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

Date of decision: 08.11.2023

+ **CM(M) 1837/2023, CM APPL. 57998/2023 & CM APPL. 57999/2023**

SANTOSH KAUR PURI & ANR. Petitioners

Through: Mr. R. K. Jain, Advocate

versus

NEETA SAHNI Respondent

Through: Ms. Kiran Singh and Mr. Ajay Sharma, Advocates

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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. 57999/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1837/2023, CM APPL. 57998/2023

1. This petition filed under Article 227 of the Constitution of India impugns the orders dated 26.11.2022 and 28.08.2023 passed by ADJ-08, Central District, ('Trial Court') in CS DJ No. 188/2022, titled as **Neeta Sahni v. Santosh Kaur Puri & Anr.**

1.1. The Petitioners herein are defendants and the Respondent herein is the plaintiff before the Trial Court.



1.2. The Trial Court vide order dated 26.11.2022 directed the defendants to deposit the arrears of 'rent' within three (3) months. The Trial Court vide order dated 28.08.2023 dismissed the application filed under Section 114 of the Code of Civil Procedure, 1908 ('CPC) for review of the order dated 26.11.2022.

2. The learned counsel for the Petitioners states that the Trial Court failed to consider the four (4) receipts executed by late Sh. Adarsh Kumar Sahni, the deceased husband of the Respondent-landlady which evidence that a sum of Rs. 17,50,000/- was accepted by late Sh. Adarsh Kumar Sahni in furtherance of the Memorandum of Understanding ('MoU') (hereinafter referred to as 'security agreement') dated 16.02.2021. The details of the receipts relied upon by the Petitioner are as under:

Sl. No.	Date of Receipts	Amount (Rs.)
1.	10.12.2020	4 lakhs
2.	15.01.2021	7.5 lakhs
3.	05.02.2021	3 lakhs
4.	14.02.2021	3 lakhs

2.1. He states that in fact, the Respondent-landlady herself has signed as a witness on three (3) of these receipts. He states that her signatures appear on the receipts dated 15.01.2021, 05.02.2021 and 14.02.2021. He states that this entire amount of Rs. 17,50,000 was paid over late Sh. Adarsh Kumar Sahni in 'cash'.

2.2. He states that the security agreement dated 16.02.2021 was executed in furtherance of the rent deed dated 30.11.2020 executed between both the



parties. He states that since the Respondent-landlady and her husband i.e., late Sh. Adarsh Kumar Sahni required funds, they had requested the Petitioner herein to lend them an amount of Rs. 17,50,000/-. He states that the said security agreement duly records the aforesaid four (4) receipts and it was agreed between the parties that the said loan amount will carry an interest of Rs. 17,500/- per month.

2.3. He relies upon the security agreement to contend that the parties agreed that monthly rent of Rs. 17,000/- will be adjusted against the aforesaid interest of Rs. 17,500/- per month.

2.4. He states that, therefore, in view of the security agreement, no order for deposit of arrears of rent could have been passed by the Trial Court.

2.5. He states that the security agreement has been signed by late Sh. Adarsh Kumar Sahni and the Respondent landlady is a witness to the said agreement.

2.6. He states that the rent agreement dated 30.11.2020 has to be read in conjunction with security agreement dated 16.02.2021.

2.7. He states that the Petitioner admits that the rent agreement dated 30.11.2020 was signed between the parties and the Petitioner is a tenant in the said premises. He states that the rent at Rs. 17,000 per month was duly remitted till January, 2021. He states, however, with effect from February, 2021, the payment of rent was not made in terms of the security agreement dated 16.02.2021. The interest payable on the loan amount of Rs. 17,50,000/- was to constitute as the rent of the property.

3. In reply, learned counsel for the Respondent states that the purported security agreement dated 16.02.2021 is a forged document and so also the four (4) alleged receipts are forged documents.



