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

Date of Decision: 22.01.2021

+ **CM(M) 53/2021**

MANMOHAN SINGH

..... Petitioner

Through: Mr.C.M. Sharma, Adv.

versus

HARISH KUMAR SETIA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

CM APPL. 2349/2021 (Exemption)

Allowed, subject to all just exceptions.

CM(M) 53/2021 & CM APPL. 2348/2021

1. This petition has been filed by the petitioner challenging the order dated 06.11.2020 passed by the learned District Judge (Commercial Court)-02, West District, Tis Hazari Courts, Delhi in Suit, being CIV DJ No. 244/2020, filed by the respondent against the petitioner, dismissing the application filed by the petitioner seeking review of the orders dated 08.06.2020 and 29.07.2020 passed by the learned Trial Court exercising powers under Order XVA of the Code of Civil Procedure, 1908 and directing the petitioner to clear the arrears of rent and to deposit future monthly rent.

2. The Suit has been filed by the respondent seeking recovery of possession as also mesne profits on basis of a registered Lease Deed

dated 02.05.2019. The learned Trial Court by its order dated 08.06.2020 issued the following directions under Order XVA of the Code of Civil Procedure, 1908: -

“5. Considering the fact that the defendant has been served only on 26.05.2020 and also considering the situation in which the case is being taken up during the lockdown, I deem it appropriate to grant 30 days time to the defendant for filing his written statement as well as reply to the present application. In case no reply is filed within 30 days i.e. by 26.06.2020, the plaintiff shall be entitled to receive the rate of rent as per registered rent agreement dated 02.05.2019 i.e. @ Rs.49,000/- per month w.e.f. 01.05.2019. The defendant is directed to clear the arrears of rent @ Rs. 49,000/- per month for the period 01.05.2019 till 31.03.2020 and user charges at the same rate for the period 01.04.2020 till 30.06.2020 within a period of 6 months w.e.f. 01.07.2020, failing which, the same shall be recoverable with simple interest @ 10% per annum. The plaintiff shall also be entitled to receive user charges @ Rs.49,000/- per month w.e.f. 01.07.2020 during the pendency of the suit.

6. In case the defendant files his written statement as well as reply to the application under consideration and wants a hearing on this application afresh, he is directed to move an appropriate application to this effect for alteration of this order. With these directions, the application under consideration stands disposed off. Matter be listed for further proceedings before the concerned court/duty officer on 02.07.2020.”

3. On an application filed by the respondent, the said order was modified by the order dated 29.07.2020, directing the petitioner herein

to clear 50% of arrears of rent and user charges within a week and rest of the amount be cleared in equal monthly installments within a period of six months.

4. The petitioner thereafter filed an application seeking review of the orders passed by the learned Trial Court. Apart from claiming that the petitioner had not been properly served in the petition and could not be represented, the main ground for seeking review was as under: -

“d. That the defendant already had informed the plaintiff to evict the tenanted shop and requested to take key of the vacated shop but the plaintiff himself insisted the defendant to remain in tenancy atleast upto the period mentioned in the rent agreement and only thereafter he will return the security amount to the defendant, for which defendant became ready, however the defendant had already bind up his business, which fact was well within the knowledge of plaintiff. But due to unfortunate pandemic of Corona Virus, lockdown was started from 22-03-2020 onwards and government strictly advice to senior citizen not to go out of house and not to come in touch of any person. As the answering defendant is a senior citizen and aged about 70 years, therefore the defendant did not go outside of his house nor visited to the tenanted shop, however plaintiff was informed telephonically and through messenger to take possession of the tenanted shop lying vacant but the plaintiff misuse the process of law just to export money from the defendant and filed the present suit under reply based on the false and concocted facts. As such under the above said facts and circumstances, which was beyond the control of answering defendant, the defendant is not liable to pay even a single penny either in account of rent or otherwise to the plaintiff for the period of 01-

04-20 to 29-07-20 nor the plaintiff is entitle for the same. Further the plaintiff is guilty of committing wrong his own and thus he cannot be allowed to take benefit of his own wrong.

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e. That no amount is due against the defendant either in account of arrear of rent as alleged by the plaintiff or in any other account rather the plaintiff is liable to return the returnable security amount of Rs.1,00,000/-, which is required to be return to the defendant by the plaintiff immediately at the time of vacating the premises but the plaintiff did not do the same till date.”

