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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 430/2018 & CM APPL. 37621-37622/2018**

SHYAM KARAN BHARDWAJ Appellant

Through: Mr. Tanmay Nagar & Mr. Yogesh
Kumar, Advocates.

versus

RAO JASWANT SINGH Respondent

Through: Mr. D.V. Khatri, Advocate.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **14.09.2018**

CAV 849/2018

Learned counsel for the caveator is present. The caveator thus stands discharged.

FAO 430/2018

Submissions have been made on behalf of either side.

Vide the present appeal, the appellant assails the impugned order dated 19.07.2018 of the learned ADJ-07, Central in Suit no.291/16 vide which an application under Order XXXIX Rule 10 read with Order XV-A and Section 151 of the CPC was disposed of with directions to the defendant of the said suit, i.e., the present appellant to deposit a sum of Rs.10,000/- per month in Court from the date of institution of the suit with directions that the arrears would be

deposited inclusive of the month of July, 2018 within a period of a month from the date of passing of this order and that the defendant would continue to deposit a sum of Rs.10,000/- every month on or before the 15th day of each succeeding month. It was further directed vide the impugned order that out of the arrears of rent and also for future rent to be deposited by the defendant, i.e. the present appellant herein, the amount of Rs.1,500/- per month would be paid to the plaintiff, i.e., the respondent herein and balance sum of Rs.8,500/- per month would remain with the Court till final decision of the present case. It has also been expressed vide the impugned order that the said order did not amount to decision on the merits of the case and was only an interim measure and that the amount that would be deposited in the Court would be subject to the outcome of the case and after the amount was deposited, appropriate orders will be passed in due course to consider the amount to be kept in fixed deposits.

It has been submitted on behalf of the appellant that the observations of the learned Trial Court in relation to the aspect that the contentions of the respondent qua the rate of rent of the premises being Rs.10,000/- per month on the basis of a stated rent agreement dated 03.01.2012 qua shop no.2 measuring 10X12 ft., Main 100 foota Road on the ground floor of the Burari Abadi Sant Nagar Lal Dora, situated on the ground floor without roof rights excluding electricity charges and water charges are erroneous, inasmuch as there was no such rent agreement as claimed by the respondent executed between the appellant herein and the respondent and that the said rent

agreement was a forged and fabricated document.

It has also been contended on behalf of the appellant that the aspect of previous litigation between the appellant herein and the respondent herein in relation to the shop no.1 situated in the same building in which the present appellant herein was a tenant under the respondent have not been adverted to and that the payment of arrears that had been testified through the testimony of PW-2, related to the said shop and not to the present shop in question. It has also been submitted on behalf of the appellant that the observations of this Court in **“EMBASSY RESTAURANT & ANR. VS. ATMA RAM BUILDERS (P) LTD.”** reported in **247 (2018) DELHI LAW TIMES 39** were squarely applicable to the facts and circumstances of the instant case inasmuch as there was no agreement between the appellant herein and the respondent for payment of the rent at the rate of Rs.10,000/- per month as contended on behalf of the appellant vide the stated rent agreement dated 03.01.2012 and that as observed in **“EMBASSY RESTAURANT & ANR. VS. ATMA RAM BUILDERS (P) LTD.”** (supra), a Court cannot direct deposit of rent by a tenant much higher than what was agreed or he was paying. It has also been submitted on behalf of the appellant herein that the rate of rent of the tenanted premises was in fact only Rs.1,500/- per month and that the suit itself was barred in terms of Section 50 of the Delhi Rent Control Act, 1958 (as amended) and that the grant of the prayer vide the impugned order, in terms of Order XXXIX Rule 10 read with Order XV-A of the CPC would give a premium to the landlords for

claiming mesne profits and damages in relation to premises in fact covered by provisions of the Delhi Rent Control Act, 1958.

