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

Date of decision: 31.08.2023

+ **RC.REV. 562/2019**

MUKESH KUMAR MITTAL

..... Petitioner

Through: None

versus

VIMLESH GUPTA

..... Respondent

Through: Mr. Nakul Gupta, Advocate %

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

REVIEW PET. 112/2023 & CM APPL. 20228/2023

1. This review petition has been filed by the Respondent ('landlord') seeking review of the order dated 28.11.2022, to a limited extent, insofar as it disposes of his interlocutory application i.e., CM APPL. No. 39158/2022, filed for determination and grant of use and occupation charges against the tenant from the date of institution of the eviction petition till the handing over of the possession.

1.1. This Court vide order dated 28.11.2022, dismissed the revision petition filed by the Petitioner ('tenant') for non-prosecution and consequently, all pending applications were disposed of and interim order dated 25.11.2019 was vacated.

1.2. The landlord by this petition is not seeking the revival of the revision petition. He only seeks revival of the interlocutory application i.e., CM APPL.



No. 39158/2022.

2. The eviction petition was filed by the landlord on 23.12.2015, before the Additional Rent Controller, Central District, Delhi, under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act'). The Rent Controller *vide* order dated 03.06.2019 allowed the eviction petition in favour of the landlord and against the tenant.

2.1. The tenant subsequently, impugned the eviction order dated 03.06.2019 by filing the revision petition bearing RC.REV. No. 562/2019 i.e., the present revision petition. This Court issued notice in the revision petition on 25.11.2019 and granted an unconditional stay of the execution proceedings.

2.2. However, this Court thereafter on 28.11.2022 dismissed the revision petition on account of non-prosecution by the Petitioner i.e., the tenant, and categorically directed that the interim order dated 25.11.2019 stands vacated.

The order dated 28.11.2022 reads as under: -

“* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 562/2019 CM APPL. 42667/2019, CM APPL.20303/2022,**
CM APPL 39158/2022

MUKESH KUMAR MITTAL Petitioner

Through: None.

versus

VIMLESH GUPTA Respondent

Through: Mr. Nakul Gupta, Advocate.

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% 28.11.2022

Learned counsel for the respondent-landlord states that the petitioner-tenant was last represented in the present proceedings on 4th March 2020. He states thereafter the matter has been listed on at least 4 occasions in 2022, however, none has appeared on behalf of the petitioner tenant.

The present petition is accordingly, dismissed for non-prosecution. Interim orders, if any, stand vacated. The interim applications, if any, stands disposed of.



MANMEET PRITAM SINGH ARORA, J
NOVEMBER 28, 2022/hp”

3. This Court has been informed that after the vacation of the interim order and dismissal of this revision petition, the landlord has recovered the possession of one shop, ground floor, forming part of property no. 4053-4055, Naya Bazar, Lahori Gate, Delhi – 110006 (‘tenanted premises’) on 06.06.2023.

4. However, as noted above, this review petition filed by the landlord seeks the revival of his interlocutory application i.e., CM APPL. No. 39158/2022.

4.1. In this application i.e., CM APPL. No. 39158/2022, the landlord had sought determination of use and occupation charges to be paid by the tenant from the date of the initiation of eviction petition i.e., 23.12.2015, till vacation of the tenanted premises by the Petitioner. In this regard, the landlord has relied upon the judgement of the Supreme Court in *Atma Ram Properties Pvt. Ltd. vs. Federal Motors Pvt. Ltd., (2005) 1 SCC 705* and *Martin and Harris (P) Ltd. & Anr. v. Rajendra Mehta & Ors., (2022) 8 SCC 527*.

4.2. This review petition is accompanied by an application under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 97 days in filing the review petition.

5. This Court is of the opinion that the review petition seeking revival of an interlocutory application, in a dismissed revision petition, without seeking revival of the revision petition is not maintainable. The landlord admittedly does not seek revival of the revision petition, which is the substantive proceeding instituted by the tenant and is merely seeking revival of his interlocutory application. The landlord herein is admittedly not aggrieved by



the said dismissal of the revision petition and has in fact relied upon the same to seek eviction of the tenant from the tenanted premises. This Court is of the opinion that after the passing of the order dated 28.11.2022, dismissing the revision petition, this Court has become *functus officio* and no orders can be passed in an interim application after the disposal of the main petition.