- 3.1. She states that it is a matter of record that late Sh. Adarsh Kumar Sahni was critically ill and was admitted in Sir Ganga Ram Hospital on 11.02.2021 and he thereafter, expired on 24.02.2021 in the hospital.
- 3.2. She states that prior to that since December 2020, late Sh. Adarsh Kumar Sahni was terminally ill and he was suffering from liver cirrhosis and was literally in and out of the hospital until his demise on 24.02.2021.
- 3.3. She states that in this background, it is evident that the dates on which the alleged receipts and the security agreement was executed, late Sh. Adarsh Kumar Sahni was not physically available for the execution of the said alleged documents.
- 3.4. She states that the Respondent-landlady and her deceased husband has sufficient financial capacity and had no requirement for availing a cash loan of Rs. 17,50,000/- from the Petitioners. She states that the alleged payment made in cash of Rs. 17,50,000/- has never been received by the Respondent-landlady herein.
- 3.5. She states that the Respondent landlady is 67 years old and is being unjustly harassed by the Petitioner who is admittedly a tenant and enjoying the suit property without payment of rent.
- 3.6. She states that the period during which purportedly the receipts and the security agreements were signed, the Covid-19 pandemic was raging in the city; and there were strict restrictions in place for movement.
- 3.7. She states that the order of the Trial Court is dated 26.11.2022. No deposit has been made by the Petitioner, tenant in compliance with the said orders. She states that as per Petitioner's own version, no payment of rent has been made since February, 2021 and therefore, an amount of Rs. 5,78,000/- has become due and payable till November, 2023.



3.8. She states that in any event, no prejudice will be caused to the Petitioner as the Trial Court had directed the said amount to be deposited in the Court.

3.9. She states that in fact, a First Information Report (FIR) has been lodged by the Respondent against the Petitioner with respect to the alleged security agreement dated 16.02.2021.

4. This Court has considered the submissions of the parties and perused the record.

5. There is no dispute that the Petitioner herein was inducted as a tenant in the suit premises on a monthly rent of Rs. 17,000/- vide rent agreement dated 30.11.2020. The Petitioner admits she duly remitted the said rent until January, 2021.

5.1. There is no dispute that no payment of rent has been made for the period February, 2021 till date i.e., November, 2023 and therefore, no rent has been paid in 34 months and an amount of Rs. 5,78,000/- (34 months x Rs. 17,000) has become due and payable as per the rent agreement.

6. A brief note dated 08.11.2023 was handed over by the counsel for the Respondent. As per the said brief note late. Sh. Adarsh Kumar Sahni was admitted in hospital on the following dates: (i) 21.12.2020 to 12.01.2021; (ii) 17.01.2021 to 27.01.2021; (iii) 07.02.2021 to 11.02.2021 (admitted in Sir Ganga Ram City Hospital); (iv) 11.02.2021 to 24.02.2021. Thereafter, late Sh. Adarsh Kumar Sahni expired on 24.02.2021.

7. The Petitioner has relied upon the security agreement dated 16.02.2021 to contend that cash amount of Rs. 17,50,000/- was paid to late Sh. Adarsh Kumar Sahni.

8. It is an admitted fact that late Sh. Adarsh Kumar Sahni, the husband



of the Respondent expired on 24.02.2021 and the Petitioner stopped making payments of rent with effect from February, 2021. There is no dispute that late Sh. Adarsh Kumar Sahni was admitted in Sir Ganga Ram Hospital and passed away on 24.02.2021. The Respondent herein has disputed the execution of the said security agreement.

9. Prima facie, in view of the fact that late Sh. Adarsh Kumar Sahni who was terminally ill and admittedly in the intensive care unit (ICU) in Sir Ganga Ram Hospital from 11.02.2021 to 24.02.2021, raises doubt with respect to the execution of the security agreement dated 16.02.2021. Similarly, with respect to the cash receipts the same are either executed on the date late Sh. Adarsh Kumar Sahni was in the hospital or barely out of the hospital. The note handed over by the Respondent shows that late Sh. Adarsh Kumar Sahni was admitted 4 times in hospital for long durations between 20.12.2020 to 24.02.2021. The execution of alleged cash receipts during this period would have to be proved by the Petitioner in accordance with law. There is no presumption of genuineness to the said receipts at this stage prior to trial in view of the express denial of the Respondent-landlady.

