

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

+ **FAO 7/2023 & CM APPL. 1225/2023**

Reserved on : 21.02.2023

Pronounced on : 16.03.2023

IN THE MATTER OF:

SMT. SWARAN MAKKAR

..... Appellant

Through: Mr. K.K. Bhuchar and Mr. Atul
Bhuchar, Advocates.

Versus

M/S DAYAL CHAND KISHORI LAL

..... Respondent

Through: Counsel (appearance not given)

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The present appeal has been preferred under Order 43 Rule 1 CPC by the appellant/plaintiff against order dated 01.10.2022 passed by the learned Additional District Judge-11, Central District, Tis Hazari Courts, Delhi in CS DJ No. 10175/16.

2. The facts, in nutshell, are that the appellant had filed the underlying suit for possession, arrears of property tax, mesne profits etc. In the plaint, it was claimed that the respondent/defendant is a tenant of part of ground floor, entire first floor and part of second floor (*barsati*) in property bearing No. 2407-19, Hardhian Singh Road, Ajmal Khan Road, Karol Bagh, New Delhi-05. It was further claimed that initially, separate

tenancies were created in the names of *Dayal Chand* and *Gangra Ram* (partners of defendant/respondent) however subsequently, a consolidated rent was paid by the present respondent/defendant.

It is a specific case of the appellant that the respondent/defendant has amalgamated the different tenancies and paid a consolidated rent of Rs.6,655/-.

3. Mr. K.K. Bhuchar, learned counsel for the appellant, submitted that the appellant had terminated the tenancy and the last consolidated rent of Rs.6,655/- was received till April, 2014. He further submitted that although in the application filed, a direction to the respondent for deposit of Rs.12 lacs per month towards use and occupation charges was sought, during the submissions before the Trial Court, only an amount of Rs.8 lacs was demanded. While relying on the lease deeds with respect to various other properties in the adjacent vicinity, one of which was executed by none other than the partner of the respondent-firm, it was submitted that average rent is Rs.145/- per sq. ft. It was also submitted that all the lease deeds provide for a minimum 10% increase in every three years.

4. Learned counsel for the respondent/defendant, on the other hand, submitted that on similar averments, an application filed by the appellant under Order 12 Rule 6 CPC came to be dismissed by the Trial Court in consideration of a specific plea by the respondent that there was a fourth tenancy with regard to the portion stated to be unauthorizedly occupied, as opposed to three. Learned counsel further submitted that the said order has attained finality having not been assailed before this Court, and enhancement of the amount already granted would amount to granting final relief in the suit.

5. I have heard learned counsels for the parties and gone through the material placed on record.

6. Vide order dated 01.10.2022, the respondent/defendant has been directed to pay rent/occupation charges @ Rs.6,655/- per month from the date of filing of suit till pendency. The limited contention raised by the appellant is that the amount of rent/occupation charges be adjudicated in view of the registered lease deeds placed on record.

7. It is worthwhile to note that during the proceedings before the Trial Court, a statement of Mr. Kishan Lal Ahuja, partner of the respondent/defendant, was recorded under the provisions of Order 10 Rule 2 CPC wherein he stated as under :-

“I am the partner in firm M/s Dayal Chand Kishori Lal (Defendant). Earlier my father was partner in the above said firm, after the death of my father on 23.02.2000. On my induction as partner in the firm, partnership deed was reconstituted in year 2000 itself, since then I am partner in the above said firm. I do not know the name of other partners. In fact there are four families the members of which are partner in that firm their names I do not remember off hand. I have not placed on record the partnership deed of the defendant firm. Presently, plaintiff Swaran Makkar is the landlord in respect of property in question in which defendant firms is the tenant. Our firm pay rent of Rs.6500 per month. We remit the rent by way of cheque. I do not want to say anything else.”

8. There is no dispute over whether there was landlord-tenant relationship between the parties. Dispute exists only as to whether the tenancy in question constituted a single tenancy (as claimed by the appellant) or three/four separate tenancies (as claimed by the respondent). Observing the controversy, the Trial Court, in view of Order 39 Rule 10 CPC and Order XV-A CPC, has directed deposit of an

amount of Rs.6,655/- per month, which is the admitted rent last paid by the respondent/defendant. It has been noted by the Trial Court that passing an order for deposit of rent on the basis of market rent, mesne profits/damages as claimed by the appellant may not be the correct approach unless the aforesaid issue is decided in trial, as well as considering that the trial is at fag end.

