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

Date of Decision: 5th November, 2019

+ **CM (M) 1481/2019 and CM APPL. 45035/2019**

BRAHAM PRAKASH DHALLA Petitioner

Through: Mr. Deepak Gupta and Mr. Amit,
Advocates (M: 9999178785).

versus

SHANTA NAGPAL & ORS. Respondents

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition challenges the order dated 3rd April, 2019 by which the Id. Trial Court has directed payment of Rs.7,500/- per month for use and occupation charges. The operative portion of the order reads as under: -

“In view of the above discussion, the application under Section 151 CPC filed by the plaintiffs is allowed. The defendant is directed to deposit the sum of Rs. 7,500/- p.m. as use and occupation charges from 01.01.2015 till the disposal of the present application (which includes the month of April, 2019) within a period of three months from today and the defendant shall continue to deposit a sum of Rs.7,500/- every month on or before 15th day of each month from May 2019 onwards. The aforesaid order does not tantamount to decision on the merits and the same is only an interim measure. The amount which remains deposited in the Court would be subject to outcome of this case. After the amount is deposited, appropriate orders would be passed in due course to consider for keeping the deposited amount in fixed deposits.”

2. The Petitioner/Tenant (*hereinafter*, “Tenant”) is a lawyer occupying property bearing No. 3263, Tiraha Behram Khan, Darya Ganj, New Delhi – 110002 (*hereinafter*, “suit property”). The Respondents/Landlords (*hereinafter*, “Landlords”) had filed a suit for declaration, possession, recovery of damages/use and occupation charges and for permanent injunction before the Id. ADJ. The suit is pending adjudication. During the pendency of the suit, an application came to be moved by the landlords seeking payment of use and occupation charges. The prayer in the application was as under: -

“It is, therefore, prayed that the defendant be directed to pay to the plaintiffs or deposit in this Hon'ble Court a sum of Rs.9,00,000/- (Rs. Nine lilacs. Only) as damages / use and occupational charges as claimed by the latter i.e. @Rs.25,000/- p.m from 01.01.2015 to 31.12.2017.

It is further prayed that the defendant be also directed to pay to the plaintiffs or deposit in the court, damages / use and occupation charges at the same rate i.e. Rs.25,000/- p.m w.e.f 01.01.2018 till the disposal of the present suit.

Any other order which this Hon'ble Court deems fit and proper, be also passed in favor of the plaintiffs.”

The Id. Trial Court has, by the impugned order dated 3rd April, 2019, directed, as against the amount of Rs. 25,000/- per month claimed by the Landlords, payment of Rs. 7,500/- per month w.e.f. 1st January, 2015.

3. The submissions made by the Id. counsel appearing for the Tenant is that the suit itself was not maintainable as no notice was issued under Section 107 read with Section 111 of the Transfer of Property Act, 1882. Thus, the suit is liable to be dismissed in terms of various judgments of the

Supreme Court and High Courts. Id. counsel further submits that as the Landlords had preferred an eviction petition under the Delhi Rent Control Act, 1958, which was pending at the relevant point, no occasion arose for fixing a sum of Rs. 7,500/- per month for use and occupation charges. According to Id. counsel for the Landlords, the eviction petition has now been withdrawn.

4. The Court has considered the submissions made on behalf of the Tenant. The Id. Trial Court has observed that in the written statement to the suit, the Tenant has categorially denied there being a landlord-tenant relationship between the parties. Under such circumstances, the Id. Trial Court has followed the judgment of a Id. Division Bench of this Court in ***Naeem Ahmed v. Yash Pal Malhotra (Deceased) Through LRs and Anr., 188 (2012) DLT 579*** as also the judgment of a Id. Single Judge of this Court in ***M/s M.C. Aggarwal HUF v. Sahara India, 2011 (183) DLT 175*** and has considered the market rate to fix the monthly use and occupation charges. A perusal of the pleadings before the Court shows that in the written statement, at page 131, the Tenant clearly avers as under: -

*“4. ... It is totally denied that the defendant was a tenant in respect of suit property which was let out to him by the erstwhile owners for residential purpose.
...”*

5. The Tenant has also disputed the title of the Landlords in the Written Statement. It is in view of this stand taken in the written statement that the Id. Trial Court has come to the conclusion that the landlord-tenant relationship has been disputed by the Tenant and hence, rent at the market rate is liable to be deposited. At this stage, when admittedly the Tenant is in possession of the suit property and, in fact, claims to be using it for office

purposes, the amount fixed by the Id. Trial Court is not unreasonable. Further, a perusal of the trial court record also shows that the Tenant's residence is in a posh South Delhi colony and hence, it cannot be stated that the Tenant cannot afford to make the payment as per the impugned order. Under these circumstances, no interference is called for against the impugned order dated 3rd April, 2019.

6. The Tenant, however, submits that since the amount is substantial, as it dates back to four years at Rs. 7,500/- per month, some time may be granted for payment of the money. The Tenant is accordingly permitted to deposit the money in four equal instalments on a monthly basis. The said deposit shall be made before the Id. ADJ and shall be retained in an interest-bearing fixed deposit. The amount payable is approximately Rs. 4 lakhs, as per the Tenant. It is directed that a monthly deposit of approximately Rs. 1,00,000/- each shall be made on 1st December, 2019, 1st January, 2020, 1st February, 2020 and 1st March, 2020 in the trial court. The amounts shall be kept in an interest-bearing FDR and shall abide by the Id. Trial Court's final decision in the suit. Apart from this modification the impugned order is sustained.

7. The petition and all pending applications are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 05, 2019
MR