$~A-1

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

% *Date of decision : 10.01.2018*

\+ CM(M) 758/2016

M/S EMBASSY RESTAURANT & ANR ..... Petitioner

Through Mr.Anip Sachthey, Ms.Anjali Chauhan and Ms.Ria Sachthey, Advs.

versus

M/S ATMA RAM BUILDERS (P) LTD..... Respondent

Through Mr.Amit Sethi, Adv. alongwith Mr.Ishan Khanna, Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This petition is filed under Article 227 of the Constitution of India seeking to challenge the order dated 9.5.2016 passed by the learned ADJ. The plaintiff/respondent has filed the suit for possession and recovery of mesne profit against the petitioner regarding the said property being Plot No.3, Block D, Connaught place, New Delhi.

2. As per the petitioner the rent payable for the premises is Rs 312.69 per month. However, the plaintiff/respondent submits that as per the plaint the house tax of the suit premises in accordance with the unit area base system for the year 2010-11 has been to the tune of Rs.20,902.50 per month which has now increased to Rs.25,082.50 per month for the Assessment Year 2013-14. Based on this, it is pleaded that the total monthly rent payable/fetched by the suit property in question is now more than Rs.3,500/- per month and thus by virtue of section 3(c) of the Delhi Rent Control Act

the suit premises has ceased to be covered by the said Act and is now covered by the provisions of the Transfer of Property Act. Hence, the suit has been filed.

3. At this stage, learned counsel for the respondent states that in his replication he has clearly stated that the rent that was earlier being paid was inclusive of property tax and hence irrespective of the statutory provisions the petitioner is liable to pay the agreed rent plus property tax which combinedly would be the rent. Hence, he pleads that the trial court has also framed an issue as follows:-

> "1. Whether plaintiff had admitted in the past that the property tax is not part of the rent being paid by the defendant to the plaintiff? OPD"

4. The respondents had also filed an application under Order 15 A of CPC seeking directions that pending enquiry under Order 20 Rule 12 CPC the court may direct the petitioner to deposit use and occupation charges/ mesne profit in the Court @Rs.25 lacs per month or at such rate of rent/use and occupation charges in court as the court may deem fit and proper from the date of filing of the application.

5. By the impugned order the trial court relied upon the observations of the Division Bench in ***Raghubir Rai vs. Prem Lata & Anr., 211 (2014) DLT 516 (DB)*** to note that the Court under Order 15A of CPC is empowered to direct deposit at such rate as the erstwhile tenant on the basis of material on record is found to have agreed to pay to the landlord. The court concluded that the first category of defendant is those cases which are filed by lessor against the lessee in case of terminating the tenancies. It noted that as per the judgment of the Division Bench of this court the

erstwhile tenant can be directed to deposit the rent claimed by the landlord even though the same has not been admitted or deposited or controverted. The trial court noted that there are three figures available First figure is a sum of Rs.312.69 per month being the last rent paid by the petitioner. The second figure is Rs.25,395/- which the respondent claims to be the last payable rent wherein he added the earlier figure of Rs.312.69/- with proportionate monthly property tax. The third figure is the desired claimed mesne profit of Rs.25 lacs per month for the suit property. The trial court notes that under Order 15-A CPC, the landlord can even claim rent claimed in the suit. Hence, it is claimed that the respondent is claiming the last claimed/calculated rent of Rs.25,395/.-. It also notes that this figure is not admitted by the petitioner and is rather controverted but the court directed the petitioner to deposit Rs.25,000/- w.e.f. 07.10.2014 in the name of this court within six weeks.

