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

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Judgment delivered on: 31.08.2020

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CM(M) 433/2020

SANJEEV KUMAR

..... Petitioner

versus

AMARJEET

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Sanjay Verma, Advocate.

For the Respondent: None.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL 21003/2020 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 433/2020 & CM APPL 21002/2020 (stay)

1. The hearing was conducted through video conferencing.
2. Petitioner seeks setting aside of orders dated 29.09.2018, 11.01.2019, 03.04.2019, 03.07.2019, 21.08.2019, 23.10.2019, 24.02.2020 and 02.03.2020. Petitioner primarily impugns order dated 02.03.2020, whereby Decree of ejectment order 12 Rule 6 CPC has been passed.

3. Subject Suit was filed by the respondent for ejectment, recovery of possession and arrears of rent.

4. It is contended by the respondent in the plaint that respondent is the owner of first and second floor of property bearing No.6338, Block No.7, Padam Singh Road, Karol Bagh, New Delhi.

5. It is contended that the respondent is completely handicapped, bed ridden and residing at the first floor of the property along with his old mother, who is aged 84 years and suffering from various ailments.

6. It is further contended in the plaint that on the request of the defendant (petitioner herein), the second floor of the subject premises was let out to the petitioner in January, 2012 on a monthly rental of Rs.5,000/-.

7. It is stated that even though petitioner started to reside in the property, he did not come forward to execute the rent agreement in respect of the property on the ground that he required the tenanted premises for a short period as renovation was going on in his house.

8. It is contended that after taking the tenanted premises on rent, petitioner used to make payments of monthly rent from time to time, however, failed to vacate the premises after a period of 11 months and continued to remain in possession.

9. It is contended in the plaint that the rent was subsequently increased to Rs.7,000/- in the year 2014. Petitioner is alleged to have

defaulted in payment of rents and subsequently, on the request of the respondent, increased the monthly rent from Rs.7,000/- to Rs.10,000/- per month with effect from March 2017.

10. It is averred that after January, 2018, petitioner failed to pay the rent and when the sister of the respondent requested him to make the payment, he flatly refused to pay any rent and did not pay any rent after January, 2018.

11. It is contended that respondent is handicapped and the mother of the respondent is an old lady suffering from various ailments and they have no source of income except the rental from the subject premises.

12. It is contended that there is no written agreement executed between the parties with regard to the tenancy of the subject premises. It is in these circumstances that the legal notice dated 12.06.2018 was served upon the petitioner asking him to vacate the property and since he failed to vacate the same, subject Suit was filed.

13. The only argument addressed by the learned counsel for the petitioner is that the Suit has been filed in the Court of Senior Civil Judge (Central District.) but in the copy of the plaint supplied to him there is a correction done and the Plaint states “In the Court of Senior Civil Judge (Central District.). He submits that the word “West” has been changed by hand to read “Central” District.

14. Apart from the above contentions, learned counsel for the petitioner has not been able to point out that there is any discrepancy in the body of the plaint.

15. It is apparent that initially the plaint was drafted to be filed in the Court of West District but at the time of filing, the same seems to have been corrected and the word 'West' has been substituted by hand by the word 'Central' and that the Suit has been filed in the Court of Senior Civil Judge (Central District.) and the plaint was placed before the Court of Senior Civil Judge (Central District.) and all orders have been passed by the Court of Senior Civil Judge (Central District.).

16. Merely because the heading of the plaint mentions 'West District.' would not mean that the court did not have jurisdiction, when admittedly the property is situated in Central District and the Suit is pending in the Court of the Civil Judge, Central District.

17. Coming to the merits of the case of the petitioner, it may be observed that the Suit was placed before the concerned Court on 29.09.2018. Summons were issued to the defendant (petitioner herein) for 29.11.2018.

18. On 29.11.2018, counsel for the defendant appeared before the Court and sought time to file written statement which was granted subject to limitation and the case was adjourned to 11.01.2019. On 11.01.2019 none appeared for the Petitioner. Trial Court observed that no written statement had been filed and accordingly, the defence of

the petitioner was struck off and he was proceeded ex-parte and the case was adjourned to 03.04.2019.

19. On 03.04.2019, an application was filed on behalf of the petitioner under Order 9 Rule 17 seeking recall of the ex-parte order dated 11.01.2019. Order of 03.04.2019 categorically records the admission of the learned counsel for the petitioner that he was a tenant in the Suit property, however, the contention raised was that he had given some advance to the respondent and was not supposed to pay any monthly rent.

20. However, in the interest of justice, the ex-parte order dated 11.01.2019 was recalled and he was granted time to file written statement within 7 days. The Court while exercising the powers under Order XV A CPC directed petitioner to pay the monthly rent of Rs.7,500/- per month. The Court, however, noticed that the monthly rent, as alleged by the respondent in the Suit, was Rs.10,000/- per month whereas the counsel for the petitioner stated that the rent was Rs.5,000/- per month only.

