



\$~126(Appellate)

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

+ CM(M) 1063/2022 & CM APPL.43768/2022, CM APPL.43769/2022

MONA MAMTANI

..... Petitioner

Through: Ms. Archana Gaur, Adv. with
petitioner in person

versus

MOHINDER KAUR BEDI (DECEASED) THROUGH
LEGAL HEIR

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T
10.10.2022

1. The order, impugned in the present petition under Article 227 of the Constitution of India, has been passed by the learned Additional District Judge (“the learned ADJ”) in CS 903/2019 (*Mohinder Kaur Medi v. Mona Momtani*), on an application filed by the respondent-plaintiff under Order XXXIX Rule 10 of the Code of Civil Procedure, 1908 (CPC).

The suit

2. The respondent in CS 903/2019, claimed to be the sole, absolute and exclusive owner of Flat No. 1026, Ground Floor, Sector A Pockets B and C, Vasant Kunj, New Delhi-110070 (“the suit property”, hereinafter), having purchased the suit property from its



erstwhile owner under an Agreement to Sell dated 15th March 2005. The plaint averred that the suit property had been leased out to the petitioner-defendant under a Lease Agreement dated 14th July 2016, for a period of 11 months, spanning from 1st August 2016 to 30th June 2017, at a monthly rent of ₹ 33,000/-. The aforesaid Lease Agreement, as per the plaint, was extended by a subsequent Lease Agreement dated 1st July 2017, executed by the constituted Attorney of the respondent, whereby the lease was extended for a further period of 11 months from 1st July 2017 to 31st May 2018 on similar terms and conditions. Despite expiry of the extended lease period on 31st May 2018, the plaint alleged that the petitioner had failed to vacate the suit property, resulting in the respondent calling upon the petitioner to vacate *vide* email dated 1st July 2018 and telephonic text messages. The plaint specifically asserts that, after the Lease Agreement dated 1st July 2017, which came to an end by efflux of time on 31st May 2018, no further Lease Agreement was executed, permitting the petitioner to continue to stay in the suit property.

3. Alleging, in these circumstances, that a considerable amount of lease rental was due from the petitioner to the respondent, the suit sought a decree of possession in favour of the respondent and against the petitioner, in respect of the suit property as well as a decree for a recovery of arrears of rent and damages/*mesne* profits, apart from permanent injunction and costs.

4. The petitioner filed a written statement, by way of response to the suit. In the written statement, the petitioner disputed the assertion



of the respondent that she was entitled to collect lease rent from the petitioner. It was asserted, in the written statement, that the lease was in the name of Sukh Preet Singh, who was the absolute owner of the suit property and that the petitioner was continuing to stay in the suit property, free of charge, with the consent of Sukh Preet Singh. In the written statement, however, the petitioner admitted that she had been staying in the suit property on payment of lease rent @ ₹ 33,000/- per month and that, in fact, she had ceased paying lease rental since March 2018. The genuineness of the Lease Deeds dated 14th July 2016 and 1st July 2017, on which the plaint placed reliance, was also contested in the written statement. Inasmuch as the Lease Deed had been executed by the respondent, whereas Sukh Preet Singh had held out, to the petitioner, that he was the absolute owner of the suit property, it was sought to be contended that Lease Deed was not binding on the petitioner.

5. I have heard Ms. Archana Gaur, learned Counsel for the petitioner as well as the petitioner herself, in person.

6. It is sought to be contended, on behalf of the petitioner, that the issue of whether the petitioner was staying in the suit property with the consent of Sukh Preet Singh, as also the question of whether the Lease Deeds dated 14th July 2016 and 1st July 2017, were binding on the petitioner, were matters which would have to be decided consequent on trial. The petitioner, who appears in person, emphatically asserts that, as Sukh Preet Singh was in dire circumstances, he had allowed the petitioner to continue to stay in the suit property without having to



pay rent and that she was continuing in the suit property on the basis of the said assurance. She, however, acknowledges that, since 31st May 2018, after the lease has expired, she has not paid any rent in respect of the suit property after March 2018 and continues to stay in the suit property, thereafter, free of rent.

7. Order XXXIX Rule 10 of the CPC reads as under:

“Deposit of money, etc., in Court.—Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.”

8. Order XXXIX Rule 10 of the CPC does not envisage entering into any convoluted factual thicket or recording of evidence. It applies, *inter alia*, where a party to a suit admits that she, or he, holds money which belongs or is due to another party. In such circumstances, the Court is empowered to direct deposit of the said amount in Court.

9. In the impugned order, the learned ADJ has proceeded on the consideration that the petitioner has, in her written statement, acknowledged that (i) she was staying in the suit property on payment of rent @ ₹ 33,000/- per month, (ii) the Lease Deed that was drawn up in that regard was valid for eleven months, (iii) she was continuing to stay in the suit property till date, even after expiry of the Lease Deed and (iv) she had not paid any rent in respect of the suit property after



March 2018.

10. It is in view of these admissions in the written statement that the learned ADJ has directed deposit, by the petitioner, in Court, of the arrears of rent and has permitted her to continue in the suit property on deposit of rent @ ₹ 33,000/- per month.

11. It is not permissible for a person to continue to occupy the property of another without paying any lease rent or licence fee in respect thereof, unless such occupation is permitted free of cost by such other party. Though the petitioner has sought to contend that Sukh Preet Singh had allowed the petitioner to continue in the suit property without paying any rent, no evidence in that regard is forthcoming on record. At the highest, that would be an issue which would have to be established during trial.

12. Inasmuch as the petitioner is admittedly continuing in the suit property after March 2018 without paying any rent, I see no cause to interfere with the impugned order.

13. This petition is, accordingly, dismissed in *limine*. Miscellaneous applications are also disposed of.

C.HARI SHANKAR, J

OCTOBER 10, 2022

r.bararia