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

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Date of Order: 07.01.2019

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F.A.O. No.85/2018

PARAMJEET SINGH KALSI

..... Appellant

Through: Mr. H.L. Narula & Mr. N.L. Anand,
Advocates with appellant in person.

Versus

MANOJ SHUKLA @ VIJAY & ANR

....Respondents

Through: Mr. Shiv Kumar Sharma, Advocate
for R-1.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

1. The impugned order dated 06.02.2018 passed by the court of learned Additional District Judge, West District, Tis Hazari Courts, Delhi, ('ADJ') in a Civil Suit No.761/2017 dismissing the application of the appellant/plaintiff under Order XXXIX Rule 10 of Code of Civil Procedure, 1908 ('CPC') is the subject-matter of challenge in this appeal. The application was dismissed by the learned ADJ for the reason '*There is no agreement between plaintiff and defendant No.1. There is no admitted rate of rent which is stated to have not been paid. Hence, no orders can be passed under Order 39 Rule 10 CPC.*'

2. The brief facts of the case are that the appellant filed a suit for recovery of possession, arrears, damages and perpetual injunction

against the respondents/defendants in respect of property No.18/30, Gali No.5, Railway Line Side, Anand Parbat Industrial Area, Delhi-110005, as shown in the red colour in the site plan, which is bounded on the North by property No.18/30-A, on the South by property No.18/29, on the East by Drain (*Nala*) and on the West by Street. It is pleaded in the plaint that both the respondents claiming themselves to be close friends and associates of each other, jointly approached the appellant for being inducted as licensee in the said property, shown in red colour in the site plan, on the first floor. On behalf of both the respondents, an agreement dated 25.05.2015 was executed by respondent No.2 for taking the said property on license for a period of eleven months with effect from 01.06.2015 on a licence fee @ Rs.21,000/- per month. It is further pleaded that the appellant has obtained a separate electricity connection vide CA No.60021166438 for exclusive use by respondent No.1 and it was agreed that the electricity charges shall be paid by cheque by respondent No.1 directly to the service provider. The appellant has further pleaded in the plaint that both the respondents have failed to pay him the license fee/rent with effect from May, 2016. He pleaded that the agreement dated 25.05.2015 stands expired by efflux of time on 30.04.2016 and occupation of the suit premises by respondent No.1 thereafter is unauthorized and illegal.

3. The respondent No.2 has neither appeared before the trial court nor filed any written statement and he is stated to be ex-parte.

4. The respondent No.1 in his written statement pleaded that *'the defendant No.1 had taken the suit property from the plaintiff on 20.03.2015 as rent free accommodation as the plaintiff took Rs.13,00,000/- (Rs.Thirteen Lakhs) from the defendant No.1 as security without interest.*

It is very pertinent to mention that it was a privity of contract between the plaintiff and defendant No.1 orally. That the plaintiff will use Rs.13,00,000/- without any interest and till the suit property is vacated by the defendant No.1 voluntarily, from his free will or that till Rs.13,00,000/- as security is refunded to the defendant No.1. No amount shall be claimed from the defendant No.1 in any manner except the electricity charges shall be payable by the defendant No.1 either to the plaintiff or to the electricity company according to the consumption shown in electricity meter installed exclusively for the use of the defendant No.1.'

5. While replying para No.4 of the plaint, the respondent No.1 pleaded that *'the defendant No.1 has never executed any rent agreement on 25.05.2015 or thereafter or at any point of time. It is very pertinent to mention that the suit property handed over on 20.03.2015 by the plaintiff as a rent free accommodation as the plaintiff took Rs.13,00,000/- from the defendant No.1 as security without interest.'* While replying para No.8 of the plaint, the respondent No.1 pleaded that *'it is admitted only to the extent that the electricity connection being CA No.60021166438, the said connection is being used exclusively by the defendant No.1 and the electricity*

charges are being paid by the defendant No.1 directly to the authorities concerned.'

6. It is submitted by the learned counsel for the appellant that the respondent No.1 has admitted that he has been in occupation of the property in question, using the said electricity connection and paying the electricity charges to the service provider. He contends that no proof of alleged payment of Rs.13 lacs has been placed on the record. He contends that the respondent No.1 has been enjoying the property without payment of any charges by taking false plea of cash payment of Rs.13 lacs. He submits that at least till the disposal of the suit, the respondent should be directed to deposit the amount @ Rs.21,000/- p.m in the trial court from May, 2016.

7. *Per contra*, learned counsel for the respondent submits that the respondent No.1 had paid Rs.13 lacs to the appellant on 20.03.2015 by cash as rent free security. He submits that respondent No.1 is not a tenant but a lawful user in the property in question. He contends that since there is no admission, the respondent No.1 cannot be directed to deposit any amount in the court. He has relied upon the judgment of the Single Bench of this court in F.A.O. No.386/2013 decided on 21.02.2014 titled as *Shri Harish Dhingra vs. Ms. Rosy Arora*.

