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

+ CS(OS) 2143/2010 & CC No.105/2011

MASOOD ADAM KHUSHABI

..... Plaintiff

Through: Mr. Sumit Bansal, Ms. Sumi Anand
and Mr. Ankit Banati, Advs.

Versus

S BALBIR SINGH & ORS

..... Defendants

Through: Mr. P.S. Bindra, Ms. Ashmita and
Ms. Savi Abbot, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.04.2018

1. The plaintiff has instituted this suit for ejectment of the defendants from premises bearing No.K-10 & K-11, Connaught Place, New Delhi after determination of the tenancy of the defendants at a rent of Rs.4,430/- per month under the plaintiff and for recovery of *mesne* profits.
2. The defendants, besides contesting the suit have also filed a Counter-Claim for specific performance of the agreement dated 22nd December, 2009 seeking a direction to the plaintiff to register the title documents in respect of premises bearing No.K-33, 34 (First Floor) and K-50 (Second Floor) as well as K-10 & K-11 (Ground Floor), Connaught Place, New Delhi and to hand over the possession thereof to the defendants.
3. On the pleadings of the parties in the suit and the Counter-Claim, the following issues were framed on 28th August, 2014:

- “1. *Whether the plaintiff is entitled to a decree of possession as prayed for? OPP*”
2. *Whether the plaintiff is entitled to a decree of mesne profits as prayed for? OPP*
3. *Whether the defendants are entitled to a decree for specific performance of the oral agreement dated 22nd December, 2009 in view of the statement made in para 3 of the written statement? OPD*
4. *Whether the Court has pecuniary jurisdiction to entertain and try the present suit? OPD*
5. *Whether the notice terminating the tenancy stands waived in view of the conduct of the plaintiff? OPD*
6. *Whether the suit is not maintainable in view of the objections raised by the defendants in para 3 of the written statement? OPD*
7. *Relief.”*

4. At this stage, the counsel for the defendants, under instructions from both the defendants personally present in Court states that the defendants do not want to contest the suit and do not want to press their Counter-Claim and only seek reasonable time to re-locate from the premises.

5. The suit having remained pending for the last eight years and during which time the defendants are informed to have continued paying amount of Rs.4,430/- per month only to the plaintiff, I have enquired from the counsel for the defendants as to the arrears of *mesne* profits and future *mesne* profits, for the period which may be granted to the defendants to vacate, which the defendants are willing to pay.

6. The counsel for the defendants, under instructions from the defendants, states that the defendants desire time till 31st March, 2019 to hand over vacant, peaceful, physical possession of the entire premises in

their occupation in K block, Connaught Place, New Delhi irrespective of the description in the plaint or in the site plan Ex. PW1/1.

7. The counsel for the defendants also offers *mesne* profits of Rs.50,000/- per month with effect from today.

8. I am of the view that the offer of the defendants of paying *mesne* profits from today and the rate at which *mesne* profits are offered is not fair. Considering the entirety of the circumstances, it is deemed appropriate to affix the arrears of *mesne* profits from the date of institution of the suit till 31st December, 2015 @ Rs.1 lakh per month and from 1st January, 2016 till 30th April, 2018 @ Rs.1.5 lakh per month. The *mesne* profits with effect from 1st May, 2018 till the month of vacation of the premises on or before 31st March, 2019 are fixed @ Rs.2 lakhs per month.

9. The defendants personally present in the Court undertake to this Court:

- (i) to hand over vacant, peaceful physical possession of the entire premises in their occupation in Block-K, Connaught Place, New Delhi to the plaintiff on or before 31st March, 2019;
- (ii) to clear the electricity, water and other dues of the premises till the date of occupation thereof, before leaving the premises; and,
- (iii) to, hereinafter, not induct any other person into possession of the premises and to not damage the premises.

10. The aforesaid undertaking of the defendants is accepted and the defendants are ordered to be bound therewith and cautioned of consequences of breach of undertaking given to the Court.

11. Accordingly, a decree is passed in favour of the plaintiff and against
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the defendants, of ejectment of the defendants from the entire premises in possession of the defendants in Block-K, Connaught Place, New Delhi. However, the said decree is made inexecutable till 31st March, 2019.

12. It is made clear that in the event of the defendants/their legal representatives being in breach of the undertaking aforesaid or any part thereof, the plaintiff, besides initiating proceedings against the defendants/their legal representatives for breach of undertaking given to the Court, shall also be entitled to forthwith execute the decree for ejectment.

13. A decree is also passed in favour of the plaintiff and jointly and severally against the defendants, of recovery of *mesne* profits/damages for use and occupation of the premises for the period from the date of institution of the suit till 31st December, 2015 @ Rs.1 lakh per month and for the period from 1st January, 2016 till 30th April, 2018 @ Rs.1.5 lakh per month and for recovery of *mesne* profits with effect from 1st May, 2018 till the month of vacation of the premises on or before 31st March, 2019 @ Rs.2 lakhs per month.

14. A decree of permanent injunction is also passed in favour of the plaintiff and against the defendants, restraining the defendants from parting with possession of the property of which the defendants as of today claim to be in control and possession, to any other person.

15. Counter-Claim No.105/2011 of the defendants is dismissed as withdrawn.

16. The parties are left to bear their own costs.

17. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

APRIL 10, 2018/‘bs’

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