9.1. Further, since admittedly, payment of Rs. 17,50,000 were not made by authorised banking channels and are stated to be made in 'cash', the proof of such a payment would have to be decided in trial. Thus, the stand of the Petitioner that she has advanced a cash loan of Rs. 17,50,000/- to late Sh. Adarsh Kumar Sahni is prima facie not made out from the facts of the case and would have to be decided at trial.

9.2. However, on the other hand, the claim of the Respondent for rent of Rs. 17,000/- for the period of February, 2021 until date is ex facie evident from the record in view of the admitted rent agreement dated 30.11.2020



and the admission of the Petitioner that no rent was paid since February 2021.

10. Therefore, in the opinion of this Court, the Trial Court after rightly considering the provisions of Order 15-A CPC, Order 39 Rule 10 CPC and Section 151 CPC has passed the correct order in the facts of this case, the operative portion of the said order reads as under:

“7. I have heard the ld. Counsel for the parties and perused the record.

8. The defendant is the tenant in the suit premises vide rent agreement dated 30.11.2020 Rs. 17000/-. The only issue is that defendant has stated that after expiry of tenancy, he has paid an amount of Rs. 17,50,000/- to the plaintiff vide one MOU dated 16.02.2021 and therefore, he is not liable to pay any rent. The copy of one security agreement / MOU is already on record which allegedly bears the signature of plaintiff. The said MOU has been categorically refuted by the plaintiff alleging that she never entered into any MOU/ security agreement with the defendant. It was further argued that the plaintiff has the sufficient funds and there was no reason for the plaintiff to enter such kind of security agreement. The order 39 rule 10 CPC stands attracted where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

9. To mitigate to hardship cause to the owner/lesser of a property in a suit for eviction of an unauthorized occupant / lessee or for recovery of rent and future mesne profits, order XV-A CPC which reads as under-

XV-A "In any suit by a lessor or a licensor against any lessee or a licensee as the case may be, for his eviction with or without the arrears of rent or license fee and future mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order..."

10. Section 151 CPC empowers the Court in exercise of its inheritance power to make such orders as may be necessary to meet the end of justice and to prevent abuse of the process of the court.

11. During the course of the arguments, it was pointed out by the Ld. Counsel for the plaintiff that the defendant is unable to show any receipt of



Rs. 17,50,000/- allegedly given to the plaintiff. As such there is no receipt or bank statement was filed by the defendant in this regard. Otherwise also, it is a matter of evidence as to whether the defendant made the payment of Rs. 17,50,000/- to the plaintiff. However, it is an admitted facts that the defendant is in occupation of the premises in question and was paying rent @ Rs. 17000/- month. Besides, it is also an admitted fact that the defendant stopped making payment qua rent from February 2021. Invoking section 151 CPC as it would meet the ends of justice, the defendant is directed to deposit the amount of Rs. 17000/- per month from the date of filing of the suit till the pendency of the suit. The defendant is also directed to deposit the arrears of rent amount within 3 months from today. The amount so deposited shall be subject to outcome of final adjudication of the suit. In view of the above discussion, application is hereby stands allowed."

(Emphasis supplied)

11. Further, since the Trial Court has directed the Petitioners to deposit the money in the Trial Court and there is no direction for release of that money to Respondent, the interest of the parties has been protected by the Trial Court.
12. In the opinion of this Court, the order of the Trial Court correctly appreciates the facts and law in this matter and requires no interference. This petition is accordingly, dismissed.
13. Pending application stands disposed of.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 8, 2023/msh/sk