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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 14.03.2023

Pronounced on: 18.04.2023

+ **RFA 63/2023 and CM APPL. 3335/2023 & 3336/2023**

RAKESH

..... Appellant

Through: Mr. Amit Choudhary,
Advocate.

versus

HOSHIYARI DEVI

..... Respondent

Through: Mr. Naveen Sehrawat and
Mr.S. Chauhan, Advocates.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The Appellant (Original Defendant in Suit No.9220/2016) is aggrieved by the ex-parte judgment and decree dated 24.01.2022 ("**Impugned Judgment**") in Suit No.9220/2016 and Order dated 21.11.2022 ("**Impugned Order**") in the Review Petition No.1/2022 passed by the learned Additional District Judge-02, South District, Saket, New Delhi in the matter titled *Smt. Hoshiyari Devi vs. Sh. Rakesh*.
2. Vide the Impugned Judgment, learned Trial Court was pleased to decree the 'suit for permanent injunction, possession and recovery of mesne profits along with pendente lite and future

interest' in favour of the Respondent (Original Plaintiff). Learned Trial Court further held that the Appellant is entitled for damages at the rate of Rs.10,000/- per month from the date of issuance of the legal notice till the date of vacation. The Appellant filed the Review Petition seeking a review of the said Impugned Judgment which was dismissed vide the Impugned Order.

FACTS RELEVANT FOR THE CONSIDERATION OF THE PRESENT APPEAL:

3. The Respondent purchased the property bearing No. 222-D/D-1, area 40 sq. yds. comprise in Khasra No. 789/508 (Abadi of Lal Dora) situated in the Revenue Estate of Village Shahpur Jat, Tehsil Hauz Khas, Mehrauli, New Delhi ("**Suit Property**") from Appellant's mother vide a registered sale deed dated 11.05.2009. The Respondent thereafter permitted the Appellant to occupy the Suit Property as a tenant at a monthly rental of Rs.6000/- based on an oral agreement. The Appellant paid the rent on a timely basis and thus the tenancy was extended from time to time.
4. In the month of November 2012, the Appellant defaulted on payment of rent. As a result, the Respondent insisted on executing a written lease agreement. Therefore, a registered lease agreement was executed between the parties on 14.12.2012 ("**Lease Agreement**") for the period from 01.09.2012 to 31.07.2013. The Lease Agreement stipulated an enhanced monthly rent of Rs.8000/-.

5. Starting from February 2013, the Appellant once again began defaulting on payment of rent. As a result, the Respondent asked the Appellant to vacate the Suit Premises. However, the Appellant refused to do so.
6. On 18.04.2013, the Respondent issued a legal notice calling upon the Appellant to hand over the vacant peaceful possession of the Suit Property and to pay mesne profits @ Rs. 25,000/- p.m. w.e.f. February, 2013. However, even after the receipt of the said legal notice, the Appellant failed to vacate the Suit Property despite assuring the Respondent that they would do so and clear all outstanding dues.
7. On 12.09.2014, the Appellant began demolishing the Suit Property. When the Respondent objected to the demolition, the Appellant and his spouse threatened to falsely implicate the Respondent and her sons in legal cases. The Respondent filed a complaint with the police vide D.D. No. 44B but such complaint did not result in any action being taken by the police.
8. The Respondent, in view of the above, filed a suit for permanent injunction, possession and recovery of mesne profits along with pendente lite and future interest against the Appellant.
9. Despite being served, the Appellant failed to file the written statement, and therefore, was proceeded ex-parte vide order dated 04.08.2015. Later, the Appellant filed an Application under Order VIII Rule 10 of CPC seeking to set aside the ex-parte order dated 04.08.2015. However, the said Application was also rejected vide order dated 18.12.2018. Thereafter, the

Appellant made no attempt to challenge the order dated 18.12.2018 and thus, the order attained finality. Nevertheless, the Appellant participated in the trial proceedings and even cross-examined the Plaintiff's Witnesses.

