

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

FAO 11/2023, CM APPLs. 2557-2558/2023 & CAV 44/2023

Date of Decision: 19.01.2023

IN THE MATTER OF:

VIMAL KHANNA

..... Appellant

Through: Mr.Vivek Kumar, Advocate.

versus

AYUSH GUPTA & ANR.

..... Respondents

Through: Mr. Arun Maitri and Ms.Radhika Chandrashekhar, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM Appl. No.2558/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

Caveat No. 44/2023

Since learned counsel for the caveator/respondents has put in appearance, the caveat stands discharged.

FAO 11/2023 & CM Appl.2557/2023 (Stay)

1. By way of the present appeal filed under Order 43 Rule 1 read with Section 151 CPC, the appellant/defendant seeks setting aside of order dated 14.09.2022 passed by the learned ADJ-02 (North-West) Rohini Courts, Delhi in CS DJ No. 63/2021, whereby the application filed by respondents/plaintiffs under Order 39 Rule 10 read with Section 151 CPC was allowed and the appellant directed to pay arrears of rent from May 2020 onwards @ Rs.27,500/- per month till date (at the admitted rent i.e. @ Rs.27,500/- per month) within 30 days and further to continue to make payment of rent @ Rs.27,500/- p.m. on or before the 15th of the succeeding month during the pendency of the Suit.

2. Briefly put, facts of the case are that the aforementioned Suit was filed by the respondents (respondent No.1 being partner of respondent No.1-firm) for possession, recovery of rent/mesne profits/damages. In the Suit, it was claimed that the respondents were the owner-landlord of property bearing *MIG Flat No. 98, First Floor, MIG Flats, Block-AN, Shalimar Residential Scheme, Shalimar Bagh, Delhi* (hereinafter, referred to as the '*suit property*') and the appellant was inducted as a tenant therein. From May, 2020 onwards, the appellant started defaulting in the payment of rent and so, the respondents had served him with a statutory notice dated 26.10.2020 terminating tenancy in the suit property and calling upon the appellant to vacate it on or before 15.11.2020. However, the appellant neither vacated the suit property nor paid the defaulted amount due towards the respondents.

3. Learned counsel for the appellant has submitted that the appellant is the owner of the suit property by virtue of an Agreement to Sell orally arrived at between him and respondent No.1. As such, he was not required to pay any rent to the respondents. Rather, instalments towards sale consideration were to be paid.

It is further contended that the Suit filed by the respondents was not maintainable, the same being hit by Section 69 of the Indian Partnership Act, 1932.

4. Mr. Arun Maitri, learned counsel has put in appearance for the respondents on advance notice and opposed the prayer made in the appeal. It is submitted that as per the admitted Rent Agreement(s) between the parties, the appellant was paying a monthly rent which was revised from time to time, and the last agreed upon monthly rent was Rs.27,500/-. After expiry of the tenancy, if both parties wanted to extend the tenancy, rent would be increased by 10% on monthly rent. In support of the contention, copies of rent agreements dated 30.04.2010, 06.05.2011 and 01.03.2012 have been placed on record.

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

6. In the present case, the appellant has raised two contentions: first, that an oral Agreement to Sell with respect to the suit property was entered between him and respondent No.1 in the year 2014, and as such, he was not required to pay the rent claimed by the respondents, and second, that the respondents' Suit was not maintainable in view of Section 69 of the Indian Partnership Act, 1932.

7. A perusal of the impugned order would show that the tenancy with the appellant was terminated by the respondents vide notice dated 26.10.2020, whereby the appellant was also called upon to hand over the possession of the suit property on or before 15.11.2020. Purportedly, despite service of statutory notice upon him, the appellant started defaulting in making rent payments from May, 2020 onwards, and arrears to the tune of Rs.1,18,750/- became due. Upon a consideration of the averments made by both sides in their pleadings, the impugned order came to be passed against the appellant.

8. Insofar as the appellant's first contention before this Court is concerned, it is observed that the factum of execution of the rent agreements between the parties has not been disputed by him. A bald averment has been made to the effect that an oral Agreement to Sell was entered between the parties, but no material has been brought on record to indicate that any such Agreement was in fact acted upon.

On a specific Court query, learned counsel for appellant has replied that though no specific date of the oral Agreement has been pleaded in the written statement, the same was arrived at between the parties somewhere in the year 2014. On further query as to whether any steps have been taken by the appellant towards enforcement of the oral Agreement statedly entered into between him and respondent No.1, learned counsel has replied that the appellant had asked for title documents but the same were not provided. It is also submitted that for the enforcement of the oral Agreement, the appellant has not taken any action till date.

In this backdrop, the first contention *prima facie* appears to be an afterthought of the appellant and is rejected.

9. With regard to the second contention, it has been clarified by learned counsel for respondents that respondent No.2/partnership firm is registered, that respondent No.1/*Mr. Ayush Gupta* is the registered partner thereof, and that requisite documents have been placed on record before the Trial Court. Considering the same, the second contention raised by the appellant is also found to be meritless and is rejected.

10. In the opinion of this Court, no ground for interference with the impugned order is made out. Accordingly, the same is upheld and the instant appeal is dismissed. All pending application(s) stand disposed of.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 19, 2023/sa

