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

Decided on: 2nd July, 2019

+ **CM(M) 548/2018**

ANITA DEVI

..... Petitioner

Through: Mr.B.L.Chawla, Advocate with
the husband of the petitioner

versus

SUKUMAR YADAV

..... Respondent

Through: Mr.Omkar Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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1. This petition under Article 227 of the Constitution is directed against an order dated 21.02.2018, by which the petitioner's application under Order XV-A of the Code of Civil Procedure, 1908 ["CPC"] has been dismissed.

2. The petitioner is the plaintiff in Suit No.12851/2016 pending before the Senior Civil Judge-04 (West), Delhi. She filed the suit against the defendant for possession of the suit property [Ground Floor, WZ-514, New Municipal No.C-99, measuring 40 sq. yds. (approximately), part of Khasra No.1575, situated in the old Lal Dora of Village Tihar, New Delhi-110018]. She also claimed a decree in the sum of ₹1,12,000/- towards arrears of rent from April, 2015 to July, 2016 as well as an injunction restraining the respondent from subletting, assigning or parting with the possession of the suit premises.

3. The case set up in the plaint is that the plaintiff let out the suit property to the defendant w.e.f. 01.05.2013 at the monthly rent of ₹7,000/- for a period of five years, and an agreement was executed to this effect on 17.06.2013. It is contended that the defendant did not pay rent after March, 2015, and that the plaintiff terminated the tenancy by a notice dated 20.06.2016.

4. The defendant filed a written statement in which he has denied the relationship of landlord and tenant between the parties. Although the petitioner's ownership of the property was not disputed, it was contended that the defendant and his daughter entered into possession on 01.07.2007 as a result of marriage between the defendant's daughter and the plaintiff's husband. The defendant has further contended that disputes arose thereafter between his daughter and the plaintiff's husband, which were settled on terms that the plaintiff would sell the suit property to the daughter of the defendant. He has stated that several documents were also executed in this regard but the documents were retained by the plaintiff "in good faith".

5. During the pendency of the suit, the plaintiff filed the application under consideration, for deposit of rent in terms of Order XV-A of the CPC. Having set out the cases of the respective parties, the Trial Court has dismissed the application with the following observations:

"The plaintiff has relied on a written rent agreement purported to be signed by the defendant. However, same is an unregistered document whereas the lease period is for five years. Accordingly, the said document cannot be considered by the court in view of section 49 of Registration Act, 1908. Besides said

agreement, there is no rent receipt or any other document to show the alleged tenancy. On the other hand, the defendant has filed a copy of statement purportedly signed by plaintiff, defendant, defendant's daughter and plaintiff's husband which mentions about transferring the suit property in the name of daughter of defendant.

It is to be noted that the provisions of order XV-A CPC are not restricted to the admitted rent as in order 39 rule 10 CPC. However, still the orders under said Order have to be passed on the basis of settled principles that prima facie case shall be in the favour of plaintiff and that the denial of the rent amount or the rent is evasive/false. However, in the given facts and circumstances, prima facie case is not in favour of plaintiff due to aforesaid observations. Accordingly, application filed by the plaintiff u/o XV-A CPC is hereby dismissed.

Further application moved under section 35 of the Indian Stamp Act and section 17 of Registration Act to impound the rent agreement dated 17.06.2013 by the defendant. Copy supplied to the clerk of Counsel for plaintiff.”

6. Pursuant to the aforesaid order, learned counsel for the plaintiff states that the plaintiff has paid the requisite stamp duty and penalty on the rent agreement dated 17.06.2013. He submits that an unregistered document can be looked into for collateral purposes and relies upon the judgment of the Supreme Court in *Bondar Singh & Ors. Vs. Nihal Singh & Ors.* AIR 2003 SC 1905 (paragraph 5) in support of his contention.

7. Learned counsel for the respondent, on the other hand, contends that an order under Order XV-A of the CPC cannot be passed based upon an unregistered document in view of provisions of Section 49 of the Registration Act, 1908. He further submits that such an order is also not permissible when the landlord-tenant relationship is disputed.

