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

+ RSA 98/2018 & CM No.26393/2018 (for stay)

SHANKAR HALDAR Appellant

Through: Mr. Kali Charan, Adv.

Versus

R.D. AGGARWAL & ANR Respondents

Through: Mr. Arjun Pant, Adv. for R-2/DDA

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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09.07.2018

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree (dated 28th May, 2018 in RCA No.09/2017 of the Court of Additional District Judge (ADJ)-03 (East), Karkardooma Courts, Delhi) allowing the appeal preferred by the respondent No.1/plaintiff against the judgment and decree (dated 6th October, 2016 in CS No.6705/2016 of the Court of ACM-cum-CCJ-cum-ARC (East), Karkardooma Courts, Delhi) of dismissal of suit, filed by the respondent No.1/plaintiff against the appellant / defendant for ejectment of the appellant / defendant from shop No.A-627 (Old No.625), New Ashok Nagar, Delhi-96 in which the appellant / defendant was a tenant under the respondent No.1/plaintiff at a rent of Rs.800/- per month and which tenancy of the appellant had been determined and in which suit the respondent No.2 Delhi Development Authority (DDA) was impleaded as a defendant, and consequently passing a decree for ejectment/ recovery of possession and for recovery of arrears of rent in favour of the respondent No.1/plaintiff and against the appellant / defendant.

2. It was / is not in dispute that the Delhi Rent Control Act, 1958 did not apply to the premises aforesaid. The appellant / defendant contested the suit pleading that the land underneath the premises had been acquired by the respondent No.2 DDA and the respondent No.1/plaintiff had acquired the premises from earlier owner thereof after the date of issuance of Notification of Acquisition and the respondent No.1/plaintiff was thus not the owner and not entitled to the decree for possession. The said defence of the appellant / defendant found favour with the Suit Court which dismissed the suit.

3. The First Appellate Court, in appeal, reversed the judgment of the Suit Court and passed an order of ejectment holding that the appellant / defendant having been inducted as a tenant in the premises / shop by the respondent No.1/plaintiff, the question of ownership of the premises / shop was not germane in a suit filed by the respondent No.1/plaintiff as landlord against the appellant / defendant inducted by the respondent No.1/plaintiff as tenant in the premises / shop. Accordingly, the decree for ejectment and for recovery of arrears of rent has been passed.

4. The counsel for the appellant / defendant has only argued (i) that the First Appellate Court has reversed the decree of the Suit Court; (ii) that the respondent No.1/plaintiff is not the owner of the shop in the tenancy of the appellant / defendant and thus not entitled to the decree for possession.

5. However the counsel for the appellant / defendant, on enquiry, as to how the question of ownership is relevant in a suit between the landlord and tenant, especially when the appellant / defendant was inducted as a tenant by the respondent No.1/plaintiff, has no answer.

6. No error of law can be found in the reasoning given by the First

Appellate Court. Besides the judgments referred to by the First Appellate Court, reference in this regard can also be made to (i) **Jaspal Kaur Cheema Vs. Industrial Trade Link** (2017) 8 SCC 592; (ii) **Dr. Ranbir Singh Vs. Asharfi Lal** (1995) 6 SCC 580; and, (iii) **Kanaklata Das Vs. Nalia Kumar Das** (2018) 2 SCC 352.

7. Though the respondent No.2 DDA was impleaded as defendant no.2 in the suit but did not file any written statement and did not contest the suit.

8. The counsel for the respondent No.2 DDA today also appearing on advance notice, states that he will instruct the respondent No.2 DDA to, if has acquired the land, take appropriate proceedings for recovery of possession thereof from whosoever may be in possession of the same.

9. Though the appellant in the memorandum of second appeal, in para 23 has proposed questions of law but in view of the settled legal position, as aforesaid, the same do not arise.

10. Finding no error in the judgment of the First Appellate Court and not finding any substantial question of law arising for adjudication, the appeal is dismissed.

No costs.

A copy of this order be given *dasti*.

RAJIV SAHAI ENDLAW, J.

JULY 09, 2018

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