5. The learned Trial Court has dismissed the said application by way of the Impugned Order on ground of limitation as also on merit.
6. As far as the merit of the application is concerned, the learned Trial Court has observed as under: -

“16 The mistake or error apparent on the face of record is relevant for us. The impugned order was passed on the registered rent agreement executed between the parties where monthly rent @ Rs.49,000/- was fixed up till 31.03.2020 and defendant had paid cheques towards payment of rent which got dishonoured and legal notice dated 14.11.2019 was given and tenancy was terminated w.e.f. 01.12.2019 and thereafter defendant had approached the plaintiff and settlement/lkrarnama was executed on 27.11.2019 whereby defendant undertaken to clear the outstanding rent till March,

2020 and post dated cheques were given. Cheques, however, for rent upto April, 2019 were cleared and other cheques became dishonoured towards outstanding rent. Again fresh legal notice was issued terminating the tenancy of the defendant w.e.f.31.03.2020. Thereafter suit was filed. Therefore rent agreement, dishonoured cheques, returning memo and settlement/lkrarnama were filed along with the suit and on the basis of the same present application under Order 15A CPC (as application to Delhi) was moved on which impugned order dated 08.06.2020 was passed directing the defendant to clear the arrear of rent and user charges within a period of six months. Subsequently modification, of the said order was sought by the plaintiff claiming that the defendant was already in arrear of rent and further six months time was granted to him to clear the arrear thereupon modification was allowed to the effect that defendant shall clear 50% of arrear of rent and user charges within a week and rest of the amount shall be cleared in equal monthly installments within six months from today.

- 17 The applicant/defendant sought review of the impugned orders claiming being senior citizen, the defendant could not go out due to Covid-19 and hence could not properly defend and also on the basis of oral agreement of returning Rs.9000/-, however, he failed to point out any error apparent on the face of record. Impugned orders were passed on the basis of material placed on record and therefore there is no error either in the order dated 08.06.2020 or its

modification order dated 27.08.2020. Accordingly the review petition is liable to be rejected.”

7. The learned counsel for the petitioner submits that the application filed by the petitioner was not only in terms of the liberty granted in the order dated 08.06.2020 by the learned Trial Court but was also even otherwise within limitation considering that the petitioner was supplied with a copy of the plaint and the documents only on 11.08.2020. On merit, he submits that there was an oral agreement between the parties that the rent shall stand reduced from Rs.49,000/- to Rs. 40,000/-. He further submits that certain cheques encashed by the respondent were not taken into account nor were mentioned in the plaint.

8. I have considered the submissions made by the learned counsel for the petitioner. In the order dated 22.07.2020, while considering the application of the respondent seeking modification of the order dated 08.06.2020, the learned Trial Court observed as under:-

“It is submitted on behalf of defendant that they need time to file reply to application for modification of previous order dated 08.06.2020 and engage counsel, which is strongly opposed by counsel for plaintiff. On the previous date as well, despite having knowledge regarding hearing of the case, none had joined the meeting/video conferencing on behalf of the defendant and today also they sought time for reply/arguments. The application is of urgent nature. In view of it, let counsel for plaintiff be heard and case be posted for order on the application with liberty to defendant to submit reply and written arguments on the e-mail id

*of the reader i.e. readerdjcomm02west@gmail.com
three days prior to next date of hearing with
advance copy to counsel for plaintiff through e-mail
i.e. raneja@anejaandaneja.com and
rishabhjainadv@gmail.com.”*

9. Thereafter, in the order dated 29.07.2020, the learned Trial Court observed as under:-

“I am in agreement with the Counsel for the plaintiff that sufficient time has already been granted for arguments on the modification as reflected in the order sheets.”

10. The learned Trial Court then passed a separate order on the same date modifying the direction under Order XVA of the CPC. The said order has not been placed on record by the petitioner. Therefore, this court cannot give its opinion on the validity of the same. Even otherwise, the direction to pay the rent has been passed on basis of the registered Lease Deed. The plea of an oral understanding reducing the rent, cannot be accepted. I, therefore, find no merit in the present petition.

11. As far as the submission of the petitioner that certain cheques issued by the petitioner have been duly encashed by the respondent, the petitioner shall be entitled to claim benefit of such payment while making compliance with the orders passed by the learned Trial Court.

12. It is further clarified that any amount paid by the petitioner in compliance with the orders passed by the learned Trial Court, shall be subject to the outcome of the Suit and in case of success of the

petitioner in the suit, shall liable to be refunded to the petitioner with interest.

13. The petition is disposed of in the above terms. There shall be no order as to cost.

NAVIN CHAWLA, J

JANUARY 22, 2021/rv

