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

Date of decision: 08.11.2023

+ **RSA 208/2023, CM APPL. 57969/2023 & CM APPL. 57970/2023**
SUBHRA KABASI Appellant

Through: Mr. Parikshit Mandal, Advocate.

versus

RANJEET

..... Respondent

Through: None.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 57970/2023

1. This is an application filed by Appellant seeking a stay of the execution proceedings in execution petition bearing no. 470/2020 pending before the Civil Judge – 06, Central District, Tis Hazari Court ('Executing Court').
2. The Trial Court vide judgement dated 14.08.2019 has passed a decree of possession in favour of the Respondent after returning a finding that there exists a relationship of landlord and tenant between the parties which stands validly terminated. The Appellate Court vide judgement dated 10.10.2023 has upheld the order of the Trial Court.
3. Learned counsel for the Appellant states that the last rent was paid in August 2019 and since then, no further amount towards the use and occupation charges, has been paid to the Respondent.
4. As per the averments made in the plaint, admittedly, the property i.e.,



House No 27, 1st Floor, Khyber Pass, Civil Lines, Delhi-110054 ('suit premises') was let out to the Appellant herein at Rs. 5000/- per month. During the oral arguments it was admitted that for the period September 2019 to November 2023. Thus, the rent for 51 months remains outstanding and as on today a sum of Rs. 2,55,000/- is due and payable by the Appellant herein.

5. Learned counsel for the Appellant states that the Appellant does not have the financial wherewithal to pay the outstanding arrears of rent.

6. It has been enquired if the Appellant is ready to peacefully vacate the suit premises within reasonable period of time in view of the concurrent judgments of the Courts below passing a decree of possession in favour of the Respondent.

6.1. The Appellant on instructions from Appellant's daughter, who is present in the Court, states that the Appellant is unwilling to vacate the suit premises.

7. In view of the admitted financial inability of the Appellant to pay the arrears of rent and to pay current use and occupation charges, grant of stay would be inequitable in the facts of this case as the balance of convenience is not in favour of the Appellant.

8. Accordingly, this application is dismissed and the Executing Court is at liberty to proceed with the execution of the decree of possession.

RSA 208/2023

9. Learned counsel for the Appellant states that since the interim application has been dismissed, the appeal itself be heard and adjudicated upon.

10. The second appeal has been filed impugning the judgement and



decree 10.10.2023 passed by Additional District Judge-03, Central District, Tis Hazari Court, Delhi in RCA No. 24 of 2023 titled as **Subhra Kabasi v. Ranjeet** ('First Appellate Court') whereby the First Appellate Court dismissed the appeal and upheld the order and part decree of the Trial Court passed by the Civil Judge- 06, Central District, Tis Hazari Court, Delhi in favour of the Respondent vide order dated 14.08.2019 in CS SCJ no.1508/2018 ('Trial Court').

11. The Appellant is the original Defendant and the Respondent is the original Plaintiff in the civil suit.

11.1. The suit was filed by the original Plaintiff for seeking recovery of the possession of the suit premises and for recovery of money and future mesne profits and for perpetual injunction restraining the Defendant from selling, alienating, gifting, mortgaging, parting with possession (full or part) or from creating any third-party interest in respect of the suit premises.

12. For the ease of reference, the parties to the present appeal are referred according to their original status before the Trial Court

13. The Plaintiff filed the suit in his capacity as the owner and landlord of the suit premises. As averred in the plaint that the Plaintiff let out the suit premises to the Defendant initially for 11 months commencing from 06.12.2015 to 5.11.2016 vide rent agreement dated 12.12.2015. However, as per the Plaintiff, the Defendant defaulted in payments of rent from April, 2016 in breach of her obligations. The Plaintiff has pleaded receipt of a legal notice dated 07.10.2016 from the Defendant offering to pay rent for the month of October, 2016 and has pleaded that the Plaintiff issued a reply dated 13.10.2016 to the said legal notice terminating the tenancy w.e.f. 05.02.2017 and calling upon the Defendant to pay arrears of rent from



October, 2016.

13.1. Thereafter for the reason that the Defendant not only failed to reply on the said notice dated 13.10.2016 but as also failed to vacate the suit premises or pay arrears of rent and mesne profits, the Plaintiff was therefore constrained to file the aforesaid civil suit.

14. The Defendant filed her written statement and categorically admitted the relationship of landlord and tenant. The execution of the rent agreement dated 06.01.2015 for letting out the suit premises at Rs. 5,000/- per month was admitted. The Defendant admitted tendering the rent to the father and mother of the plaintiff. The Defendant however, disputed that there was any default in payment of rent and pleaded that the rent has been tendered regularly and periodically. The Defendant stated that she continues to pay rent to the Plaintiff. The Defendant filed on record money order receipts to show payment of Rs. 5,000/- per month.

14.1. The Defendant, however, disputed execution of the copy of the rent agreement filed with the plaint and also disputed receipt of the legal notice dated 13.10.2016 pleaded by the Plaintiff.

14.2. It was further pleaded that the suit premises belongs to the Central Government and for this purpose, she relied upon a letter dated 26.04.2018 issued by Defence Estates Officer dated 26.04.2018.

15. Thereafter, with its replication to the written statement, an application under Order XII Rule 6 of Civil Procedure Code, 1908 ('CPC') was filed on behalf of the Plaintiff on account of unequivocal admission of relationship of landlord and tenant in the written statement.

16. In view of the rival claims of the parties, the Trial Court after perusing the pleadings and documentary evidence filed by the parties partly decreed



the suit of the Plaintiff under Order XII Rule 6 of CPC and thereafter directed the Defendant to handover the vacant and peaceful possession of the suit premises to the Plaintiff within three (3) months from the said order dated 14.08.2019.

