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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 04th SEPTEMBER, 2019

+ RSA 179/2019 and CM No. 39849-39850/2019

KEWAL KRISHAN ABROL

..... Appellant

Through: Mr. Anuj Kumar Garg, Advocate

versus

REENA BALI

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent had instituted civil suit (CS-SCJ 8009/16) against the appellant herein on 03.06.2013 which, after trial was decided by judgment dated 05.05.2018 whereby a decree of possession in respect of premises no.J-8, House no.84, Ground Floor, Rajouri Garden, New Delhi was passed alongwith decree for recovery of arrears of rent at the rate of Rs.7,000/- per month with effect from March, 2013 till the date of the decree with interest at the rate of 9% p.a. till realization. The appellant (hereinafter referred to as the defendant / judgment debtor) challenged the said decision by appeal by RCA 73/2018 which was dismissed by the court of the Additional District Judge by judgment dated 29.05.2019, the finding of the trial court having been upheld.

2. Feeling aggrieved, the judgment debtor has come up to this court with the second appeal invoking the jurisdiction under Section 100 of the Code of Civil Procedure, 1908 (CPC).

3. The learned counsel for the appellant has been heard at length and the record perused. This court finds no substance in the appeal. The reasons may be set out hereinafter.

4. The respondent (plaintiff or decree holder) admittedly is the owner of the suit property. It is undisputed that the defendant was inducted as a tenant in the suit property by the respondent in the year 2001. Though there is some controversy as to the month of 2001 when the tenancy had actually commenced nothing turns on it as the dispute essentially related to the rate of rent. While the plaintiff's case was that the monthly rent was Rs.7,000/- p.m. exclusive of other charges, the defendant had claimed in contest that the rent was initially Rs.1,500/- p.m. though he also would claim that by the time of institution of the suit, the rent had been increased to Rs.2,000/- p.m. only. He also claimed that he had paid an amount of Rs.2,00,000/- (Rupees two lakh) as security at the time of creation of the tenancy. It was on the basis of claim of rate of rent that objection to the jurisdiction of the civil court was taken, reference being made to Section 3(c) read with Section 50 of Delhi Rent Control Act, 1958. The trial court noted the evidence and reached the conclusion that the evidence adduced by the plaintiff merited acceptance. The claim of the defendant (appellant) about payment of Rs.2,00,000/- (Rupees two lakh) as security at the time of inception of the tenancy was rejected

for the reason no proof, other than oral word, was adduced, it having been found to be unpalatable that a tenant entering into lease at Rs.1500/- p.m. (as was the rate claimed) would be willing to pay such disproportionately high amount as security.

5. Admittedly, there has been no formal lease deed executed. Concededly, there are no rent receipts relied upon by the either side. There is no proof of payment of rent for any of the months of the tenancy adduced by the appellant. The claim of the appellant in such regard was primarily oral though he would also refer to certain deposits made by him under Section 27 of Delhi Rent Control Act, 1958 by petitions (Ex. DW1/2 and DW1/4) after tender of rent at Rs.2,000/- p.m. by money order (ex. DW1/1), the request for such deposits having been allowed by Additional Rent Controller by order (ex. DW1/3).

6. The trial judge, however, found the evidence of the plaintiff about the rate of rent corroborated by the Income Tax Returns (Ex. DW1/4 – collectively) for assessment years 2001-2002 to 2006-2007. There is an elaborate discussion in the impugned judgment of the trial court taking note of the rental income from the subject property having been reported contemporaneously to the revenue for the corresponding periods, the said declarations in the Income Tax Returns confirming the rate of rent pleaded by the plaintiff (decree holder). The view taken by the trial court was upheld by the first appellate court thereby endorsing the finding of fact.

7. The second appeal questioning the finding of facts cannot be entertained. No questions of law arise. The appeal is dismissed in *limine*. This disposes of the pending applications as well.

R.K.GAUBA, J.

SEPTEMBER 04, 2019

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