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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 26.09.2022***

+ RFA 415/2021, CM APPL. 44114/2021 (stay), CM APPL. 44115/2021 (direction), CM APPL. 44153/2021 (stay).

SIDDHANTH MENDIRATTA Appellant

Through: Mr. Arun Dhiman and Ms. Devika Agnihotu, Advs.

versus

MADHU CHAWLA & ANR. Respondents

Through: Mr. Rajeev Singh Chauhan, 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 10.11.2021 passed by the learned ADJ in CS (DJ) No. 803 of 2019. Vide the impugned judgment, the learned Trial Court has decreed the suit of the respondents/plaintiffs for possession by allowing the respondents' application under Order XII Rule 6 CPC and has directed the appellant to handover the vacant possession of the suit property being Shop no. G-19, Vishwa Sadan, District Centre, Janakpuri, New Delhi (hereinafter referred to as 'the suit property')
2. The suit property was initially let out by the respondents in favour of the appellant by way of a rent agreement in April/May, 2014 and the tenancy period in respect of the suit property was extended from time



to time. While it is the case of the respondents that after the expiry of the previous rent agreement, the parties entered into a rent agreement on 22.08.2018 for a period of 11 months w.e.f. 01.09.2018 to 31.07.2019 at a monthly rent of Rs. 29,000/-, it is the appellant's case that the monthly rent of the suit property was only Rs. 2,900/-. It was the respondents' case that since the appellant failed to pay the rent for the month of July-September, 2019, a legal notice dated 07.09.2019 was served upon the appellant to pay arrears of rent and vacate the suit property. As the appellant neither paid the arrears of rent nor vacated the suit property, the respondents filed a suit for possession, arrears of rent and *mesne profits*.

3. The suit was defended by the appellant by filing a written statement, wherein the appellant contended that the suit for possession was not maintainable as the appellant had paid a sum of Rs. 10,00,000/- as interest free security to the respondent in respect of the suit property and was therefore entitled to occupy the suit property till the amount of Rs.10,00,000/- was returned by the respondents. It was further averred that since the monthly rent of the suit property was Rs. 2,900/-, the learned Trial Court did not have the jurisdiction to entertain the suit and the appropriate remedy, if any, available with the respondents was to approach the competent authority under the Delhi Rent Control Act.
4. Based on the evidence led by the parties, the learned Trial Court, vide its impugned judgment has decreed the suit for possession by holding that once the appellant had admitted that he was inducted as a tenant in the suit property, the respondents were entitled to a decree for



possession. The relevant findings of the learned Trial Court read as under:

“Therefore, as per this provision, Court can pass a judgment on the basis of the admissions made by any party whether in pleading, or orally or in writing, or otherwise. Ownership of the plaintiffs upon the suit property is not disputed by the defendant as there is no denial on behalf of the defendant regarding para no.1 of the plaint wherein this fact is mentioned. In para no.1 of the plaint it is also mentioned that defendant was a tenant in suit premises since 2014 and tenancy period was extended from time to time. These contents of para no.1 are also not denied. Therefore, this fact is also admitted by the defendant that he has possessed the suit property as a tenant of the plaintiffs. In para no.2 & 3 of the plaint, the plaintiffs have relied upon rent agreement dated 22.08.2019 executed between the parties. As per the said rent agreement, it commenced from 01.09.2018. As per para no.3 of the aforesaid rent agreement, it was for a period of 5 years, however, as per para no. 4 & 5 rent agreement was initially for 11 months only and it was extendable after 11 months with increase in the rent by 20 per cent. As per this agreement, monthly rent was Rs.29,000/- and plaintiffs have received Rs.51,000/- as refundable security from the defendant. In reply to this para no.2, the defendant has stated in WS that rent of the tenanted premises was Rs.2900/- instead of Rs.29000/- as plaintiffs have taken mortgage amount of Rs.10,00,000/- from the defendant and it was agreed that as and when the plaintiffs will pay Rs.10,00,000/- to the defendant, the defendant will vacate the tenanted premises. In this para of WS, there is no specific denial of execution of the rent agreement dated 22.08.2018. It is also not specifically denied in this para that rent agreement



