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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA 41/2018 & C.M.No. 8834/2018

B.K SHARMA

..... Appellant

Through: Mr. S. P. Aggarwal, Advocate with
Appellant in person.

Versus

RITA SHARMA

..... Respondent

Through: Mr. Amit Chadha and Mr. Anuj Soni,
Advocates with Respondent in
person.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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19.03.2018

On the previous date, notice was issued only for exploring the possibility of an amicable settlement of the lis between the parties, who are siblings. The learned counsel for the parties upon instructions submit that there is no likelihood of any settlement.

Mr. Amit Chadha, Advocate who appears for respondent on receipt of advance notice of the appeal, states upon instructions that it has been held that the respondent is the owner of the premises on the basis of a registered Rent Agreement.

The learned counsel for the appellant relies upon a judgment of this Court in RFA No.74/2002, titled as '*Naeem Ahmed vs. Yash Pal Malhotra (deceased)*', decided on 27.02.2012, to state that the appellant being the owner of the premises on the basis of a General Power of Attorney, cannot

be ousted from the premises because he otherwise owns 50% of the premises. The Court would note that the said case was with respect to the procedure to be followed in the event a tenant denounces ownership of the plaintiff to the suit property; the Court had held that where the defendant or an occupier of the property had denounced the relationship of landlord and tenant and set up his own title to the property, a suit for recovery of possession would lie in law against such person since the tenants' occupation would have become unauthorized and that of a trespasser; the impugned order in that case, passed under the Delhi Rent Control Act, 1958 was set aside and the case was posted before the Civil Judge concerned for further proceedings.

In the present case, the suit had been filed for possession of the suit property, recovery of rent/use and occupation charges and for permanent injunction etc., which has been decreed. The impugned order has relied upon a registered Rent Agreement between the parties, which clearly records the respondent as the owner of the suit premises and this has been duly acknowledged by the appellant. It is argued that the appellant had become the owner of the premises by an adverse possession because he has possession of the same for over 25 years and the registered Rent Agreement was entered on account of his "sibling affection", i.e. to assist his sister, to tide over some troubles that she was going through at that phase in her life. This, however, was never the appellant's case before the Trial Court and in any case it has never been so proven. Therefore, the Court is not inclined to issue notice in the present case.

At this stage, Mr. Aggarwal states upon instructions that the appellant would not press the appeal provided some time is given to him to vacate the

suit property as its vacation would affect his livelihood, and he has been running a business therefrom for a number of years.

In the circumstances, Mr. Chadha, the learned counsel for the respondent upon instructions submits that the respondent concedes for grant of time period for vacating the suit premises till 31.08.2018, provided damages for the use and occupation of the premises are fixed at Rs.25,000/- per month. Mr. Aggarwal states upon instructions, that the said terms are agreeable.

In view of the aforesaid, the following order is passed with consent of both the parties:-

- (i) the appellant shall vacate the suit premises on or before 31.08.2018;
- (ii) the appellant shall pay an amount of Rs.25,000/- per month effective from March till August, 2018 i.e., Rs.1,50,000/- in total;
- (iii) the aforesaid amount of Rs.1,50,000/- shall be paid in two equal instalments into the bank account of the respondent i.e. SBI Account No. 10591479866, Majlis Park, Delhi-110033, which is stated to be a joint account alongwith her husband Mr. Ravi Bhushan Sharma;
- (iv) the first instalment of Rs.75,000/- for the months of March, April and May, 2018 shall be paid into the aforementioned bank account by 15th April, 2018 and the second instalment of the identical amount for the months of June, July and August, 2018 shall be paid accordingly by 15th June, 2018;
- (v) any infraction of this order, either in payment of the quantum or within the time stated, will be visited with a costs of Rs.10,000/-, to be paid into the aforenoted bank account of the respondent within 15 days of such infraction.

The learned counsel for appellant states upon instructions from the appellant, who is present in the Court, that the latter undertakes to abide by the terms of this consent order and that no further extension of time shall be sought. The undertaking is accepted. Additionally, he shall file an undertaking to this effect by tomorrow evening.

The appeal, alongwith pending application, is disposed off in the above terms.

A copy of this order be given *dasti* to the learned counsel for the parties under the signature of the Court Master.

NAJMI WAZIRI, J.

MARCH 19, 2018

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