6. Even on merits, no claim for mesne profits is maintainable for the period between 23.12.2015 (i.e., the date of institution of eviction petition) to 03.06.2019 (i.e., the date of passing of the impugned order allowing the eviction petition) and for the statutory period of six (6) months granted thereafter to the tenant in terms of Section 14(7) of the DRC Act, to handover the possession of tenanted premises.

6.1. The interim stay was granted by this Court on 25.11.2019 and until 01.09.2022, this landlord did not raise any claim for use and occupation charges.

6.2. The claim was raised for the first time by filing CM APPL. No. 39158/2022. This Court vide order dated 28.11.2022 dismissed the revision petition and CM APPL. 42667/2019, which was the application filed by the tenant seeking stay of the eviction order. This Court while disposing of the said application i.e., CM APPL. 42667/2019, did not impose any condition of payment of use and occupation charges on tenant for continuing to occupy the tenanted premises.

6.3. The order dismissing the revision petition and CM APPL. 42667/2019 has become final.

6.4. The Supreme Court in the judgment of *Martin and Harris* (Supra), while referring to the judgment passed in *Atma Ram Properties* (Supra) has observed that the Appellate Court while granting stay has jurisdiction to put



reasonable terms and conditions to compensate the decree holder for loss incurred by delay in execution of the decree. However, as noted hereinabove, CM APPL. 42667/2019 stands dismissed and no use and occupation charges were fixed by this Court at the relevant stage.

7. The landlord in his review petition has stated that his CM APPL. No. 39158/2022 is in the nature of a counter claim, filed for grant mesne profits in terms of the judgments of Supreme Court in *Martin and Harris* (Supra) and *Atma Ram Properties* (Supra).

7.1. The learned counsel for the Petitioner has relied upon judgement of this Court in *Sita Kashyap & Another vs. Harbans Kashyap and Others; 2011 (123) DRJ 52*, in support of his submissions to maintain his claim of use and occupation charges by way of an interlocutory application in a dismissed revision petition. However, the said judgement itself states that no order can be passed by the Court once it has become *functus officio*. The relevant extract of the judgment in *Sita Kashyap* (Supra) reads as under:

“.....Of course, no order for such payment/adjustment/apportionment can be passed by the Court once it has become functus officio, in the sense that no proceedings in the main suit are pending before it, but, when the suit proceedings continue to be pending before the Court for one reason or the other, there is no legal impediment in passing such an order even after passing of the final decree. In such cases, the Court is competent to pass a supplementary/additional decree limited to the grant of mesne profits.”

(Emphasis Supplied)

8. The CM APPL. 39158/2022 filed by the Respondent cannot be considered as a counter claim, which can be adjudicated even after the dismissal of the revision petition. As noted hereinabove, the use and occupation charges are fixed by the Appellate Court/Revisional Court as a condition of stay during the pendency of the petition and not entertain as a separate claim. The relevant extract of judgment in *Martin and Harris*



(Supra) reads as under:

“17. In Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. [Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd., (2005) 1 SCC 705], this Court held that the appellate court does have jurisdiction to put reasonable terms and conditions as would in its opinion be reasonable to compensate the decree-holder for loss occasioned by delay in execution of the decree while granting the stay. The Court relying upon the provisions of the Delhi Rent Control Act, observed that on passing the decree for eviction by a competent court, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises in present and earn the profit if the tenant would have vacated the premises. The Court has explained that because of pendency of the appeal, which may be in continuation of suit, the doctrine of merger does not have effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a later date.”

(Emphasis Supplied)

9. In view of the aforesaid, this Court is of the opinion that this review petition is without any merits and is accordingly, dismissed.

10. This will, however, not preclude the Respondent from seeking mesne profits from the Petitioner, before the appropriate forum and in accordance with law.

MANMEET PRITAM SINGH ARORA, J

AUGUST 31, 2023/rhc/aa

[Click here to check corrigendum, if any](#)