9. On an analysis of Order 39 Rule 10 CPC vis-à-vis Order XV-A CPC, it is apparent that language of the latter, especially absence of the word '*admitted*' in it, vests the Court with discretion to issue a direction for deposit of 'such amount' as the Court may deem fit/reasonable [Refer: Raghubir Rai v. Prem Lata & Anr. reported as **2014 SCC OnLine Del 3045**].

10. Pertinently, a Co-ordinate Bench of this Court in Madho Singh Chauhan v. Smriti and Others reported as **2022 SCC OnLine Del 1059** opined that the principle under Order XV-A CPC applies differently based upon whether the defendant was a tenant or alleged unauthorized occupant. It further held that Order XV-A CPC confers complete discretion on the Court to decide the amount to be fixed for payment and observed thus:-

"20. A bare reading of sub-para (F), (G) and (H) of para 9 of the report in Raghuvir Rai, vis-à-vis the earlier sub-paras (A) to (E) thereof, clearly indicate that the principle that applies, under Order XV-A, to unauthorised occupants who are not tenants, and that which applies to tenants, are completely distinct. Where the defendants are the tenants in the suit property, there may be substance in the contention that the payment directed under Order XV-A(1) ought to be commensurate to the rent charged with respect to premises in the vicinity. Where, however, the defendants are not tenants, as in the present case, where they are the divorced wife and children of the petitioner who, according to him, are continuing in unauthorised occupation of the suit property, the

discretion of the court, in fixing the amount payable under Order XV-A(1) is not constrained or constricted in any manner by the consideration of the rent chargeable with respect to premises in the vicinity.”

(emphasis added)

11. There is no gainsaying that an order under Order 39 Rule 10 CPC and/or Order XV-A CPC is rendered as an interim measure to safeguard the interest of the plaintiff/owner. This ‘order as an interim measure’ is to be carefully passed and the provisions loosely interpreted to safeguard the interest of a party that claims ownership over a property and assails unauthorized occupation of the same. In light of the very nature of relief contemplated under the above provisions, there is no reason to deprive a plaintiff of fair protection of his interest during pendency of the trial just because the trial is near its end or because there is dispute as to whether the property was tenanted as one or three/four.

12. In the present case, the appellant has placed on record certain registered lease deeds, to show that rentals upto Rs.145/- are being charged from tenants in the vicinity of the property in question. In the application filed, though the appellant had sought use/occupation charges @ Rs.12 lacs per month, during the course of submissions before the Trial Court, the demand was statedly restricted to Rs.8 lacs per month. Despite considering the scope of Order XV-A CPC, the Trial Court restricted its decision to direct payment only to ‘admitted’ rate of rent. The same does not find favour with this Court.

13. During the course of hearing before this Court, learned counsels for the parties further informed that in the underlying suit, the appellant/plaintiff’s evidence has been recorded, however respondent/defendant has failed to appear and has been proceeded ex-

parte. It was also informed that an application seeking setting aside of the *ex-parte* order is pending consideration before the Trial Court.

14. Considering the aforesaid and the material on record, this Court is of the opinion that interest of justice would be served if the respondent/defendant is directed to deposit before the Trial Court arrears @ Rs.2 lacs per month since the date of filing of the suit till its pendency. Therefore, the present appeal is allowed and it is ordered accordingly. The arrears upto the date of passing of this judgment be deposited with the Trial Court within a period of six months from today. For the period beginning 16.03.2023, the deposit at the aforesaid rate shall be made month by month, in advance, by the 7th of every month. The amount to be deposited by the respondent/defendant shall be kept in an interest-bearing deposit and its release shall be subject to the final outcome of the suit. Pending application stands disposed of.

15. A copy of this judgment be communicated to the concerned Court for information.

(MANOJ KUMAR OHRI)
JUDGE

MARCH 16, 2023

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