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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 16.08.2022*

+ RFA 351/2022 & CM APPL. 33846/2022

KIRAN ARYA

..... Appellant

Through: Mr. Anoop Kumar, Adv.

versus

PRAVEEN GOYAL

..... Respondent

Through: Mr. Pradeep Kr. Singh, Adv.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****REKHA PALLI, J (ORAL)**

1. The present regular first appeal under Section 96 of the Code of Civil Procedure (hereinafter, CPC) seeks to assail the judgment and decree dated 19.04.2022 passed by the Ld. ADJ-04, South West District, Dwarka Courts in CS No. 194/2021. Vide the impugned judgment, the learned Trial Court has decreed the respondent/plaintiff's suit for possession under Order XII Rule 6 CPC after taking into account the appellant/defendant's statement under Order 10 CPC, wherein she had clearly admitted that she was a tenant in the suit property.
2. For the sake of convenience, the parties would be referred to as their original position before the learned Trial Court.
3. The common case of the parties is that the suit property was let out by the plaintiff in favour of the defendant vide rent agreement dated 11.11.2019; the terms whereof stipulated that the monthly rent of the suit property would be Rs. 12,500/- excluding water and electricity charges



and the tenancy would be for a period of 11 months w.e.f., 10.11.2019 to 09.10.2020. While it is the plaintiff's case that the defendant paid the rent only till February, 2020 and thereafter expressed her inability to pay the same on account of financial difficulties being faced by her due to the pandemic of Covid-19, it is the defendant's case that the rent was paid till February, 2021. Upon expiry of the tenancy period of 11 months, the plaintiff asked the defendant to vacate the suit property and pay the arrears of rent w.e.f. 01.03.2020, which she failed to do so, leading to the filing of the suit for possession, arrears of rent and permanent injunction by the plaintiff.

4. Before the learned Trial Court, the suit was defended by the defendant by filing a written statement wherein she not only denied that the plaintiff was the owner of the suit property but also took a plea that the suit for possession was not maintainable as the suit property was an agricultural land owned by the Gram Sabha. A further plea was taken by the defendant that since the rent agreement dated 11.11.2019 was an unregistered document, no reliance could have been placed on the same by the learned Trial Court.

5. In the light of this stand taken by the defendant, the learned Trial Court deemed it appropriate to examine her under Order 10 CPC wherein she admitted that she was a tenant in the suit property and claimed that she had paid rent upto March, 2021. She further stated that while taking the suit property on rent, she had paid a sum of Rs. 5,00,000/- in cash to the plaintiff as security but did not have any receipt of the said payment.

6. After taking into consideration the admission made by the defendant of her being a tenant in the suit property owned by the



plaintiff, the learned Trial Court decreed the plaintiff's suit for possession under Order XII Rule 6 CPC, while adjourning the matter for determination of payment of mesne profits, if any. The relevant extracts of the impugned judgment read as under –

“The defence of defendant was struck off 24.11.2021 but thereafter written statement has been filed before the next date of 19.01.2022 vide attested affidavit dated 17.01.2022. An application U/s 5 of Limitation Act alongwith review application to review the order dated 24.11.2021 is on record as filed on 22.02.2022. The applications are straightaway argued.

Keeping in view the contents mentioned therein, the application is allowed subject to cost of Rs. 2000/- payable to plaintiff and WS is taken on record.

The defendant is examined U/o 10 CPC whereby she has admitted the tenancy, the rate of rent and the rent agreement executed between the parties dated 11.11.2019 Ex. PX. The defendant has also identified her signatures on Ex. PX at points A. Order 12 Rule 6 CPC gives ample power to court to pass decree on the basis of admission whether orally or in writing at any stage either on the application or in its own motion.

