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

Date of decision: 22nd October, 2019

+ **CM(M) 1417/2019 and CM APPL. 42890/2019, 42891/2019**

VIJAY KUMAR SURI Petitioner

Through: Mr. A.K. Dhupar, Advocate (M:
9810263766).

versus

SURINDER PAL SINGH (DECEASED) THR LRS Respondents

Through: Mr. Praveen Suri, Advocate (M:
9810928188).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition has been filed by the Petitioner/Tenant (*hereinafter*, “Tenant”) challenging the order dated 21st April, 2018 by which the Id. Trial Court has directed payment of the admitted rent w.e.f. 1st April, 2013 @ Rs. 2,200/- per month. The said order reads as under: -

*“Counsel for defendant has submitted that the rent amount @ Rs. 2200/- has been deposited in the Court of Rent Controller upto 31st March, 2013 and the copy of receipts were filed on court record on last date. It is further submitted that defendant has been sending money orders but the Plaintiff is deliberately not accepting the same. Proxy Counsel has sought pass over for 12.15 pm for clarification regarding the rent amount deposited before the Rent Controller. Counsel for defendant has submitted that he may not be able to appear at 12.15 pm but court may pass appropriate order after hearing the Counsel for Plaintiff.
At 12.15 pm.*

Counsel for Plaintiff has submitted that the defendant has not filed the original receipts but court may pass the order since 1st April, 2013. It is further submitted that however the plaintiff has not received any rent since 01.12.2012. I have considered the submissions. It is admitted by the defendant regarding the rent being Rs. 2200/- whereas higher rent has been claimed by the plaintiff. However, without prejudice to the higher rent the present application under order 15A CPC has been moved by the plaintiff to pay the admitted rent since 01.12.2012. Considering the pleadings along with the copy of receipt regarding payment of rent upto 31.03.2014 before the rent controller and the submissions of the Counsels, the application is allowed since 01.04.2013 and the defendant is directed to pay the rent at the rate of Rs. 2200/- per month since 01.04.2013 till date and continue to pay such rent on each hearing till disposal of the suit.

Put up on 09.05.2018 for payment of the rent accrued till date.”

2. The Tenant approached the Id. ADJ by way of appeal, challenging the said order. Vide order dated 4th June, 2018, the Id. ADJ stayed the order dated 21st April, 2018, subject to deposit of 50% of the total arrears of rent.

The said order reads as under: -

“Operation of order dated 21.04.2018 is stayed subject to deposit of 50% of total arrear of rent as per the direction of Ld. Trial Court dated 21.04.2018 before next date of hearing i.e. 02.07.2018.

Let notice of appeal be issued to the respondent on filing of PF/RC, returnable for 25.08.2018. TCR be called for NDOH.

Copy of the order be given dasti.”

3. Ld. counsel for the Tenant submits that the said order has been

complied with by the Tenant. However, on 1st August, 2019, the ld. ADJ rejected the Tenant's appeal on the ground that the same is not maintainable under Order XLIII Rule 1 CPC. Hence, the Tenant challenges the order dated 21st April, 2018 before this Court.

4. Ld. counsels for the parties inform this Court that while the present petition was being preferred by the Tenant, on 16th September, 2019, the ld. Trial Court struck off the Tenant's defence for non-payment/non-deposit of the arrears of rent.

5. The submission of ld. counsel for the Tenant is that one of the issues which has been framed in the suit relates to the maintainability of the suit, as it is the Tenant's contention that the suit is barred by Section 50 of the Delhi Rent Control Act, 1958 (*hereinafter*, "*DRC*"). Ld. counsel submits that if the suit itself is not maintainable, the order directing deposit of the rent is vitiated and, in fact, the maintainability of the suit itself ought to be decided first.

6. On the other hand, ld. counsel for the Respondent/Landlord (*hereinafter*, "*Landlord*") submits that the Tenant's defence having now been struck off, on account of non-deposit of amounts, the maintainability of the suit no longer requires to be adjudicated.