6. I may first note the scope of order 15A CPC. The Division Bench of this court in ***Raghubir Rai vs. Prem Lata & Anr. (supra)*** noted the parameters of Order 15A as follows:-

> "23. We are therefore unable to agree with the contention of the counsel for the appellant/defendant that the Court, in exercise of powers under Order XV-A of the CPC, is incapacitated from directing deposit at a rate higher than that admitted by the defendant.
>
> 24. We are of the view that the Court, in exercise of powers under Order XV-A of the CPC is empowered to direct deposit at such rate as the erstwhile tenant/defendant may on the basis of material on record be found to have agreed to pay to the landlord for the said period even if the tenant before the Court may not have admitted the same or

disputed/controverted the same. Similarly, in a suit between the owner of immovable property and an unauthorized occupant, Order XV-A empowers the Court to direct the defendant who though may not be liable to be ejected/dispossessed immediately without trial but who, on preponderance of probabilities may not be found to have a right to continue in possession of the property, to deposit during the pendency of the suit such amount as may appear to be reasonable, to safeguard the right of the owner of the property and to ensure that such owner is compensated at least for the time taken in adjudication of a false defence taken up by the defendant in unauthorized occupation. This, in our view is necessary to avoid the process of the Court being abused by unscrupulous litigants and to curb the growing tendency of using the process of litigation as a tool of oppression.

25. We should however not be interpreted as laying down that Order XV-A empowers the Court to, without evidence assess mesne profits or to merely by taking judicial notice and without any material on record, arbitrarily direct the defendant to deposit a much higher amount then what he had been paying or had agreed to pay. Reference in this regard can be made to the judgment of the Division Bench of this Court in National Radio & Electronic Co. Ltd. Vs. Motion Pictures Association MANU/DE/1175/2005 : 122 (2005) DLT 629 laying down that mesne profit have to be proved by reliable and cogent evidence in accordance with law. Of course, if the erstwhile tenant/defendant is found to have agreed to periodically increase the rent/user charges, even if such contract may have come to an end, in exercise of powers under Order XV-A of the CPC direction for deposit with such increases can be made unless strong grounds exist for such increases being not due."

7. The Supreme Court in a recent judgment dated in ***Atma Ram Properties Pvt. Ltd. vs. The Oriental Insurance Co. Ltd 2017 (14) SCALE***

146, has categorically rejected the plea that was raised wherein it has been pleaded that in view of section 67(3) of the New Delhi Municipal Council Act, 1994 the property tax would form internal component of the rent. In the said case the Supreme Court held as follows:-

> "28. Therefore, we are of the view that though the Rent Act is an earlier Act when compared to the NDMC Act, it is a special enactment with regard to the matter in issue and has a non-obstante clause. The NDMC Act is not a special enactment insofar as landlord-tenant issue is concerned and it contains Section 411 which provides that other laws not to be disregarded. Section 67(3) of the NDMC Act merely gives a right to recover the tax in respect of the premises as rent. It does not override the Rent Act insofar as obviating the effect of Section 7(2) of the Rent Act. In our opinion, the tax recoverable from the tenant Under Section 67(3) of the NDMC Act as arrears of rent by the Appellant cannot be considered to be forming part of the rent for the purpose of seeking eviction/ejectment of the Respondent who defaults in payment of such recoverable tax as rent."

8. In view of the above judgment of the Supreme Court the tax which is said to have been paid by the respondent and which according to the respondent is recoverable from the tenant under section 67(3) of the NDMC Act as arrears of rent cannot without anything more be considered to be forming part of the rent for the purpose of seeking eviction/ejectment of the petitioner. To that extent, in view of the above legal position stated by the Supreme Court there can be no justification for the impugned order to direct that deposit of Rs.25,000/- per month under Order 15A CPC as has been done which deposit is premised on the fact that the rent is an integral part of the rent between the parties. As noted by the Division Bench of this court as noted above under Order 15A CPC a court cannot direct deposit of rent by a

tenant much higher than what was agreed or he was paying. No doubt, the respondent still pleads that as per agreement with the petitioner, property tax was a part of the rent. But an issue to this effect has been framed. It would be for the respondent to press the issue. However, for the present the plea cannot be accepted in view of the above judgment of the Supreme Court. In the light of the legal position, the impugned order clearly suffers from material irregularities. The said order is set aside.

9. I may clarify that observations herein are only for the purpose of disposal of the present petition and do not in any manner bind the respondent on merits for adjudication of its suit before the trial court including its plea that as per the oral/written arrangement between the parties the tax component formed integral part of the rent.

10. The petition stands disposed of. All pending applications if any also stand disposed of.

JAYANT NATH, J

JANUARY 10, 2018

n