was for 11 months with the option of extension with increase of rent by 20 per cent. As per the rent agreement, the monthly rent was Rs.29,000/-. The defendant has stated that rent was Rs.2900/- but has not placed on record any document to show that the agreed rent was Rs.2900/-. He had neither filed any rent agreement nor filed any receipt nor any transaction document showing prima-facie that at any point of time, he had paid Rs.2900/- as a rent to the defendant. Further the defendant had made self contradictory statements in this respect. In reply to the application u/O XII R 6 CPC, it is mentioned by the defendant in para no.2 of preliminary submissions that defendant had paid a sum of Rs. 10,00,000/- to the plaintiffs as security amount and in lieu of the exorbitant interest free security amount, the rent was settled at Rs.2900/- per month. On the other hand, in para wise reply in WS, In para no.2 defendant had stated that the plaintiffs had mortgaged the suit property as the plaintiffs had taken mortgaged amount of Rs.10,00,000/- and it was agreed that as and when plaintiffs will pay Rs 10,00,000/- to the defendant, he will vacate the suit property. Further he is mentioning In his WS that he is making the payment of Rs.2900/- as rent/maintenance charge. Therefore, the defendant is not clear that whether he is paying Rs.2900/- as rent or only as maintenance charge, as according to him he had already made the payment of Rs.10,00,000/- interest free to the plaintiffs. Therefore, there is nothing on record shown by the plaintiffs that rent agreed between the parties is Rs.2900/- and this Court is not having jurisdiction to try this suit.”

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“The only rent agreement relied upon by the plaintiffs prescribes in para no.11 & 12 that either of



the parties can terminate this agreement by giving one month notice and first party (Plaintiffs) can terminate the tenancy in case of violation of any term and condition by the second party i.e. the defendant. In furtherance of these paragraphs, the plaintiff have already served a legal notice dated 07.09.2021 upon the defendant regarding termination of the tenancy.

*Admittedly this notice has been duly received by the defendant. As per the contents of the notice, the defendant was in arrear of the rent since July 2019. Defendant had not shown any proof regarding payment of the rent for that period. It is held by **Hon'ble High Court of Delhi in Ved Prakash & Anr. Vs. Marudhar Services Ltd. & Anr.** that suit for possession of a tenanted property can be decreed under Order XII Rule 6 CPC, where there is admission of the tenancy in the pleadings. Hence, in view of admission of the tenancy by the defendant qua suit property of plaintiffs and in view of the admission of legal notice already given by the plaintiffs for termination of the tenancy, plaintiffs are entitled for the decree of possession in their favor and against the defendant qua the suit property. Hence, the suit of the plaintiffs is partly decreed in their favor and against the defendant regarding the relief of possession as per prayer clause (a) of the suit. Application u/O XII R 6 CPC is allowed and disposed of accordingly. Decree-sheet be prepared accordingly.*

Other submissions made by the parties in their respective pleadings regarding arrear of rent, mesne-profit, security amount or the mortgage amount are matter of trial and suit will proceed further regarding the prayers other than the relief of possession. Put up for settlement of issues regarding remaining reliefs on 21.01.2022.”

5. Being aggrieved, the appellant has preferred the present appeal. In



support of the appeal, Mr. Arun Dhiman, leaned counsel for the appellant submits that the impugned judgment is liable to be set aside as the learned Trial Court had failed to appreciate the fact that the appellant had paid a sum of Rs.10,00,000/- in cash to the respondents as interest free security for continuing to occupy the property without payment of any rent and therefore, till the said amount was returned, the appellant could not be evicted from the suit property. He, therefore, contends that once it is an admitted position that the respondents have not refunded the sum of Rs.10,00,000/- to the appellant, no decree for possession could have been passed.

6. He then submits that the learned Trial Court had also erred in coming to the conclusion that there was an admission on the part of the appellant regarding the execution of the rent agreement dated 22.08.2018. On the other hand, the appellant, in his reply to the written statement had taken a specific plea that the rent agreement dated 22.08.2018 was a forged and fabricated document and did not bear the signatures of the appellant. He, therefore, contends that once the very execution of the rent agreement dated 22.08.2018 was denied by the appellant, the learned Trial Court could not have decreed the suit of the respondents/plaintiffs on the erroneous presumption that the execution of rent agreement had been admitted by the appellant.
7. Mr. Dhiman next submits that even otherwise, the suit for possession was not maintainable as the learned Trial Court did not have the necessary jurisdiction to try the suit. He submits that since the monthly rent of the suit property was Rs. 2,900/- and not Rs. 29,000/- as is sought to be contended by the respondents, no suit for possession



was maintainable and only an eviction petition under the Delhi Rent Control Act could have been filed. He, therefore, prays that the appeal be allowed and the impugned judgment be set aside.