21. The case was thereafter adjourned to 03.07.2019. On 03.07.2019, the Court noticed that the written statement had even thereafter not been filed and further granted him 5 days time to file written statement and the case was adjourned to 21.08.2019. On 21.08.2019, petitioner filed the written statement. Respondent filed

an application under Order 12 Rule 6 CPC and the case was adjourned to 23.10.2019 for filing reply.

22. On 23.10.2019, adjournment was sought by the petitioner to file reply to the application under Order 12 Rule 6 CPC. 15 days further time was granted to the petitioner to file reply and the case was adjourned to 29.11.2019.

23. On 29.11.2019, once again adjournment was sought on behalf of the respondent to file reply to the application under Order 12 Rule 6 CPC. One month time was granted to file reply to the application under Order 12 Rule 6 CPC. The case was adjourned to 17.02.2020. It is informed by learned counsel for the petitioner that the date of 17.02.2020 was changed to 24.02.2020 with the consent of the parties.

24. On 24.02.2020, when the case was taken up for arguments on the application under Order 12 Rule 6 CPC, it was noticed that reply had still not been filed and the only submission made was that the Court did not have territorial jurisdiction as in the plaint it was mentioned that the Suit had been filed in the Court of West District.

25. Right to file reply by the petitioner was closed. Arguments on the application under Order 12 Rule 6 were heard and the case was adjourned to 02.03.2020 for orders on the application under Order 12 Rule 6 CPC.

26. On 02.03.2020, once again a request to file reply to the application under Order 12 Rule 6 CPC was made, which was

declined and the Court on the same day in the evening passed the orders under Order 12 rule 6 decreeing the Suit.

27. Even though no submissions has been made by the learned counsel for the petitioner on the merits of the order dated 23.03.2020 passed on the application under Order 12 Rule 6 CPC, I deem it expedient to consider the merits of the order.

28. The case set up by the respondent is that the respondent is the owner of the property and had let out the second floor of the subject property to the petitioner initially on a monthly rent of Rs.5,000/- in the year 2012, which was increased to Rs.7,000/- per month in the year 2014 and thereafter to Rs.10,000/- per month in the year 2017.

29. As per the respondent, petitioner had failed to pay the monthly rent and a legal notice dated 12.06.2018 terminating the tenancy, was issued to the petitioner and petitioner was asked to vacate the property.

30. In the written statement, the only defence taken by the petitioner is that there was an oral agreement under which petitioner had paid a sum of Rs.30 lakhs in cash at a monthly interest of 1%. It is contended that the interest was in lieu of rent payable to the respondent.

31. Trial Court has noticed that no material or document had been produced by the petitioner to show that any amount was advanced to the respondent or that there was ever any agreement to show that no

rental would be charged. Rather the admission of the counsel for the petitioner is noticed by the Court on 03.04.2019 that the petitioner was a tenant in the property. Further the Court has noted the submission of the counsel for the petitioner that the monthly rent was Rs.5,000/-.

32. A landlord in a Suit for ejectment has to establish:-

- (i) existence of a relationship of landlord and tenant;
- (ii) that the monthly rent is more than Rs.3,500/- (i.e. the property is not the protected under the Delhi Rent Control Act); and
- (iii) that there is no subsisting term of lease under any registered agreement
- (iv) and the month to month tenancy has been terminated by the service of a legal notice.

33. In the present case, the contention of the respondent, that he is the owner of the second floor and let out the property to the petitioner, has not been denied.

34. In fact there is a categorical admission recorded in order dated 03.04.2019 that petitioner is the tenant in the property. Petitioner has not produced any document on record to show that there is any subsisting term under any registered lease deed. There is also an

admission recorded of counsel for the petitioner before the Trial Court on 03.04.2019 that the monthly rent was Rs.5,000/- which goes to show that the property is not protected under the Delhi Rent Control Act.

35. Trial Court has rightly noticed that there is an admission of relationship of landlord and tenant and month to month tenancy already stands terminated and rate of rent is more than Rs.3,500/- and accordingly, in my view, the Trial Court has rightly passed a decree of possession under Order 12 Rule 6 based on the admissions made by the petitioner in the pleadings and before the Court.

36. Even if the contention of the petitioner that he had loaned a sum of Rs. 30,00,000/- to the Respondent at a monthly interest rate of 1% and the interest was to be in lieu of the rent, the same does not further the case of the petitioner rather militates against it.

37. It is admitted by learned counsel for the petitioner that till date no Suit or counter claim for recovery of amount has been filed. If one were to calculate the interest @ 1% per mensem on Rs. 30,00,000/- it works out to Rs. 30,000/- per month. As per the petitioner this was to be offset against rental which shows that the rent would be Rs. 30,000/- per month which is far in excess of Rs. 3,500/-.

38. I find no infirmity in the order dated 02.03.2020 and the decree of ejectment passed by the Trial Court.

39. I find no merit in the petition. The Petition is, accordingly, dismissed.

40. Copy of the order be forwarded to the concerned Trial Court for record.

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

AUGUST 31, 2020
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SANJEEV SACHDEVA, J

