



\$~16

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

+ RSA 20/2024

DHAN DEVI

.....Appellant

Through: Mr. Anirudh Bakhru, Mr. Aman
Dhall and Mr. Shashi Kant, Advs.

versus

PAWAN GUPTA

.....Respondent

Through: Mr.S.C.Singhal, Adv.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **28.10.2024**

1. The present appeal is preferred by the defendant/appellant against the order dated 19.10.2023 in regular first appeal passed by Addl. District Judge – 02, South West district, Dwarka Courts, Delhi, whereby, the judgment and decree dated 09.08.2018 passed in civil suit no. 1364/2017 by the Trial Court allowing the suit for possession, arrears of rent, damages and mesne profits was affirmed.
2. The brief facts for context stipulate that the property bearing no. WZ-61A/16, Galli No. 16, Vashishth Park, near Shankar Ayurvedic village, Dabri, new Delhi-46 (*hereinafter Suit Property*) was purchased by one Smt. Raj Dulari, who had orally inducted the defendant/appellant as a tenant at one room, bathroom and passage on ground floor and two rooms on first floor of the suit property. The last paid rent was Rs. 2500/- per month.
3. On 20.04.2016, Smt. Raj Dulari died leaving behind the plaintiff/respondent and his brothers are legal heirs. The brothers of the plaintiff/respondent relinquished their rights in the suit property *vide*



relinquishment deed dated 17.11.2017, making plaintiff/respondent, the absolute owner.

4. The plaintiff/respondent's case is that the defendant/appellant did not pay any rent provoking the plaintiff/respondent to send him a 15-day termination of tenancy notice dated 25.09.2017, which was refused by the defendant/appellant and the defendant/appellant did not pay the rent since 01.01.2016 making him an unauthorized occupant since 16.10.2017.

5. The defendant/appellant was proceeded *ex-parte* and the Trial Court arrived at the finding that the area of village Dabri did not come under the purview of the Delhi Rent Control Act ("Act") in absence of any Government notification qua the village Dabri showing applicability of the Act and the unrebutted evidence holds the case of the plaintiff/respondent.

6. The defendant/appellant preferred a regular first appeal against the Trial Court judgment and the same was dismissed by the first Appellate Court on the ground that application order 9 rule 13 CPC for condonation of delay was hopelessly time barred and was filed by suppressing material facts. The Court held as under:-

"28. Thus, in totality of the discussion and observations made above not only the application of the defendant was hopelessly time barred but the same was also filed by suppressing material facts. Merely because the Ld. ASCJ condoned the application under section 5 of the limitation act in a mechanical manner does not mean that the delay stands condoned on merits and confers right on the defendant to assert her right on merits before this Court. It is rightly observed by the learned ASCJ in the impugned order that the ex parte judgment and decree was passed on 09.08.2018 and the possession was taken under execution proceedings on 02.02.2019 but the application under Order IX, Rule 13, CPC was filed only on 20.11.2019 so there are no reasons for the applicant to stand on her own argument that she was not aware about the proceedings of the Court and has fairly not got the chance to defend the case as she has not filed any objection at any earlier stage of the execution proceedings. The applicant has not placed any document on record to show that her address



is different from that mentioned on the plaint.”

7. Learned counsel appearing on behalf of the defendant/appellant, proposes a substantial question of law for admission of the appeal. The same reads as under:-

(i) *“Whether the finding of the Courts below is erroneous in view of the mandatory provisions of law stipulating the mandatory affixation of summons as ingrained under Order V Rule 17 of the Code in the event of alleged and purported refusal by the Defendant to accept summons, which admittedly was not there in the present case.”*

8. Learned counsel for the defendant/appellant then submits that assuming that the notice was refused to be accepted by the defendant/appellant, further steps ought to have been taken under Order V Rule 17 of the Code of Civil Procedure, 1908 for service of the notice by following the procedure envisaged, therein.

9. On the query being raised to the learned counsel for the defendant/appellant, as to whether the aforesaid plea was taken before the Court below, he submits that the same was unfortunately not argued.

10. In view of the aforesaid, the Court is of the considered opinion that it is only a substantial question of law which must arise under the facts of the case and not a general question of law, for admission of appeal under Section 100 of the CPC, 1908.

11. Therefore, under the facts of the present case, the Court does not find any substantial question of law and accordingly, the appeal fails and is thereby, dismissed.

PURUSHAINDR KUMAR KAURAV, J

OCTOBER 28, 2024/MJ