10. Meanwhile, the Appellant's wife, Smt. Sunil Kumari moved an Application under Order I Rule 10 CPC, seeking to implead herself as a necessary party. It was her contention that she is the owner of the Suit Property as all her documents (Voter I-Card, ration card, electricity connection, and Aadhar Card) have the address of the Suit Property. Additionally, the House Tax receipts of the Suit Property also bear her name. She further contended that her mother-in-law, Smt. Jagni Devi, had no right over the Suit Property and therefore, could not have sold the same to the Respondent. According to her, the Suit Property was part of the Government land, and the Appellant, in collusion with the government officials, executed the sale deed. It is also pertinent to mention here that during the pendency of the said application, the Appellant's wife placed on record an ex-parte order passed in her favor under Section 12 of Protection of Women from Domestic Violence Act, 1953. As per the said order, the learned Metropolitan Magistrate, Mahila Court, South Delhi restrained the Appellant and his mother from dispossessing/disturbing the possession of Smt. Sunil Kumari without following due process of law. However, the Learned Trial Court vide order dated 10.04.2018, dismissed the said

Application filed by the Appellant's wife under Order I Rule 10 CPC.

11. The Respondent led her evidence and produced four witnesses to prove her case. Learned counsel for the Appellant cross-examined the Respondent's witnesses and after conclusion of the evidence by Respondent, the evidence was closed.
12. Learned Trial Court, after hearing the parties, passed the Impugned Judgment, directing, inter alia, as follows:

"In the final analysis, in view of the observations made above, the suit of the plaintiff seeking ejectment from the suit property. i.e, Property bearing no. 222-D/D-1, area measuring 40 sq. yards, comprise in Khasra no. 798/508 (Abadi of Lal Dora) 11111 situated in the revenue estate of Village Shahpur Jat, Tehsil Hauz Khas, Mehrauli, New Delhi decreed in favour of plaintiff alongwith damages from 14.12.2012 @ Rs.10,000/- per month till the vacation of suit property alongwith pendente lite and further interest @ 9% per annum. Cost of the suit is also awarded in favour of the plaintiff. The defendant shall hand over the peaceful, physical and vacant possession of the suit property to the plaintiff within 60 days from passing of this judgment".

13. Being aggrieved by the Impugned Judgment, the Appellant filed a Review Petition which was dismissed by the learned Trial Court vide the Impugned Order. The Appellant is therefore, challenging the Impugned Judgment and the Impugned Order in the present proceedings.

SUBMISSIONS ON BEHALF OF THE APPELLANT

14. Learned counsel for the Appellant submits that while passing the Impugned Judgment, learned Trial Court erred both in facts as well as in law. Learned counsel further submits that the

Impugned Judgment is contrary to the principles of natural justice as the Appellant was not permitted to file the written statement. Learned counsel further submits that the Appellant was not given an opportunity to cross examine PW-1. Although, PW-1 was partly cross-examined on 09.05.2019, her cross-examination was deferred for the next date. However, PW-1 never stepped into the witness box thereafter and hence her evidence remained inconclusive. Furthermore, learned counsel for the Appellant submits that the learned Trial Court erred in disallowing the application for impleadment filed by the Appellant's wife. Learned counsel argues that the learned Trial Court also erred in not considering the order passed by the Metropolitan Magistrate, Mahila Court in the proceeding initiated by the Appellant's wife.

15. With these arguments, learned counsel for the Appellant prays for setting aside of the Impugned Judgment.

LEGAL ANALYSIS

16. This Court has heard the arguments advanced by the learned counsels for the Parties and examined all the records and documents.
17. The Respondent is claiming to be the owner of the Suit Property and has filed the present 'suit for permanent injunction, possession and recovery of mesne profit along with pendente lite and future interest'. To prove her ownership, the Respondent adduced the following evidence:

- (i) The Respondent stepped into the witness box as PW-1 and placed on record Exhibit PW1/2, the registered Sale Deed dated 11.05.2009, executed in her favour by Smt. Jagni Devi (mother of the Appellant).
- (ii) PW-4, the official from the Sub-Registrar's Office, Mehrauli was summoned who brought on record the copy of the said registered sale deed as Exhibit PW4/A.

Hence, the Respondent proved on record that she is the owner of the Suit Property.

