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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 29th August, 2019

+ RSA 39/2019 & CM Nos. 22009/2019 & 8525/2019

PREM CHAND

..... Appellant

Through: Mr. Y.S. Panwar, Adv.

versus

RAMBHOLI DEVI @ RAM BHOOLI DEVI Respondent

Through: Mr. Dwapayan Gupta with
Ms. Shikha Goyal, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent (decree holder) had instituted Civil Suit (7804/2016) against the appellant (judgment debtor) on 05.09.2013 praying for a decree for recovery of possession, arrears of rent and *mesne profits* (damages) in respect of premises described as a shop on the ground floor of property bearing no. 592/22-B, Nakul Gali, Vishwas Nagar, Shahdara, Delhi- 110032 (herein after referred to as suit shop).

2. The decree holder claimed and the judgment debtor admitted that she was landlady in respect of the suit shop, he being a tenant therein, the tenancy having been created by a rent deed dated 01.07.2003 which was proved at the trial as Ex. P7. The case of the decree holder (plaintiff) was that though the initial rate of rent was

fixed at Rs. 2500/- per month and the tenancy at that stage was created for a period of eleven months, it was renewed from time to time by written rent agreements, lastly it having been renewed by a rent deed dated 01.05.2011 (Ex. P2), the rate of rent settled at that stage being Rs. 4400/- per month.

3. The suit was contested by the judgment debtor (defendant) on various grounds, his prime contention being that the rate of rent has remained @ Rs. 2,500/- per month only. His claim was that he was not in arrears of rent w.e.f. 01.04.2012 and has paid rent till June, 2013 (as was alleged). He contended that the rent at the said settled rate had been tendered but refused to be accepted by the landlady. The defendant also contested the case by claiming that jurisdiction of the civil court was barred under provisions of the Delhi Rent Control Act, 1958, this in view of his contention as to the rate of rent.

4. The suit was decreed by the Civil Judge, by judgment dated 19.05.2017, the contentions of the defendant as to the rate of the rent having been rejected. It is also to be noted here that defendant had claimed *inter alia* that at the time of creation of the tenancy he had given an amount of Rs. 50,000/- as security to the landlady which required to be adjusted. This contention was also rejected. Thus, the decree for recovery of possession was granted in respect of the suit shop in favour of the plaintiff, the judgment debtor (defendant) also being burdened with the liability to pay damages at Rs. 8,800/- per month from 01.04.2012. This adjudication was based on the evidence adduced through Ashok Chaddha (PW-2), a property dealer

operational in the area, confirming that the suit shop could fetch a rent of Rs. 9000/- per month, the tenancy having come to an end on account of efflux of time and in terms of the legal notice dated 30.07.2013 (Ex. P4).

5. The judgment and decree dated 19.05.2017 was challenged by the defendant before the District Judge of the Shahdara District by RCA No. 114/2017. Though the findings of the trial court with regard to the existence of landlord-tenant relationship and the rate of rent being beyond the one covered by the rent restriction law were upheld, the decree of recovery of possession being also endorsed by the first appellate court, by its judgment dated 06.10.2018, the finding as to the rate of rent and the directions about damages were partially modified. It is noted that the first appellate court concluded that the rate of rent could not be more than Rs. 4000/- per month w.e.f. 01.05.2011. It also found that the landlady had, by a suggestion to the defendant in his cross- examination, admitted the receipt of Rs. 10,000/- as security deposit which amount was required to be adjusted.

6. The first appellate court further taking note of certain payments that had been made by the judgment debtor in lump-sum allowed the adjustment of such amounts and also of Rs. 10,000/- it being the refundable deposit. It reduced the damages to the rate of Rs. 5000/- per month making it effective from 30.07.2013, the date of the legal notice till delivery of vacant possession. It clarified that decree of *mesne profits* would be executable only upon the decree holder paying corresponding court fee.

7. The judgments of the two courts below are sought to be challenged by this regular second appeal.

8. During the course of hearing, the counsel for the respondent/decreed holder submitted that though the modification made by the first appellate court in the rates of rent and damages were uncalled for and unjustifiable, he (decree holder) does not seek correction in this regard and, therefore, has not filed any counter-objections or cross-appeal. He clarified that the respondent/decreed holder is accepting the decree of eviction and *mesne profits* as modified by the first appellate court without any objection.

9. Having heard both sides and having gone through the record, this Court finds no question of law arising in the present matter on which the second appeal can be maintained against the consistent findings of the two courts below on the issue of landlord-tenant relationship and the rate of rent being more than Rs. 3500/- per month. The rent deed (Ex. P7) whereby the appellant was initially inducted on 1.07.2013 clearly showed the rate of rent to be Rs. 2500/- per month. There is ample evidence showing the renewal of the said lease from time to time by written rent agreements inclusive of rent deed dated 04.06.2004 (Ex. P8), rent deed dated 20.11.2017 (Ex. P9) and rent deed dated 01.05.2011 (Ex. P2). No doubt, the appellant disputed the execution of the last said rent deed. But then, his denial of the execution of the said document is not acceptable. Given the execution of the previous chain of documents, the word of the decree holder (PW-1), it being fully corroborated by PW-2, an attesting witness to

the last said renewal, cannot be disbelieved. The plea that an amount of Rs. 50,000/- was paid at the time of the initial tenancy is without any foundation. There is absolutely no cogent proof of such payment. The word of the appellant (DW-1), though sought to be supported by deposition of two witnesses Nepal Singh (DW-2) and Rakesh (DW-3) cannot be accepted. The two said witnesses expressly conceded that they had not seen any such payment being made.

10. The appeal thus is devoid of merits. It is dismissed. This also disposes of pending applications.

R.K.GAUBA, J.

29th August, 2019

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