7. Ld. counsel for the Tenant submits that while directing deposit of arrears of rent since 1st April, 2013, the amounts spent towards the water bill and installation of the meter have not been adjusted.

8. This Court has considered the submissions of the parties and the pleadings on record. A perusal of the plaint shows that the Landlord's case is that the rent amount was Rs. 4,000/-, exclusive of electricity charges along with enhancements as pleaded in the plaint. In response, however, in the

written statement, the Tenant has taken the position that monthly rent was Rs. 2,000/-, which was enhanced to Rs. 2,200/- in January, 2011.

9. A perusal of the impugned order shows that the Id. Trial Court has, on the basis of the plea in the written statement, directed that the Tenant pay the admitted rent to the Landlord.

10. In ***M/s Atma Ram Properties (P) Ltd vs M/s Federal Motors Pvt. Ltd. (2005) 1 SCC 705***, the Hon'ble Supreme Court has clearly observed that in cases involving Landlords and Tenants, the Landlord cannot be denied enjoyment of the property and also not receive any rent. The observations of the Supreme Court are as under:

“4. Ordinarily, this Court does not interfere with discretionary orders, more so when they are of interim nature, passed by the High Court or subordinate courts/tribunals. However, this appeal raises an issue of frequent recurrence and, therefore, we have heard the learned counsel for the parties at length. Landlord-tenant litigation constitutes a large chunk of litigation pending in the courts and tribunals. The litigation goes on for unreasonable length of time and the tenants in possession of the premises do not miss any opportunity of filing appeals or revisions so long as they can thereby afford to perpetuate the life of litigation and continue in occupation of the premises. If the plea raised by the learned Senior Counsel for the respondent was to be accepted, the tenant, in spite of having lost at the end, does not lose anything and rather stands to gain as he has enjoyed the use and occupation of the premises, earned as well a lot from the premises if they are non-residential in nature and all that he is held liable to pay is damages for use and occupation at the same rate at which he would have paid even otherwise by way of rent and a little amount of costs which is

generally insignificant.

...

18. That apart, it is to be noted that the appellate court while exercising jurisdiction under Order 41 Rule 5 of the Code did have power to put the appellant tenant on terms. The tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is statutory but his prayer for grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the appellate court. While ordering stay the appellate court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate court to put the appellant tenant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd. [(1999) 2 SCC 325] this Court has held that once a decree for possession has been passed and execution is delayed depriving the judgment-creditor of the fruits of decree, it is necessary for the court to pass appropriate orders so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property.”

Non-payment of rent would cause enormous prejudice to the Landlord if the admitted amount is not paid during the pendency of the proceedings before the Id. Trial Court.

11. In the present case, the question as to what is the rent which is due and payable by the Tenant is yet to be adjudicated by the Id. Trial Court. However, in the written statement the admitted position is that the Tenant has stated that the amount of Rs. 2,200/- per month was payable by him.

Under these circumstances, the fact that the suit is pending adjudication including on the issue of maintainability does not mean that the admitted rent cannot be directed to be paid to the Landlord.

12. Accordingly, it is directed that the Tenant shall pay the entire amount, as directed by the Id. Trial Court vide order dated 21st April, 2018, after deducting the amount which has already been deposited i.e., to the tune of 50% of the total arrears of rent.

13. Insofar as the water and installation charges are concerned, if the same are duly supported by a receipt, suitable adjustment shall be given by the Landlord in respect thereof. It is admitted that 50% of the total rent amount, as directed to be deposited by the Id. Appellate Court, has been released to the Landlord. The remaining 50% of arrears shall be paid to the Landlord @ Rs. 2,200/- per month up till date, within a period of four weeks from today. If the original receipt showing the payment of water and installation charges is produced, the Landlord shall make suitable adjustment. Subject to the above payments being made within a period of four weeks from today, the order directing the defence of the Tenant to be struck of shall stand set aside. The petition shall proceed for trial and shall be disposed of expeditiously, not later than nine months from today.

14. The petition and all pending applications are disposed of. *Dasti.*

PRATHIBA M. SINGH
JUDGE

OCTOBER 22, 2019
MR