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

% Judgment delivered on: 17th November, 2020

+ CM(M) 429/2020& CM APPLN. 20823/2020

DARSHAN ARORA Petitioner

versus

VIJAY KUMAR Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Rajat Aneja, Advocate

For the Respondent : Mr. Himanshu Kaushik, Advocate

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. The hearing was conducted through video conferencing.
2. Petitioner impugns order dated 13.02.2020 whereby the review petition filed by the petitioner seeking review of order dated 17.07.2020 has been dismissed by the Trial Court.
3. Respondent had filed the subject suit for possession, permanent injunction, mesne profits and recovery of rent against the petitioner contending that the petitioner was a tenant in the subject premises at the rate of Rs. 10,000/- per month and the tenancy was to commence with effect from 01.02.2015 for a period of 36 months.

4. It was contended that the rent was to increase by 10% and the rent after increase, on the date of filing of the suit was Rs. 12100/-. Respondent claimed arrears of rent @ Rs. 10,000/- per month with effect from 01.01.2016.

5. In the written statement filed by the petitioner, petitioner admitted the execution of the lease agreements and also admitted that the rate of rent was Rs. 10,000/- per month. He, however, contended that he had advanced loans to the respondent in the sum of Rs. 58.05 lakhs and as such was not liable to pay any amount to the respondent. It was contended that a Suit for recovery was filed by the petitioner, which was pending on the date of filing of the written statement.

6. An application was filed by the respondent under Order 12 Rule 6 CPC seeking decree of possession as well as arrears of rent on admission. By judgment and decree dated 04.04.2019, this application under Order 12 Rule 6 CPC was allowed by the trial court. Trial court categorically held that the alleged loan was granted prior to the execution of the lease agreement and there was no mention of any loan or financial assistance in the lease deed and once the agreement was reduced into writing, petitioner (defendant before the Trial Court) could not be permitted to lead any oral evidence to alter the terms of any agreement.

7. It was further held that in case any right was created in favour of the petitioner in respect of immoveable property, he should have

sought specific performance of such agreement and no specific performance had been sought, only a simplicitor suit for recovery of money was filed. Trial court held that this went on to show that petitioner had no independent right in the tenanted premises except as a tenant holding over.

8. In view of the admissions made by the petitioner, the trial court decreed the suit for possession under Order 12 Rule 6 CPC.

9. Petitioner filed an appeal against the judgment dated 04.04.2019 before this Court which was registered as RFA No. 674/2019. The appeal was listed on 24.07.2019 when the counsel for the petitioner submitted that the petitioner was not inclined to challenge the decree of possession on merits but sought six months time to vacate the premises.

10. Learned counsel for the petitioner submits that in the meantime proceedings were initiated by a secured creditor under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 and accordingly, petitioner handed over the possession to the respondent.

11. Thereafter, on 05.09.2019, when the appeal was listed before this court, the respondent who was present in Court stated that he had received the possession, accordingly learned counsel for the appellant sought leave to withdraw the appeal and the appeal was dismissed as withdrawn.

12. In view of the withdrawal of the challenge by the petitioner to the judgment and decree dated 04.04.2019, the finding returned by the trial court that petitioner had no independent right in the tenanted premises except as a tenant by holding over would operate as resjudicata.

13. By the subject order dated 17.07.2019, trial court had held that the plea raised by the petitioner in the written statement that he had provided some financial assistance to the respondent and that the suit premises which was let out to the petitioner could be used by the petitioner till the time respondent did not repay the amount had been rejected by the order dated 04.04.2019. Accordingly, the application filed by the respondent under Order 39 Rule 10 CPC read with Order 15(A) CPC was allowed and the petitioner was directed to pay rent @ Rs. 10,000/- per month; which was the agreed rate of rent with effect from 01.01.2016 till the date of the order and future payment at the same rate till disposal of the suit.

14. The contention of learned counsel for the petitioner is that since the trial court has by order dated 13.02.2020 framed an issue as to whether the plaintiff (respondent herein) is entitled to decree of recovery of rent, the issue is yet to be adjudicated and the order passed under Order 39 Rule 10 CPC amounts to decree in the Suit without a trial.

15. Further, it is contended that the written statement is in the

nature of set-off and till the time suit filed by the petitioner for recovery is adjudicated, no order permitting respondent to recover the money could be passed.

16. I am unable to accept the contention of learned counsel for the petitioner, in as much as, in the plaint the contention of the respondent is that rent was initially was Rs. 10,000/- per month which was to be increased by 10% and accordingly on the date of filing of the plaint the rent was Rs. 12,100/-.

17. Since, in the written statement, there is no denial that the premises was let out at the rate of Rs. 10,000/-, trial court has merely directed the payment of the agreed rate of rent @ Rs. 10,000/- and not at the enhanced rate as claimed by the petitioner.

18. Further perusal of the written statement shows that petitioner has not specifically claimed any set-off against the respondent's demand for arrears of rent. Though contention of the petitioner is that an independent Suit had already been filed, the finding of the trial court as contained in judgment and decree dated 04.04.2019 that petitioner does not have any independent right in the property except as a tenant holding over, has become final and conclusive since the appeal filed by the petitioner was withdrawn and the said finding would operate as resjudicata in so far as petitioner is concerned.

19. Petitioner has admitted the rent agreement, which was executed after the alleged loan. There is no reference of any loan or provision

of rent free accommodation in the said agreement. Petitioner has admitted that the letting was at the rate of Rs. 10,000/- per month. He has also not denied that the rent has not been paid. Trial Court has merely gone on the basis of the admissions. Even before this court nothing has been shown to the contrary.

20. In view of the above, I find no merit in the contention of the petitioner or any infirmity in the order dated 17.07.2019 as also order dated 13.02.2020 rejecting the review application filed by the petitioner.

21. The petition is accordingly dismissed. Parties are left to bear their own costs.

22. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

SANJEEV SACHDEVA, J

NOVEMBER 17, 2020

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