8. Having heard learned counsel for the parties, I am of the view that the impugned order is not sustainable. The learned Trial Court has recorded that the plaintiff has been unable to establish a *prima facie* case in his favour, in view of the stand taken by the defendant. However, there are several discrepancies in the case set up by the defendant which have not been considered by the Trial Court. First, the defendant has not produced any marriage certificate or any evidence, other than a photograph, in respect of the purported marriage between the daughter and the husband of the plaintiff. The defendant has also not claimed that the plaintiff's husband was residing with the defendant's daughter in the matrimonial home. Secondly, even assuming that the defendant's daughter was married to the plaintiff's husband, the defendant has not established any right in his favour to remain in occupation of the premises. Finally, learned counsel for the plaintiff has drawn my attention to a rent agreement dated 23.05.2013 executed between the plaintiff's husband [Baij Nath Sharma] and the defendant's daughter [Kanchan Devi] wherein she is described as wife of Bhupinder Yadav, as also the birth certificate of the son of the said Kanchan Devi, where the father's name is again mentioned as Bhupinder. These documents are inconsistent with the defendant's case that his daughter married Baij Nath Sharma on 01.07.2007.

9. As far as the non registration of the rent agreement is concerned, for the present purposes, it is sufficient to note that the plaintiff is relying upon the same only for the purposes of deposit of alleged arrears of rent in the Court. The legal notice sent by the plaintiff dated 20.06.2016 did not elicit any response from the defendant, although learned counsel for the defendant contends that service of the notice was not effected.

10. The provisions of Order XV-A of the CPC are as follows:

"ORDER XV-A

STRIKING OFF DEFENCE IN A SUIT BY A LESSOR

(A) *"In any suit by an owner/lessor for eviction of an unauthorized occupant/lessee or for the recovery of rent and further mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears upto 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 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."*

Note: This amendment shall come into force within the local limits of the jurisdiction of the High Court of Delhi immediately on the date of its Publication in the Delhi Gazette."

11. The purpose of the provision has been explained by this Court in *Prem Lata vs. Raghubir Rai & Ors.*, 2014 I AD (Delhi) 708, wherein this Court held as follows:

".....In the first place, it requires to be observed that Order XV A CPC has been titled "Striking off defence in a suit by a lesser". It is, therefore, a provision intended to benefit the lessor. The object is to mitigate the hardship to the landlord on account of long pendency of an eviction suit, during which the lessor should not be deprived of the rent payable by the lessee or the future mesne profits that might accrue. The omission of any reference to an 'admitted' rent is deliberate. It accounts for the possibility that the market rent, during the pendency of the litigation, might be much higher than the 'admitted rent'. It therefore gives discretion to the Court to require the tenant to pay rent commensurate with the market rent or, in any event, higher than the admitted rent. While the word 'rent' is relatable to the amount payable by a lessee, the provision also talks of an 'unauthorised occupant'. On termination of the lease, the lessee would become an unauthorised occupant. In such case, the amount directed to be deposited by such unauthorised occupant, for use and occupation, cannot

be termed as 'rent'. This explains the use of the term 'such amount' occurring in the provision.

11. The provision states that apart from the arrears, the Defendant can be required to continue to deposit "in each succeeding month the rent claimed in the suit as the Court may direct". If Order XV A Rule (1) CPC had stopped here, then it is possible to contend, as has been done by the learned counsel for the Defendants, that the provision envisages deposit only of arrears of rent and nothing else. However, a further sentence in Order XV A rule 1 CPC states "the Defendants shall continue to deposit such amount till the decision of the suit unless otherwise directed:.. When this sentence read with the previous sentence in Order XV A rule 1 CPC, and the object of the provision is kept in mind, it is possible to interpret the term 'such amount' as not being limited to an 'admitted' amount of 'rent'. "

12. In view of the above, the plaintiff has made out a good case for deposit of arrears of rent under Order XV-A of the CPC. The defendant is directed to deposit arrears of rent for the period April, 2015 to July, 2019 at the rate of ₹7,000/- per month in the Trial Court, amounting to ₹3,57,000/-. At the request of learned counsel for the defendant, it is directed that the arrears will be deposited in installments. The deposit will be made by the 15th of each month starting with July, 2019, in seven installments of ₹50,000/- per month and an eighth installment of ₹7,000/-. The defendant will also deposit in the Trial Court an amount of ₹7,000/- per month, in addition to the aforesaid arrears, by the 15th of each calendar month, during the pendency of the suit. The amounts so deposited shall be deposited by the Trial Court in interest bearing fixed deposits.

13. It is made clear that the observations contained in this order are for the purpose of disposal of this application alone and will not prejudice the parties at the trial of the suit. The deposit will also be without prejudice to the rights and contentions of the parties.

14. The petition is allowed in the terms aforesaid.

PRATEEK JALAN, J

JULY 02, 2019

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