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

+ **CM(M) 160/2020 and CM APPLs. 5169-71/2020**

PRITHPAL SINGH

..... Petitioner

Through: Mr. B.S. Chauhan, Advocate with
Petitioner in person (M:
9312706649).

versus

NAVEEN KUMAR

..... Respondent

Through: Mr. Abhimanyu and Ms. Priya
Sharma, Advocates (M: 9717960907)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **10.02.2020**

1. This petition challenges the impugned order dated 30th November, 2019, by which the trial court has refused the application for framing of an additional issue.

2. The case of the Petitioner is that while passing the order dated 7th February, 2019, the Id. SCJ-cum-RC had passed a preliminary decree for possession and framed the following issues on the question of *mesne* profit/damages: -

“(i) Whether plaintiff is entitled for recovery of arrears of rent @ 1,30,000/- alongwith interest, if yes, interest at what rate? OPP.

(ii) Whether plaintiff is entitled for recovery of damages @ 52,000/- per month w.e.f 01.04.2018, as prayed for? OPP.

(iii) Relief.”

3. This order was appealed against by the Petitioner and vide order dated 5th August, 2019, the Id. Appellate Court observed as under: -

“8 The Id. SCJ-cum-RC has rightly appreciated the facts & circumstances and the evidence and decreed the suit for possession. The defendant's claim of refund of security can be agitated by him before the trial court by claiming an issue to be framed on this aspect. The plaintiffs case for recovery of arrears of rent and the recovery of damages is, ofcourse, still pending before the ld. Trial Court.”

4. Pursuant to this order, the Petitioner filed an application under Order XIV Rule 5 CPC seeking the framing of an additional issue in respect of the security amount. The Trial Court has, in the impugned order dated 30th November, 2019 observed that since there was no counter-claim or set-off sought in the written statement, an additional issue in respect of the security deposit cannot be permitted.

5. Ld. counsel for the Petitioner submits that in the written statement the Petitioner has specifically taken the defence that an adjustment is liable to be given for a sum of Rs. 2,00,000/-. Thus, according to him, the issue concerning the security deposit would have to be adjudicated at the final stage.

6. Ld. counsel for the Respondent, on the other hand, submits that since there is no counter-claim or set-off prayed for, no adjustment can be given. Ld. counsel further submits that in any event, a recent order of the Supreme Court in ***Ashok Kumar Kalra v. Wing CDR Surendra Agnihotri and Ors.*** [SLP(C) 23599/2018, Order dated 8th January, 2020] clarifies that once issues have been framed, no counter-claim can be filed.

7. This Court has perused the orders passed in the matter, as also the written statement. In the written statement, the specific stand of the Petitioner is that he has made a payment of Rs. 2,00,000/- as security

deposit. The Court has framed issues in respect of the arrears of rent and recovery of damages. While adjudicating the same, since the Petitioner claims that he has already paid a sum of Rs. 2,00,000/- as security deposit, it is but natural that the adjustment thereof, if any, would have to be considered by the Trial Court at the final stage of adjudication. Thus, if recovery of arrears and damages is granted by the Trial Court, suitable adjustment, for the security amount paid, if proved in accordance with law, in terms of the agreement between parties, would have to be considered and determined by the Trial Court at the final stage.

8. As the case of the Respondent is that the Petitioner is unnecessarily delaying the adjudication of the petition, it is directed that the petition be expeditiously disposed of by the Trial Court.

9. With these observations, the petition and all pending applications are disposed of. *Dasti*.

PRATHIBA M. SINGH, J.

FEBRUARY 10, 2020
MR