16.1. Further an application under section 151 of CPC was filed on behalf of the Defendant for recalling of the order dated 14.08.2019. The said application was dismissed by the Trial Court after recording that the grounds raised in the application goes into the merits of the order and therefore it cannot be considered under an application for review.

17. The First Appellate Court vide impugned judgment dated 10.10.2023 observed that it does not find any reason to interfere with the order and decree dated 14.08.2019 passed by the Trial Court and upheld its findings.

18. The key facts relied on and findings returned by the Trial Court as well as the First Appellate Court to reach to the above said concurrent conclusion reads as under:

- a. That the relationship between the Plaintiff and the Defendant is of landlord and tenant, which has been unambiguously admitted by the Defendant in her written statement.
- b. The admitted rent of the suit premises is Rs. 5,000/- per month and therefore, it is not protected by the Delhi Rent Control Act, 1958.
- c. The tenancy stands terminated by notice dated 13.10.2016. In alternative, the tenancy stands terminated with the service of summons in this suit seeking recovery of possession. For this proposition, the First Appellate Court relied upon the judgment of Supreme Court in *Nopani Investments Pvt. Ltd. vs. Santokh Singh (HUF)*; 2008 Vol 2 SCC 728 and the judgment of this Court in *Cement Corporation India Ltd. vs. Bharat*



Bhushan Sehgal, RSA No. 46/2012.

d. The objection raised by the Defendant with respect to the title of Plaintiff to the suit premises is barred in view of section 116 of Indian Evidence Act, 1872.

19. In this second appeal, learned counsel for the Appellant has not disputed the findings of the Courts below with respect to existence of relationship of landlord-tenant and the termination of the tenancy. Even before this Court, the Defendant has not disputed that she was inducted in the suit premises as a tenant by the Plaintiff.

20. The sole contention of learned counsel for the Appellant is that since the title of the suit premises vests as a Custodian property belonging to Ministry of Defence; and therefore, the Respondent herein, who though is admittedly the landlord, is not entitled to recover possession of the suit premises. However, in the opinion of this Court, the Appellate Court has correctly dealt with this issue raised by the Appellant in paragraph nos. 13 & 14 of the impugned judgment, which reads as under:

“13. During the arguments in the appeal, it is contended by counsel for the appellant that the respondent is not the owner of the suit premises but it is owned by the Government. The said argument seems to be baseless in view of the contents of the written statement wherein, as discussed above, the lessor-lessee relationship between the parties is clearly admitted.

14. Even otherwise, under Section 116 of the Indian Evidence Act, 1872, a tenant of immovable property, shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property.”

(Emphasis Supplied)

21. In view of the provision of Section 116 of the Indian Evidence Act, 1872, the First Appellate Court has rightly held that the Appellant i.e., the



tenant is estopped from challenging the title of the landlord in view of the said provision. Hence the same objection raised by the Appellant even before this Court is without any substance and does not give rise to any triable issue.

22. A Coordinate Bench of this Court in ***Ramesh Chand v. Uganti Devi, 2008 SCC OnLine Del 1187*** held that a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent acts dishonestly and the challenge to the ownership does not give rise to a triable issue. The operative portion to this aspect reads as under:

“.....Section 116 of the Evidence Act creates estoppels against such a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent, acts dishonestly. I, therefore, find that there was no infirmity in the order of learned ARC in this respect. As far as letting purpose is concerned, in view of the judgment of Hon'ble Supreme Court in Satyawati Sharma (dead by LRs. v. U.O.I., (2008) 5 SCC 287, this ground is not available to the petitioner.”

(Emphasis Supplied)

23. This Court find no infirmity in the said finding of Trial Court and the First Appellate Court.

24. This Court is of the opinion that no substantial question of law has arisen for consideration in the present appeal. The arguments raised by the Appellant do not raise any question of law much less a substantial question of law and the grounds merely challenge the finding of facts.

25. In this regard, it would be appropriate to refer to the case of ***Nazir Mohamed v. J. Kamal and others (2020) 19 SCC 57*** wherein the Supreme Court observed that second appeal only lies on a substantial question of law and the party cannot agitate facts or call upon the High Court to re-appreciate the evidence in a second appeal. The operative portion to this



aspect reads as under:

*“22. A second appeal, or for that matter, any appeal is not a matter of right. the right of appeal is conferred by statute. A second appeal only lies on a substantial question of law. If statute confers a limited right of appeal, the court cannot expand the scope of the appeal. **It was not open to the respondent-plaintiff to reagitate facts or to call upon the High Court to reanalyse or reappreciate evidence in a second appeal.**”*

23. Section 100 CPC, as amended, restricts the right of second appeal, to Only those cases, where a substantial question of law is involved. The existence of a "substantial question of law" is the sine qua non for the exercise of jurisdiction under Section 100 Cr.

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28. To be “substantial”, a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.

29. To be a question of law "involved in the case, there must be first, a foundation for it laid in the pleadings, and the question should emerge from the sustainable findings of fact, arrived at by courts of facts, and it must be necessary to decide that question of law for a just and proper decision of the case.”

(Emphasis supplied)

26. This second appeal is accordingly dismissed and the order of the First Appellate Court is upheld.

27. Pending applications, if any, stands disposed of.

28. It is needless to say that the decree of possession passed in favour of the Respondent, is a decree which is binding inter-se the parties and in no manner effects the rights, if any, of the Custodian/Central Government qua the suit premises, which will be decided in the appropriate proceedings, if any, initiated by the Custodian/Central Government.

MANMEET PRITAM SINGH ARORA, J



NOVEMBER 8, 2023/akc/ms

Click here to check corrigendum, if any