8. On the other hand, Mr. Rajiv Singh Chauhan, learned counsel for the respondents, supports the impugned judgment and submits that the appellant had been illegally occupying the suit property without paying rent since July, 2019. He submits that the appellant's plea that he had paid a sum of Rs. 10,00,000/- in cash as security to the respondents was wholly false and was rightly rejected by the learned Trial Court. The respondents had received, only a sum of Rs. 51,000/- as interest free security from the appellant, which amount the respondents were always willing to refund at the time of vacation of the suit property. He, therefore, submits that the appellant is illegally continuing to occupy the suit property without any rent whatsoever to the respondents w.e.f July, 2019.
9. He further submits that the appellant's bald plea that the rent of the suit property was Rs. 2,900/- and not Rs. 29,000/- is also equally false and has been rightly rejected by the learned Trial Court. This plea of the appellant is belied from the fact that a shop situated behind the respondents' shop, of which the appellant is the owner, has been let out for Rs. 19,500/- per month. He submits that once the appellant's own shop, which is located in the same premises as that of the suit property, has been let out by him for Rs. 19,500/-, the appellant's plea that the rent of the suit property was only Rs. 2,900/-, is unbelievable and was rightly rejected by the learned Trial Court. He, therefore, prays that the appeal be dismissed with costs.



10. Having considered the submissions of the learned counsel for the parties and perused the record, I find no infirmity with the impugned judgment. Once the appellant has himself admitted that he was inducted as a tenant in the suit property by the respondents and in respect thereof, had entered into rent agreements with the respondents in the year 2014-2017, the learned Trial Court was justified in decreeing the suit for possession under Order XII Rule 6 CPC. As noted hereinabove, the primary submission of the learned counsel for the appellant before this Court is that the appellant had paid a sum of Rs. 10,00,000/-, in cash, as security to the respondents and was therefore, entitled to retain the possession of the suit property till the aforesaid amount was returned by the respondents. In my considered view, once the very receipt of the amount of Rs. 10,00,000/-, claimed to have been paid by the appellant towards security, has been denied by the respondents, the learned Trial Court was justified in rejecting this plea. Moreover the learned Trial Court had also observed that the appellant had taken contradictory stands in respect of this payment of Rs. 10,00,000/- purportedly made in cash to the respondents. Even before this Court, the appellant has not been able to explain as to how and when this amount of Rs. 10,00,000/- as claimed, had been paid to the respondents, in cash. Even otherwise, while passing the decree for possession, the learned Trial Court has adjourned the matter for determination of *mesne profits*, arrears of rent and amount, if any paid as security by the appellant. It is the own stand of the appellant even before this Court that he would be willing to vacate the suit property if he is refunded the sum of Rs 10,00,000/-, which he claims, was paid



to the respondents in cash. In the light of this position taken by the appellant coupled with the fact that he has not been able to *prima facie*, show as to how this purported sum of Rs.10,00,000/- was paid in cash to the respondents without any receipt, the learned Trial Court was, in my view, justified in decreeing the suit for possession while adjourning the matter for determination of the issue of payment of any amount towards security.

11.I have also considered the appellant's plea regarding the monthly rent of the suit property being Rs. 2,900/- and not Rs. 29,000/- but do not find any merit in the same. The appellant admittedly did not lead any evidence to show that the monthly rent of the suit property was Rs. 2,900/-. Merely because the appellant has chosen to deny his signatures on the rent agreement dated 22.08.2018, for which purpose learned counsel for the appellant sought to hand over in Court, a purported communication from the Notary Public to the effect that no such agreement was notarised by him, cannot be a ground to ignore the vital fact that the rent of the adjacent shops, including the shop owned by the appellant was much higher than Rs. 2,900/-. Once it is admitted that this communication from the Notary Public was not produced before the learned Trial Court, this Court cannot accept any such document sought to be relied on by the appellant without even any application for additional evidence being filed by him. This Court may also take judicial notice of the fact that the rent of a commercial shop in a shopping complex in Janakpuri of the size of the suit property, can by no means be a mere Rs. 2,900/- per month. This plea of the appellant has, therefore, rightly been rejected by the learned



Trial Court.

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 appellant to pay mesne profits and/or payment of any amount by him to the respondent towards security, which are pending adjudication before the learned Trial Court.

SEPTEMBER 26, 2022

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(REKHA PALLI)
JUDGE