

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

+ **RFA No.660/2017**

% **16th February, 2018**

SANT RAM PANDEY Appellant

Through: Mr. J.K. Tripathi, Advocate.

versus

MAHESH RATHORE Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.26664/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No.660/2017

2. This Regular First Appeal is filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) by the plaintiff in the suit impugning the judgment of the Trial Court dated 20.3.2017 by which trial court has dismissed the suit for possession, arrears of rent, damages and permanent injunction with respect to the suit property

which as per the suit plaint is two rooms on the ground floor of property no. 631-A, Gali No.12, Shaheed Bhagat Singh Colony, Karawal Nagar, Delhi.

3. Admittedly, there is a relationship of landlord and tenant between the parties. Admittedly the rate of rent as per the appellant/plaintiff is Rs.2,200/- per month. Therefore once the rent is less than Rs.3,500/- per month, respondent/defendant will have protection of the Delhi Rent Control Act, 1958 and the suit for possession with respect to tenanted premises cannot be filed in the civil court.

4. There is however an issue as to whether the respondent/defendant had only one room with him in tenancy or had two rooms in the tenancy. In this regard the trial court has rightly held that no evidence having any substance was led by the appellant/plaintiff except self-serving statement in deposition, and therefore, the trial court held that once the respondent/defendant claimed to be a tenant of two rooms and not one room therefore it cannot be held that the respondent/defendant is a tenant only of one room and not two rooms and that the appellant/plaintiff is entitled as

claimed to possession of one room of which tenancy was never created in favour of the respondent/defendant.

5. With respect to rate of rent, it is noticed that the appellant/plaintiff contended that rate of rent was originally Rs.1,500/- per month and which was increased to Rs.2,200/- per month w.e.f 1.10.2012 and that rent at Rs.2,200/- was claimed from 1.5.2013 and though there is no dispute between the parties that rent is not paid from 1.5.2013 but since the respondent/defendant contended that rent was Rs.500/- per month and not Rs.2,200/- per month, Therefore, the trial court has refused to grant a money decree for arrears of rent at Rs.2,200/- per month w.e.f 1.5.2013.

6. Since trial court has held that appellant/plaintiff failed to prove that tenancy was only of one room therefore there did not arise passing of any decree for damages in favour of the appellant/plaintiff and against the respondent/defendant with respect to the second room and which second room effectively therefore also has been held to be in the tenancy of the respondent/defendant by the trial court.

7. A civil suit is decided on preponderance of probabilities. If the appellant/plaintiff comes to the court and pleads tenancy at a

particular rate of rent, it is the appellant/plaintiff who has to prove that rate of rent. The appellant/plaintiff failed to prove the rate of rent at Rs.2,200/- per month. Also, once the rate of rent is below Rs.3,500/- per month with respect to tenanted premises, suit could not be filed in the civil court as Section 50 of the Delhi Rent Control Act operates as a bar for filing of the suit in the civil court with respect to the tenanted premises. Also, trial court has rightly decided on balance of probabilities that the appellant/plaintiff failed to prove that tenancy was only of one room and not two rooms because respondent/defendant claimed tenancy of two rooms and appellant/plaintiff failed to prove by any substantial evidence much less documentary evidence that tenancy was of one room and not two rooms.

8. In view of the above, there is no merit in the appeal.
Dismissed.

FEBRUARY 16, 2018
Ne

VALMIKI J. MEHTA, J