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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 147/2019
KANWALJEET KAUR Petitioner
Through: Mr. J.M. Kalia, Advocate.

versus

VIJAY SARTHI Respondent
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **28.01.2019**

CM APPL. 3966 & 3967/2019 (Ex.)

Exemptions allowed subject to all just exceptions.

The applications stand disposed of.

CM(M) 147/2019

The petitioner assails the impugned order dated 13.08.2018 of the learned Trial Court of the ADJ-05, South, Saket in CS No.204/17, vide which an application under Order XII Rule 6 of the CPC filed by the plaintiff thereof i.e. the petitioner herein was declined with the matter having been directed to be listed for admission and denial of documents and framing of issues.

It has been submitted on behalf of the petitioner i.e. the plaintiff to the said suit that the jural relationship of the landlord/tenant is not disputed and that the rent has been paid by the defendant to the plaintiff in as much as the bank account statement of the plaintiff

indicates a sum of the rent amount being deposited per month into the account of the plaintiff and that there are also receipts on the record indicating the payment of rent by the defendant to the plaintiff and that thus, the decree under Order XII Rule 6 of the CPC for possession ought to have been granted.

Inter alia reliance is placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***"Payal Vision Ltd. Vs. Radhika Choudhary"*** in Civil Appeal No.6734 of 2012 with reference to observations in Para 16 & 17, which read to the effect:-

"16. To the same effect is the decision of Privy Council in AIR 1937 251 (Privy Council) where Privy Council observed:

The Section postulates that there is a tenancy still continuing, it had its beginning at a given date from a given landlord. It provides that neither a tenant nor any one claiming through a tenant shall be heard to deny that that particular landlord had at that date a title to the property. In the ordinary case of a lease intended as a present demise (which is the case before the Board, on this appeal) the Section applies against the lessee, any assignee of the terms and any sub-lessee or licensee. What all such persons are precluded from denying is that the lessor had a title at the date of the lease and there is no exception even for the case where the lease itself disclosed the defect of title. The principle does not apply to disentitle a tenant from disputing the derivative title of any who claims to have since become disentitled to the reversion.

(Emphasis supplied)

17. In the light of the above, the trial Court was, in our view, perfectly justified in decreeing the suit for possession filed by the Appellant by invoking its powers under Order

XII Rule 6 of the Code of Civil Procedure. Inasmuch as the High Court took a different view ignoring the pleadings and the effect thereof, it committed a mistake.”,

submitting *inter alia* thus, to the effect that the defendant/ tenant cannot dispute the relationship of landlord- tenant between the parties and that then a decree under Order XII Rule 6 of the CPC ought to have been passed.

A bare perusal of the impugned order indicates that it has been observed therein to the effect:-

“Defendant filed written statement admitting that he was the tenant of Late Sh. Jawant Singh. He averred that he paid the rent to an Advocate Sh. Hans Raj till September 2015. It is averred that thereafter both plaintiff and one Ms. Harminder Kaur Kanda started demanding the rent so he stopped paying rent to both of them. The defendant also reveal that a litigation is pending between the plaintiff and Ms. Harminder Kaur Kanta before Hon’ble High Court of Delhi with respect to the title over the suit property and for probate of the Will.”,

and there are also observations in the impugned order to the effect:-

“There is no denial on the part of the plaintiff that a probate petition with respect to the Will is pending.

It is clear from the averments made in the plaint that the plaintiff is claiming to have inherited the landlordship over the tenanted premises on the basis of a Will. Probate proceedings with respect to the Will are pending. A judgment in a probate proceedings is a judgment in rem binding upon this Court. Since the Will on the basis of which plaintiff is claiming to have inherited the landlordship is the subject matter of probate, this Court

cannot rely upon the Will to say that plaintiff has inherited the landlordship. It is the case of defendant that he had started paying rent to Advocate Sh. Hans Raj and there is no averment that rent was ever paid to the plaintiff. Hence, there is no admission on the part of the defendant regarding existing of jural relationship of landlord and tenant between him and the plaintiff.”

It has been categorically observed vide the impugned order that there is no admission regarding existence of the jural relationship between the plaintiff and the defendant and thus, the application under Order XII Rule 6 of the CPC is not maintainable and that the plaintiff would have to prove her case during the trial and that the suit cannot be decreed on the basis of stated admissions.

As regards the contention that has been raised on behalf of the petitioner herein in relation to the bank account statement of the petitioner, the bank statement *per se* is insufficient without any further indication therein as to why the amount of Rs.12,100/- is indicated to have been deposited into the account of the petitioner. As regards, the reliance, that has been placed on two agreement receipts of rent which are stated receipts, purportedly signed by the defendant/ tenant, it is essential to observe that there is no indication thereon to indicate that the said receipts relate to payment of any rent by the defendant/ tenant to the petitioner herein i.e. the plaintiff to the said suit.

In the circumstances, it is apparent that the impugned order dated 13.08.2018 cannot be faulted. Taking into account the factum that as indicated vide the impugned order dated 13.08.2018 itself, the

matter was listed for admission and denial of documents and as to whether the defendant has disputed the issuance of the said receipts in favour allegedly of the plaintiff i.e. the petitioner herein, cannot be taken into account without such admission and denial of documents having taken place and without the defendant admitting issuance of such receipts in favour of the petitioner.

There is thus, no infirmity in the impugned order dated 13.08.2018. The present petition is thus declined.

ANU MALHOTRA, J

JANUARY 28, 2019/NC