simultaneously pay the amount of Rs.3 lacs to the appellant/defendant no.1 by means of a bank pay order. In case possession is not delivered to respondent no.1/plaintiff on or before 31.8.2018 then the relief para 23(iv) will stand as it is i.e. decree for *mesne* profits will remain.

6. I may note that the suit property has been sub-let by the appellant/defendant no.1 to the respondent no.2/ defendant no.2, and it will be the responsibility of the appellant/defendant no.1 to get possession from the respondent no.2/ defendant no.2/sub-tenant and hand over possession of the suit premises to the respondent no.1/plaintiff because once the tenancy stands terminated the interest of the sub-tenant also will stand determined along with the tenancy interest of the appellant/defendant no.1/tenant.

7. Appeal is accordingly partially and conditionally allowed, but dismissed so far as the other reliefs which have been granted by the

trial court by the impugned Judgment dated 21.10.2006. Parties are left to bear their own costs.

AUGUST 06, 2018/ Ne

VALMIKI J. MEHTA, J

