

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

+ **RFA No. 110/2018**

% **5th February, 2018**

SURESH SHARMA Appellant

Through: Dr. Abhishek and Mr. Dalip
Singh, Advocates.

versus

SHAILESH AWASTHI Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 4325/2018 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

CM No. 4326/2018 (delay in filing) & CM No. 4327/2018 (delay in re-filing)

For the reasons stated in the applications, delays in filing and re-filing are condoned.

CM stands disposed of.

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit

impugning the judgment of the Trial Court dated 17.8.2017 by which the trial court has decreed the suit for possession and damages with respect to the suit property bearing no.21/22, Flat No.6, First Floor, Krishna Nagar, Safdarjung Enclave, New Delhi. Suit has also been decreed for recovery of arrears of rent amounting Rs.1,80,000/- and for use and occupation charges at Rs.20,000/- from March,2014 till receiving of possession by the respondent/plaintiff, and which rent of Rs.20,000/- is the admitted rate of rent.

2. Respondent/plaintiff filed the subject suit for possession, arrears of rent, mesne profits etc with respect to the suit property pleading that appellant/defendant is the tenant thereof in terms of the notarized lease deed dated 9.4.2011 signed by the respondent/plaintiff and the appellant/defendant. The period of lease under the lease deed dated 9.4.2011 was for 11 months and after the period of 11 months the tenancy continued from month to month. As the appellant/defendant failed to vacate the suit premises hence after serving of the legal notice dated 25.11.2013 terminating the tenancy, the subject suit was filed.

3. Appellant/defendant appeared and contested the suit and denied that there was any relationship of landlord and tenant between the parties. Suit was therefore prayed to be dismissed. It was pleaded that appellant/defendant was not in possession of the suit property. At this stage, on the aspect of existence of tenancy it will be relevant to note the pleading of the appellant/defendant in the written statement in para 2 of the preliminary objections as also para 2 of the reply on merits and these paras read as under:-

Para 2 of the preliminary objections of the Written Statement

“2. That there is no subsisting agreement between the parties, and there is no relationship between the defendant and the plaintiff as tenant and landlord qua the suit property.

Para 2 of the reply on merits

2. That the contents of para 2 of the plaint are wrong and same are denied. It is denied that the defendant is tenant of plaintiff on the basis of alleged notarized lease deed dt. 9.4.2011 signed and executed between the plaintiff and defendant. There is no subsisting and binding agreement as the said alleged lease deed dt. 9.4.2011 is not duly witnessed by two independent witnesses, hence same cannot be admitted admissible in evidence nor can be relied upon.”

(underlining added)

4. After pleadings were complete, the trial court framed the following issues:-

“1. Whether the plaintiff has no cause of action? OPD

2. Whether there is no subsisting agreement between the parties and there is no relationship of landlord and tenant between the plaintiff and defendant? OPD
 3. Whether the suit is bad for misjoinder and non-joinder of the parties? OPD
 4. Whether the plaintiff is entitled to decree for possession, as prayed for? OPP
 5. Whether the plaintiff is entitled to damages/mesne profits @ Rs.50,000/- per month, as prayed for? OPP
 6. Whether the plaintiff is entitled to decree of Rs.1,80,000/- towards arrears of rent w.e.f. June 2013 to February 2014? OPP
 7. Whether the plaintiff is entitled to pendente lite and future interest @ 18% per annum on the outstanding amount from the date of filing of the suit till its realization? OPP
 8. Relief.
5. Parties led evidence and this aspect is recorded in paras 5 and 6 of the impugned judgment which read as under:-

“5. The plaintiff, in order to prove his case, examined himself as PW-1 and his affidavit for evidence Ex.PW1/1. Sh. Pramod Kumar was examined as PW-2 and his affidavit for evidence Ex.PW2/A. Sh. Ravi Sharma was examined as PW-3 and his affidavit for evidence Ex.PW3/A. Sh. Satyajeet Srivastava, P.O. ICICI Bank, South Extension, Part II, New Delhi was examined as PW-4. Sh. Dhiraj Kaushal was examined as PW-5 and his affidavit for evidence Ex.PW5/1. The following documents were relied upon by the plaintiff.

1. Ex.PW1/A is the copy of sale-deed dated 10.11.2008.
2. Ex.PW1/B is the copy of Rent Agreement dated 09.04.2011.
3. Ex.PW1/C is the site plan.
4. Mark ‘A’ is the copies of Account Statements.

5. Ex.PW1/E (Colly) is the speed-post/courier dated 25.11.2013.

6. Ex.PW4/1 (Colly) is the summary of account w.e.f. 01.11.2007 to 07.04.2015.

7. Ex.PW5/A is the lease-deed dated 24.09.2013.

6. The defendant, in order to prove his defence, examined himself as DW-1 and his affidavit for evidence Ex.DW1/A. The defendant has not relied upon any documents.

6. I may note that there is no dispute that the respondent/plaintiff is the owner of the suit property. Appellant/defendant also does not claim any right, title and interest in the suit property. Therefore, even if the appellant/defendant is not a tenant, since the respondent/plaintiff is the owner and the appellant/defendant has no right, title and interest in the suit property, the suit for possession had to be decreed.

7. Additionally, in my opinion, the trial court has rightly held that there is a relationship of landlord and tenant between the parties by placing reliance upon a lease deed dated 9.4.2011 which has been proved as Ex.PW1/B by the respondent/plaintiff. In his affidavit by way of evidence respondent/plaintiff has not only proved the lease deed but has also proved the signatures of the respondent/plaintiff at point A and that of the appellant/defendant at point B on this lease deed dated 9.4.2011 Ex.PW1/B. The affidavit by way of evidence

filed by the appellant/defendant does not depose that the lease deed Ex.PW1/B does not bear the signatures of the appellant/defendant. Once that is so, in my opinion, the trial court has rightly relied upon the lease deed dated 9.4.2011 to hold the existence of relationship of landlord and tenant between the parties.

8. In my opinion, there is another reason why the appellant/defendant should be held as a tenant because respondent/plaintiff in para 6 of his affidavit by way of evidence deposed with respect to the appellant/defendant continuously depositing Rs.20,000/- as rent in the bank account of the respondent/plaintiff. Though the statement of account was filed and proved by the respondent/plaintiff as PW1/D, and deposits in the accounts were referred to as X-1 to X-5 in a series, however, this statement of account was de-exhibited as it was only a photocopy, but even if the statement of account is de-exhibited the factum has been deposed to by the respondent/plaintiff of the appellant/defendant depositing rent of Rs.20,000/- in the account of the respondent/plaintiff but the appellant/defendant in his affidavit of evidence has not deposed that he has not deposited any rent in the

bank account of the respondent/plaintiff. Therefore for this additional reason the trial court was justified in arriving at a conclusion of the appellant/defendant being a tenant in the suit premises.

9. Learned counsel for the appellant/defendant argues that appellant/defendant was not in possession and someone else was the tenant in the suit property, however, on going through the written statement filed by the appellant/defendant in the trial court it is seen that there is no mentioning of the name of the alleged tenant who is said to be the real tenant of the respondent/plaintiff.

10. In view of the aforesaid discussion, appellant/defendant cannot successfully argue that he was not the tenant or that he is not liable to pay the *mesne* profits as decreed.

11. There is no merit in the appeal. Dismissed.

FEBRUARY 05, 2018/ib

VALMIKI J. MEHTA, J