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

Date of Decision: 28th November, 2018

+ FAO(OS) 163/2018

MAMTA NAGPAL

..... Appellant

Versus

MANIKA MADAN & ANR

..... Respondents

+ FAO(OS) 176/2018

MAMTA NAGPAL

..... Appellant

Versus

MANIKA MADAN & ANR

..... Respondents

Present:- Mr.Vikram Singh, Adv. with Mr.C.Shekhar, Adv. for the
appellants.
Ms.Payal Jain, Adv. for R-1.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

: **Rajendera Menon, Chief Justice (Oral):**

C.M.No.49567/2018 (exemptions) in FAO(OS) 176/2018

C.M.No.46304/2018 (exemptions) in FAO(OS) 163/2018

Allowed, subject to all just exceptions.

C.M.No.49665/2018 in FAO(OS) 163/2018

The application is allowed and the FAO(OS) 163/2018 is taken up for hearing along with FAO (OS) 176/2018 today itself.

FAO(OS) No.176/2018

FAO(OS) No.163/2018

1. As both these appeals arise out of the orders passed in a pending Civil Suit being C.S.(OS) No.1900/2015, they are being disposed of by this common order.

2. In FAO (OS) No.176/2018, the appellant impugns an order dated 26th October, 2018 by which an interlocutory application being I.A.No.13922/2018 in C.S.(OS) No.1900/2015 for recalling a direction given to the appellant to file an eviction suit against the tenant has been rejected.

3. In FAO (OS) No.163/2018, the appellant challenges the order dated 10th September, 2018 passed in C.S.(OS) No.1900/2015 by which an application filed by the appellant under Order XII Rule 6 of the Code of Civil Procedure, 1908 ('CPC') has been dismissed. The appellant is defendant No.1 in a suit filed by the respondent No.1 herein. In the suit that was pending, a contempt application being CCP (O) No.19/2018 was filed by the plaintiff against the present appellant alleging wilful disobedience of orders dated 6th December, 2016 and 18th April, 2017 passed by the Court whereby the appellant was directed to deposit rent of the property situated at 3rd Floor, Cottage Property No.6, West Patel Nagar, New Delhi – 110008 with the Registrar General of this Court on or before 7th day of each month. It was found that the appellant did not comply with the order of depositing of rent and thereby the contempt proceedings were initiated.

4. The entire arrears of rent was deposited during the pendency of the contempt proceedings and the counsel for the appellant assured the Court

that he shall file a petition against the tenant for eviction as well as recovery of rent and mesne profits within two weeks before the Court. Subsequently, an application being I.A.No.13922/2018 was filed for recall of this order in which it was stated that the entire rent from May, 2017 to September, 2018 has been deposited with the Registrar of this Court on 24th September, 2018 and, therefore, the direction for filing an eviction suit may be recalled.

5. The appellant stated that the arrears of rent could not be paid because of demonetisation and various other reasons. The learned Single Judge found that the appellant gave an undertaking to file the eviction suit as the tenant had not deposited the rent and had committed breach of the laws of tenancy and, therefore, there was no reason for recalling the said order.

6. Considering the fact that the order for filing the eviction suit against the tenant has been passed on the undertaking given by the appellant's own counsel and the justification given by the appellant for default in depositing the rent was not acceptable to the Court, we find no reason to make an indulgence into the matter. The learned Single Judge has rightly refused to recall the order. The tenant having committed default of payment of rent, the direction for a suit for eviction to be filed cannot be faulted with that also when it was based on the appellant's own assurance.

7. As far as the case of the appellant with regard to the proceedings initiated under Order XII Rule 6 CPC that under registered Will dated 13th May, 2011 propounded by the plaintiff, she is entitled to 1/3rd undivided share in the suit property and placing reliance on certain judgments sought issuance of a preliminary decree granting 1/3rd share in the property, the learned Single Judge took note of the conduct of the appellant, the manner in

which in spite of the order of *status quo* granted and the direction for deposit of rent, the appellant having violated the same, it was held by the learned Single Judge that Order XII Rule 6 CPC is a discretionary relief, it cannot be claimed as a matter of right looking into the conduct of the applicant not being above board and finding that she has been remiss in protracting the suit and property jointly owned by the parties, the discretion of passing a preliminary decree was rejected.

8. In our considered view, the discretion exercised by the learned Single Judge in the matter which is primarily based on the conduct of the appellant and the manner in which she is contesting the proceedings cannot be termed as illegal or arbitrary warranting interference in the matter.

9. Accordingly, finding no ground, the appeals are dismissed.

CHIEF JUSTICE

V. KAMESWAR RAO, J

NOVEMBER 28, 2018

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