On behalf of the respondent, it has been submitted by the learned counsel present that the contentions raised by the appellant in relation to the rent agreement dated 03.01.2012 being forged and fabricated is wholly erroneous and false and that there is also a testimony of PW-3, Sh. V.C. Mishra that has been recorded during the course of the proceedings and the said testimony corroborates the factum of execution of the rent agreement between the parties. It has also been submitted on behalf of the respondent that the present appellant was earlier a tenant under the respondent qua the shop no.1 in the same building and undoubtedly there was a litigation that had been filed by the respondent herein against the appellant qua the same but during the course of the said proceedings due to negotiations between the parties, as a consequence of which the shop no.3 in the same building had been sold by the respondent to the wife of the present appellant as a consequence of which the appellant herein had surrendered the shop no.1 and as a consequence thereof had taken the shop in question, i.e. the shop no.2 situated in the same building on rent on 03.01.2012 vide the written rent agreement.

It has also been submitted on behalf of the respondent that a rent agreement on the same day, i.e., 03.01.2012 qua the adjacent shop, i.e. shop no.1 had also been executed between the respondent and one Mr. Anil Sachdeva in which the rate of rent has been fixed as Rs.11,000/- per month. It has also been submitted on behalf of the

respondent that no prejudice whatsoever is being caused to the appellant herein inasmuch as the directions for the deposit of the rent have only been to the tune of Rs.1,500/- per month to be paid to the plaintiff and the balance sum of Rs.8,500/- per month to be deposited in Court till the final decision of the case.

On a consideration of the rival submissions made on behalf of either side, it is essential to advert to the verdict of the Hon'ble Division Bench of this Court in **“Raghubir Rai Vs. Prem Lata & Anr.” 2014 X AD (DELHI) 45** of which there is a reference made in the impugned order as well. Though, it is sought to be contended on behalf of the appellant that the said verdict is not applicable to the facts and circumstances of the instant case inasmuch as there was an execution of a Commission Agency in that case and that there is no rent agreement executed in the instant case.

It is essential to observe that vide Para 27 of the verdict of the Hon'ble Division Bench of this Court in **“Raghubir Rai Vs. Prem Lata & Anr.”** (supra), it was observed to the effect:-

“27. We have perused the suit file and find neither the respondent no.1/plaintiff nor the appellant/defendant to have placed on record any document to show the rate of rent. The Commission Agency Agreements which are denied by the appellant/defendant of course show that the payment was being made @ Rs.1.5 lakhs per month. The rent receipt purportedly issued by the respondent No.1/plaintiff of receipt of rent @ Rs.1000/- per month is denied by the respondent No.1/plaintiff.”,

indicate *inter alia* to the effect that there was a denial qua the Commission Agency Agreements that had been alleged to have been executed as per which the tenant had claimed that the rate of rent was Rs.1.5 lakhs per month whereas the tenant claimed that the rent was only for a sum of Rs.1,000/- per month and the directions of the learned Single Judge in that case were upheld by the Division Bench in relation to the directions qua deposit of sum of Rs.1,00,000/- per month observing *inter alia* to the effect vide Para 28 of the said verdict that the Hon'ble Bench was unable prima facie to believe that a valuable commercial property, as the subject property was, would have been let out at a rent below Rs.3,500/- per month, allowing the letting to fall within the ambit of the Rent Act, whereunder the eviction of a tenant is not only difficult but virtually impossible.

It is also essential to observe that the observations in Para 24 and 25 of the said verdict of the Hon'ble Division Bench which read to the effect:-

“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 than 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 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.”

In the facts and circumstances of the instant case, it is held that there exists no infirmity in the impugned order dated 19.07.2018 inasmuch as in any event, it is not disputed that the adjacent shop, i.e., shop no.1 is in the premises in question is let out at the rate of Rs.11,000/- per month vide a rent agreement dated 03.01.2012 which

is also the stated date of execution of the rent agreement between the appellant and the respondent herein qua shop no.2 in similarly situated premises. Furthermore, vide the impugned order dated 19.07.2018, the amount that has been allowed to be released to the respondent/landlord is only a sum of Rs.1,500/- per month and the balance sum of Rs.8,500/- per month has been directed to be deposited in Court in terms of the said order, the release of which is to be adjudicated on disposal of the suit.

The present appeal and accompanying application are declined. Nothing stated hereinabove shall amount to any expression on the merits or demerits of the case.

ANU MALHOTRA, J

SEPTEMBER 14, 2018/NC