8. I have heard the learned counsel for the parties.

9. Order XXXIX Rule 10 CPC stands attracted where the subject-matter of a suit is money or some other thing that is capable of delivery and any party to the suit admits that he holds such money or other thing as a trustee for another party, or that it belongs to or is due

to another party, the court is empowered to direct the same to be deposited in the court or deliver to such last-named party, with or without security, subject to further directions.

10. To mitigate the hardship caused to the owner/lessor of a property in a suit for eviction of an unauthorized occupant/lessee or for recovery of rent and future mesne profits, Order XV A CPC was incorporated and made applicable to Delhi by an amendment with effect from 14.11.2008 which reads as under :-

"Striking off defence in a suit by a lessor

1) In any suit by a owner/lessor for eviction of an unauthorized occupant/lessee or for the recovery of rent and future mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order (within such time as the court may fix) and thereafter continue to deposit in each succeeding month the rent claimed in the suit as the Court may direct. The defendant shall continue to deposit such amount till the decision of the suit unless otherwise directed.

In the event of any default in making the deposit as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.

2) Before passing an order for striking off the defence, the Court shall serve notice on the Defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the Defendant should be relieved from an order striking off the defence.

(3) The amount deposited under this rule shall be paid to the plaintiff owner/lessor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it would not also be treated as a waiver of notice of termination."

11. It is noticed from a perusal of the abovesaid provision that the word 'rent' is not qualified by the word 'admitted' in contrast to Order XXXIX Rule 10 CPC which envisages an admitted amount. Under Order XV-A CPC, the court is empowered in any suit by an owner/lessor for eviction of an unauthorized occupant/lessee or for recovery of rent and future mesne profits to direct the defendant to deposit such amount as the court may direct on account of arrears upto the date of order within such time as the court may fix and thereafter may further direct the defendant to continue to deposit in each succeeding month the rent claimed in the suit as the court may direct and on passing of such order, the defendant shall continue to deposit such amount till the decision of the suit unless otherwise directed. The provision further provides that in case of any default in making the deposit, the court may strike off the defence of the defendant. This provision gives ample discretion to the court to require the defendant to deposit such amount which may be the rent claimed by the plaintiff or the market rent or which, in the facts and circumstances of the case, the court may deem the appropriate.

12. Section 151 CPC empowers the court, in exercise of its inherent powers, to make such orders as may be necessary to meet the ends of justice and to prevent the abuse of the process of the court.

13. During the course of arguments, it is admitted by learned counsel for the respondent that receipt of Rs.13 lacs was not obtained by respondent No.1 from the appellant. It is not only incomprehensible but also indigestible that respondent No.1 had paid a huge amount of Rs.13 lacs by cash to the appellant without obtaining any receipt. No prudent person shall pay such huge amount of Rs.13 lacs in order to occupy a property without execution of any document. On asking, the learned counsel for respondent No.1 is not able to answer if respondent No.1 had shown the availability of the cash amount of Rs.13 lacs on 20.03.2015 in any of his financial statement or income-tax record. He is not answering as to whether respondent No.1 had withdrawn such a huge amount in cash from any of his savings bank account in any bank or post-office, prior to making the alleged payment to the appellant/plaintiff. Unfortunately, he simply shrugged his shoulders by pleading that it is a matter of evidence.

14. The respondent No.1 has very conveniently pleaded in his written statement of having made a payment of cash amount of Rs.13 lacs on 20.03.2015 to the appellant/plaintiff without obtaining the receipt with apparent intention to continue in occupation of the property of the appellant/plaintiff without payment of any charges which appears to be an abuse of the process of the court. In the facts and circumstances of the case, when respondent No.1 has admitted his occupation in the property of the appellant since 20.03.2015, he cannot be allowed to use the property without any payment, at least, during the pendency of the suit. It is not disputed by respondent No.1

in his written statement that the said property can fetch the rent at the rate of Rs.21,000/- per month. The allegation of the appellant in para 3 of the plaint having rented out other portion of the first floor of the suit property @ Rs.25,000/- per month to some other entity is not disputed by the respondent No.1 in corresponding para of the written statement. Therefore, this court invokes Order XVA read with Section 151 CPC as it would meet the ends of justice and prevent the abuse of the process of the court if the respondent No.1 is directed to deposit the amount at least @ Rs.21,000/- per month from the date of filing the suit, that is, 01.07.2017. The respondent No.1 shall deposit the entire arrears at the rate of Rs.21,000/- per month from 01.07.2017 till 31.12.2018 within one month positively with the trial court and shall continue to deposit such amount @ Rs.21,000/- per month with the trial court by 10th of each succeeding English calendar month till disposal of the suit. The amount so deposited shall be subject to outcome of final adjudication of the suit.

15. Nothing observed or said in the order shall tantamount to an opinion on merits of the case. With the above directions, the appeal is disposed of accordingly with no order as to cost.

(VINOD GOEL)
JUDGE

JANUARY 07, 2019
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