This is a suit for possession, arrears of rent and injunction. The high handedness of defendant is well depicted on file whereby she wants to enjoy the property without paying the rent or clear the outstanding. So the court is left with no other option except to pass the decree of possession in favour of plaintiff against the defendant U/o 12 Rule 6 CPC as all the things have been admitted by defendant. Even otherwise, admission is best piece of evidence as per Section 58 of Indian Evidence Act as well as AIR 1960 SC 100.



Accordingly, decree of possession is hereby passed in favour of plaintiff and against the defendant and defendant is directed to hand over the vacant and peaceful possession of property No. S-3, land area measuring 125 sq. yards, situated at Chanakya Place, Part-II, Uttam Nagar, New Delhi-110059. Decree sheet be prepared. Be put up for arrears of rent, filing of replication and framing of issues on 19.05.2022.”

7. Being aggrieved, the defendant has preferred the present appeal. In support of the appeal, Mr. Anoop Kumar, learned counsel for the defendant submits that the impugned judgment is wholly perverse and is liable to set aside as the learned Trial Court has erred in coming to the conclusion that the defendant was illegally occupying the suit property without paying any rent. The sole submission of the learned counsel for the defendant is that once it was the categorical stand of the defendant that she had paid a sum of Rs. 5,00,000/- in cash to the plaintiff as security, with a request to adjust the same towards the arrears of rent and future rent, she could not be held to be in unauthorized occupation of the suit property. He contends that the learned Trial Court could not have passed the impugned decree for possession till the entire amount of security was adjusted by the plaintiff or refunded back to the defendant. He, therefore, prays that the appeal be allowed and the impugned judgment be set aside with a direction to the learned Trial Court to consider the issue of possession only after determining the defendant's plea of having paid Rs. 5,00,000/- in cash, to the plaintiff, as security.

8. On the other hand, learned counsel for the plaintiff, who appears on advance notice, supports the impugned judgment and submits that even though the defendant's plea of having paid the amount of Rs.



5,00,000/- towards security was wholly false, the said issue, which cannot in any manner effect the right of the plaintiff to get possession of his property, will, in any event, be duly adjudicated at the time of determination of mesne profits by the learned Trial Court where this issue is admittedly pending consideration.

9. Having considered the submissions of the parties and perused the record, I find no infirmity with the impugned judgment. Once the defendant had herself admitted during her examination by the learned Trial Court that she was a tenant in the suit property and had paid rent upto March, 2021, and was therefore, clearly a defaulter, the learned Trial Court was justified in decreeing the plaintiff's suit for possession. Moreover, it is an admitted position that as per the Rent Agreement dated 11.11.2019, which the defendant did not deny, the tenancy was for a fixed period upto October, 2020, which period has since expired long back. As noted hereinabove, the sole submission of learned counsel for the defendant before this Court is that the defendant had paid a sum of Rs. 5,00,000/-, in cash, as security to the plaintiff. In fact, he has candidly stated before this Court, that the defendant would be willing to vacate the suit property, if she is refunded back the balance amount of security.

10. In my considered view, once the very receipt of the amount of Rs.5,00,000/-, claimed to have been paid by the defendant towards security, albeit without any receipt, is denied by the plaintiff, this question as to whether any such payment was made by the defendant to the plaintiff, can be determined only after trial on the aspect of payment of mesne profits. It may also be noted that even though, the plaintiff has



denied not only the receipt of any amount towards security but also of any rent from the defendant after February, 2020, it is the defendant's own case that the period of lease has since expired and she has not paid any rent to the palintiff from March, 2021.

11. In these circumstances, the learned Trial Court was justified in holding that the defendant was in illegal occupation of the suit property and has, therefore, in my view, rightly passed the decree for possession in favour of the plaintiff.

12. The appeal being meritless, is accordingly, dismissed. Needless to state, the dismissal of this appeal will have no bearing on the determination of the issues regarding the liability of the defendant to pay mesne profits and/or payment of any amount by him to the plaintiff towards security, which are pending adjudication before the learned Trial Court.

(REKHA PALLI)
JUDGE

AUGUST 16, 2022
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