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

% Judgment delivered on: 19th November, 2020

+ CM(M) 497/2020& CM APPLN. 25183/2020

M/S ANSAL HOUSING AND CONSTRUCTION LTD Petitioner

versus

SMT HARDARSHAN KAUR

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Aishwarya Rao, Advocate

For the Respondent : Mr. Ajay Gaiind, 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 18.06.2019 whereby the trial court has directed the petitioner to pay a shortfall rent for the period from January, 2019 to March, 2019 and rent from April, 2019 to September, 2019 @ Rs. 1,44,670/- per month.
3. The petitioner was a tenant in Flat Nos. 1009, 1011, 1016 & 1018 having a total area of 2516 sq. ft. on the 10th Floor of Classique Tower, Plot No. 1, 'J' Block, Community Centre, Rajouri Garden, New Delhi.
4. Subject property was let out to the petitioner under a lease agreement dated 30.08.2014 on a monthly rental of Rs. 1,25,800/-. The

rent was liable to be increased by 15% after expiry of block of 3 years. At the time of creation of the lease, a security deposit of Rs. 3,77,400/- was deposited with the respondent which was to be adjusted at the time of vacation of the premises.

5. As per the petitioner/Tenant, the lease agreement was terminated in January, 2019 and a termination notice was issued contending that possession shall be handed over on 21.04.2019. As per the petitioner, premises were to be handed over on “as is where is basis”.

6. Petitioner had taken several premises on rent on the said floor and there were no internal walls. As per the lease agreement, on surrender of tenancy, premises were to be taken over by the landlord on “as is where is basis” and the responsibility of reconstruction of intervening walls was of the landlord.

7. As per the petitioner, the tenancy was terminated in January, 2019 and with effect from 21.04.2019, petitioner is not liable to pay any rental.

8. Learned counsel for the petitioner submits that the respondent was asked to take over the possession on “as is where is basis”. However, respondent did not come forward to take over the possession.

9. The case of the respondent is that possession was never offered and no letter has even till date been issued requiring respondent to take over possession on “as is where is basis”.

10. The controversy as to whether the possession was offered on “as is where is basis” is not germane for the purposes of the present petition and is stated to be pending consideration before the trial court.

11. The issue that arises for consideration before this Court is as to whether the petitioner is liable to pay rent from April, 2019 to September, 2019 @ 1,44,670/- as directed by the trial court.

12. Learned counsel for the respondent submits that there is categorical admission on the part of the petitioner that petitioner had not handed over possession on 21.04.2019 and the sub-tenant had handed over possession of the premises to the petitioner/tenant on 21.09.2019 and as such there was no question of petitioner offering possession to the respondent on 21.04.2019. Since admittedly possession was not handed over till September, 2019, petitioner remained be liable to pay rental, at least till the said date.

13. Petitioner, in the written statement, in paragraph 4 of the preliminary objection has categorically stated that the premises was leased out to HDFC Bank as a sub-tenant; who terminated the lease on 21.04.2019 and promised to hand over possession on or before 21.04.2019, however, the same was not done by the HDFC Bank.

14. Though the case set up in the written statement is that lease was terminated on 21.01.2019 and they were not liable to pay rent after termination of lease, however, in reply to the application filed by the respondent under Order XV (A), petitioner has very categorically stated

that possession was not handed over by HDFC Bank to the petitioner on the stipulated date i.e. 21.04.2019 and after receiving the possession from HDFC Bank on 21.09.2019, when the petitioner contacted the respondent stating that they were ready and willing to hand over possession in the same condition as it was received from HDFC Bank, respondent was not willing for the same.

15. Perusal of the written statement as well as the reply to the application under Order XV (A) shows that there is a categorical assertion on part of the petitioner that petitioner was not in position to offer physical possession to the respondent before 21.09.2019 and as per the petitioner itself, possession was offered after 21.09.2019.

16. Though it is disputed by learned counsel for the respondent that offer of possession has ever been made, without prejudice to the said fact as to whether offer of possession has been made or not, since it is the case of the petitioner itself that before 21.09.2019 no offer of possession was made because possession was not received from HDFC Bank, the sub-tenant, Petitioner would continue to remain liable to pay the rent.

17. Trial court, by the impugned order, has merely held petitioner liable on the basis of the above assertions that HDFC Bank, the sub-tenant had handed over possession to the petitioner only on 21.09.2019 and not before that.

18. In view of the above admitted position, trial court has merely directed the petitioner to pay a shortfall of rent for the month January,

2019 to March, 2019, which is the shortfall on account of the differential in three months rent while calculating the security deposit and the actual three months rent which was payable after increment in terms of the lease agreement and further directed payment of the rental for the period April, 2019 till September, 2019 @ Rs. 1,44,670/- which was rent payable for the said months at the admitted rates as per the lease agreement.

19. I find no infirmity in the view taken by the trial court and the directions issued by order dated 18.06.2020. I find no merit in the petition. The petition is accordingly dismissed.

20. The petitioner is now directed to comply with the order dated 18.06.2020 and to pay the directed amount within a period of 10 days from today.

21. 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 19, 2020

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