18. It is the case of the Respondent that she leased out the Suit Property to the Appellant on a monthly rent of Rs. 6000/-. Later, a Lease Agreement dated 14.12.2012 was executed and duly registered by the parties for the period 01.09.2012 to 31.07.2013 with an enhanced monthly rent of Rs.8000/-. In order to prove the said tenancy, the Respondent adduced the following evidences:

- (i) Respondent, as PW-1 produced the said lease agreement as Exhibit PW1/3.
- (ii) One of the attesting witnesses to the said Lease Agreement, Mr. Harwinder Panwar was examined as PW-2. In his evidence, he categorically stated that the Appellant and Respondent executed the said Lease Agreement at the Sub-Registrar Office, Mehrauli in his presence and one Mr. Ajay Kumar.

Hence, the Respondent proved on record that vide the registered Lease Agreement dated 14.12.2012 executed between the

parties, she had leased out the Suit Property to the Appellant from 01.09.2012 to 31.07.2013 on a monthly rent of Rs.8000/-.

19. The Respondent further proved on record the legal notice dated 18.04.2013 along with postal receipts and acknowledgement card (Exhibits PW1/4-Exhibit PW1/6) to show that the lease has been validly terminated. Even otherwise, the said Lease Agreement dated 14.12.2012 was valid only till 31.07.2013 and thereafter the lease was expired by efflux of time.
20. Based on the evidence adduced by the Respondent, it is evident that she was able to establish that she is the rightful owner of the Suit Property. Furthermore, she had leased out the Suit Property to the Appellant for a monthly rent of Rs. 8,000/-. She further proved that she had validly terminated the lease between the parties.
21. The Appellant failed to file his written statement and his Application under Order VIII Rule 10 CPC was also dismissed. The Appellant opted not to challenge the said order and waived his right to defense in the matter. Therefore, the evidence presented by the Respondent remained unrebutted and uncontroverted.
22. During the course of the proceedings, the Appellant's wife filed an application for impleadment and attempted to dispute the ownership claim of the Respondent. However, the said Application was dismissed by the learned Trial Court vide order dated 10.04.2018 and the Appellant's wife did not challenge this decision. Even otherwise, the document produced by the

Appellant's wife merely established the fact that she was in possession of the Suit Property and she was unable to produce any title document to substantiate her claim of ownership.

23. Learned Trial Court, examined these issues in detail. The analysis of the learned Trial Court on these issues is as follows:

“ 9. The Plaintiff has placed on record the purported Sale Deed Ex. PW1/2 (OSR) of property bearing no. 222-D (D1), Shahpur Jat, New Delhi to prove her ownership over the suit property. She has also placed on record the Lease Agreement Ex. PW1/3 (OSR) to show that she had entered into a lease agreement with the defendant wherein the defendant had been initially inducted as a tenant in the property for a monthly rent of Rs.6.000/- per month and thereafter the tenancy was extended on mutual oral agreement between the parties from time to time. Furthermore, the lease agreement dated 14.12.2012 Ex. PW1/3 was executed between the parties at a monthly rent of Rs.8,000/- . The plaintiff had also proved legal notice dated 18.04.2013 Ex. PW1/4 which was sent to the defendant by the plaintiff seeking handing over of the vacant possession of the suit property. The plaintiff has also examined PW2 Harvinder Panwar, who is the witness to the Registered Lease Deed Ex. PW1/3 executed between the plaintiff and the defendant and the testimony of this witness remained un-rebutted. It is the case of the plaintiff that despite termination of the tenancy the defendant continues to stay in the property and had not handed over the possession of the suit property to it. At the risk of repetition, it is reiterated that the tenancy of the defendant has been confirmed and proved during trial and the plaintiff has been able to show her prima facie ownership over the suit property and the induction of the defendant as her tenant qua the same. The tenancy has been validly terminated by sending legal notice Ex. PW1/4 and after service of the said notice, the occupation of the suit property by the defendant has become unauthorized. It is

a sealed position of law that filing of suit itself per se is a notice to the other side.

Accordingly, the plaintiff has been successful in proving the landlord-tenant relationship. The rate of rent was Rs.8,000/- per month. Therefore, after 14.12.2012, the possession of defendant over the suit property has become illegal and plaintiff has become entitled for possession of suit property.

9.1. With respect to right of decree of permanent injunction, in view of observations made in preceding paragraphs that there exists landlord and tenant relationship between the parties to the suit, the plaintiff is also entitled for decree of permanent injunction against the defendant restraining him from creating any third party interest in the suit property.

