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

% *Date of Order: 16.11.2018*

+ **FAO 528/2018**

JASWINDER KAUR & ANR Appellants
Through: Mr.Surinder Singh, Advocate
with Mr.Sanjay Kumar,
Advocate.

versus

ANIL AHUJA Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

CM No. 47527/2018 (for exemption)

1. Allowed, subject to all just exceptions.

FAO 528/2018 & CM No. 47526/2018 (for stay)

2. The impugned order dated 19.09.2018 passed by the court of the learned Additional District Judge-06, South-East District, Saket Courts, New Delhi ('ADJ') in Civil Suit No. 1731/2017, is the subject matter of challenge in this appeal by the appellants/defendants.

3. The respondent/plaintiff has filed a suit for possession, recovery of rent and damages and permanent injunction against the appellants in respect of a Flat No.2, Block No.1, DDA Flats, Kalkaji, New Delhi (Ground Floor) as shown in red colour in the site plan annexed along with the plaint. The said premises was rented out to the appellants

initially by the rent agreement dated 11.02.2014 at a rent of Rs.16,500/- per month excluding electricity and water charges for a period of 11 months. The tenancy was renewed orally after the expiration of said period. Thereafter, the respondent/plaintiff asked the appellants to vacate the property by the letter dated 07.05.2017. A reminder dated 27.06.2017 was sent to the appellant. When the appellants failed to deliver back the possession or pay the arrears of rent, the respondent/plaintiff got issued a legal notice dated 26.09.2017 asking them to vacate the property in question within 15 days and make the payment of arrears of rent and damages w.e.f. 01.03.2017.

4. In their written statement, the appellants have, *inter alia*, pleaded that *'the said rent agreement clearly indicates that the property mentioned in the rent agreement is shop not the flat. It has come in the knowledge of the defendant no.1 that the shop in the possession of the defendant no.1 does not belong to the plaintiff. Despite this fact plaintiff illegally received monthly rent of Rs.16,500/- from the defendant no.1 for the last three years, hence the plaintiff illegally received around Rs.6,00,000/-.....'* They further pleaded that *'it is further submitted that a shop was taken on rent by the defendant no.1 which was claimed to be owned by the plaintiff and the said rent amount of Rs.16,500/- was paid for the shop. This amount was paid for around three years by the defendant no.1 but when the defendant no.1 came to know that the said shop was not owned by the plaintiff, the defendant no.1 stopped paying the rent to the plaintiff*

and requested him to show the ownership documents of the shop so that she could pay the rent of the shop but till date the plaintiff did not show any proof.....’.

5. The respondent/plaintiff filed an application under Order XXXIX Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (‘CPC’) for directions to the appellants to either deposit the admitted rent in the court or to pay the amount directly to him.

6. The respondent/plaintiff had claimed that the rent has been paid only upto February, 2017. However, during the course of arguments before the learned ‘ADJ’, the learned counsel for the appellants submitted that it has been paid up to March, 2017 @ Rs.16,500/-. After hearing both the parties, the learned ‘ADJ’ passed the following order: -

“Keeping in view the fact that rent was being paid admittedly at the rate of Rs.16,500/- and even as per contention of defendant it was not paid from April, 2017, I deem it proper to direct the defendant to pay at the said rate of Rs.16,500/- per month from April onwards during pendency of the suit. Let the arrears w.e.f. April 2017 be paid within four weeks and continued to be paid regularly at the said rate by account payee cheque or demand draft in the name of plaintiff by 7th of every month in advance. Application u/o 39 R 10 CPC stands disposed accordingly.”

7. The learned counsel for the appellants contends that the respondent/plaintiff has constructed a shop in the flat illegally and

unauthorizedly without the permission of the Delhi Development Authority (DDA) and as such the appellants cannot be made liable to make the payment of rent. He further submits that the appellants have filed an application under Order VII Rule 11 CPC for rejection of the plaint, which has not been disposed of.

8. The appellants have admitted that the premises in question was taken by them on rent @ Rs.16,500/- per month from the respondent/plaintiff by the said rent agreement. During the course of arguments, it was contended by the learned counsel for the appellants/defendants before the Ld. 'ADJ' that the rent has been paid upto March, 2017 @ Rs.16,500/-. This indicates that rent has not been paid by the appellants from April, 2017 onward. However, the appellants have been occupying and enjoying the premises in question without payment of any charges to the respondent/plaintiff, from whom they had taken the same on rent.

9. Order XXXIX Rule 10 CPC stands attracted where the subject-matter of a suit is money or some other thing that is capable of delivery and any party to the suit admits that he holds such money or other thing as a trustee for another party, or that it belongs to or is due to another party, the Court is empowered to direct the same to be deposited in the court or deliver to such last-named party, with or without security, subject to further directions. Section 151 of the CPC empowers the court to make such orders as may be necessary to meet the ends of justice and to prevent the abuse of the process of the court.

10. The appellants have been enjoying the property in question without payment of any charges, which is not permissible in law. Relationship of landlord and tenant is admitted by the appellants. Rate of rent is also not in dispute. As per the appellants, rent is due from April, 2017. Therefore, the court is empowered to direct the appellants/defendants to deposit/pay such money as it thinks fit, particularly, to prevent the abuse of the process of the court and to meet the ends of justice.

11. I do not find any illegality or infirmity in the order dated 19.09.2018 passed by the learned 'ADJ'. The petition is without any merit and accordingly dismissed with no order as to costs.

12. In view of the above, the application, being CM No.47526/2018, is also dismissed.

NOVEMBER 16, 2018

"shailendra"

VINOD GOEL, J.