9.2. Now adverting to the relief of entitlement to damages/mesne profits, the plaintiff is claiming Rs.25,000/- per month towards unauthorized use and occupation of the suit property until the physical and vacant possession is handed over to the plaintiff by the defendant. The last rent payable by the defendant was Rs.8,000/- per month as per the Registered Lease Deed. Admittedly, the plaintiff has not placed on record any rent receipt and in the present case, the defendant has been proceeded ex-parte which prima facie evidences that the facts averred in the plaint are correct. The present suit has been instituted on 24.09.2014. Therefore, the plaintiff is entitled to damages @ Rs.10,000/- per month from the date of legal notice i.e. 14.12.2012 till the vacation of suit property alongwith interest. The plaintiff is entitled to interest @ 9% per annum towards the damages till realization.

10. In the final analysis, in view of the observations made above, the suit of the plaintiff seeking ejectment from the suit property i.e. Property bearing no. 222-D/D-1, area measuring 40 sq. yards, comprise in Khasra no. 798/508 (Abadi of Lal Dora) situated in the revenue estate of Village Shahpur Jat, Tehsil Hauz Khas, Mehrauli, New

Delhi decreed in favour of plaintiff alongwith damages from 14.12.2012 @ Rs.10,000/- per month till the vacation of suit property alongwith pendente lite and further interest @ 9% per annum. Cost of the suit is also awarded in favour of the plaintiff. The defendant shall hand over the peaceful, physical and vacant possession of the suit property to the plaintiff within 60 days from passing of this judgment. Decree sheet be prepared accordingly. File be consigned to record room”.

24. The Learned Trial Court passed the Impugned Judgment based on the correct appreciation of the facts. There is no impunity or perversity in the Impugned Judgment.
25. The Appellant filed a review application before the learned Trial Court alleging that he has not been given opportunity to cross-examine PW-1. However, the Learned Trial Court vide the Impugned Order, dismissed the said Review Petition. A perusal of the record reveals that PW-1 was partly cross-examined on 09.05.2019 and her further cross-examination was deferred. On the next date of hearing i.e. on 23.08.2019, PW-1 was present but due to the absence of the Appellant's counsel, the Court proceeded with PW-2's evidence. PW-1 was also present in the Court on 22.10.2019 but her evidence was deferred due to the examination of the summoned witnesses. Thereafter, due to Covid-19 Pandemic, there were no effective hearings until 17.12.2021, when the Plaintiff's evidence was closed in the presence of the learned counsel for the Appellant without any objection from the Appellant. The matter was then listed for final arguments, during which the Appellant argued the matter but never expressed his intention to cross-examine PW-1. In this

regard, it is pertinent to quote the observation of the learned Trial Court in the context of the Review Application and the same reads as follows:

“It is a well settled law that law lends its helping hand towards a litigant who is diligent and not towards the person who sleeps over his/her rights. The Applicant/ Defendant herein did not move any subsequent application or request seeking recall of PW-I. The judgment dated 24.01.2022 has been passed on the basis of material and after consideration of evidence available on record which remained uncontroverted and un-rebutted as no further cross examination of PW I was carried till the conclusion of PE and the Defendant though ex-parte, had not taken further steps for reasons best known to the Defendant/ Applicant. The conduct of the Defendant/ Applicant fails to show that he was diligent in pursuing the present case. It is significant to mention that present suit was instituted on 26.09.2014 before Hon'ble High Court of Delhi and on 24.01.2022, judgment was passed in the aforesaid case. “

26. This Court agrees with the view expressed by the learned Trial Court. Even otherwise, the Appellant has not filed any written statement and thus has no defence. Hence, the inconclusive evidence of the PW-1 is not fatal as the Respondent's case was based on cogent documentary evidence. Hence, this Court is of the considered view that there is no perversity in the Impugned Order. Additionally, there was no error apparent on the face of the record which warranted a review of the Impugned Judgment.
27. In view of the detailed discussions herein above, this Court is of the view that the learned Trial Court passed the Impugned Judgment and the Impugned Order based on correct appreciation of evidence as well as settled principles of law. Hence, no

interference is called for and the present Appeal is dismissed. All the pending Applications are also dismissed.

28. No order as to costs.

GAURANG KANTH, J.

APRIL 18, 2023

