



\$~31

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

+ **CM(M) 945/2022 & CM APPL. 40084/2022**

JAGDISH KUMAR

..... Petitioner

Through: Mr. R.K. Sharma, Adv.

versus

ANKUR AGGARWAL

..... Respondent

Through: Mr. Sandeep Kumar, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

27.02.2024

%

1. The present petition under Article 227 of the Constitution of India has been filed assailing the order dated 05.09.2022 passed by the Additional District Judge-03, Rohini Courts, Delhi (hereinafter referred to as “Appellate Court”) whereby the application under Order XLI Rule 5 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter “CPC”) preferred by the petitioner seeking stay of the order dated 12.05.2022 was dismissed. The petitioner herein is the appellant and the respondent herein is the respondent before the learned Appellate Court.

2. The respondent/plaintiff instituted a suit for recovery of possession and mesne profits for the use and occupation of a private shop bearing the address, Shop No.3, forming a part of the property No.B-8, Rana Pratap Bagh, Delhi-10007 (hereinafter referred as ‘Suit Property’).

3. It is averred that the petitioner/defendant is a tenant under the father



of the respondent in the suit property, paying a monthly rent of Rs.6,000/- excluding electricity, water and other charges. On 03.01.2014, the father of the respondent expired, leaving his share to the respondent, the mother of the respondent and the married sister of the respondent, who relinquished her share in favour of her mother vide relinquishment deed dated 22.01.2014.

4. In the month of September, 2019, the respondent approached the petitioner to increase the rent to the existing prevalent market rate, i.e. Rs.30,000/- per month. The petitioner denied to pay the said rent and thereafter the respondent asked the petitioner to vacate the suit property. Subsequent thereto, the present suit before the learned Trial Court was filed.

5. The petitioner contested the suit and filed his written statement. It is submitted that the last rent paid by the petitioner was Rs. 1,000/- which was later enhanced to Rs.1,100/- for which no receipt was issued, however, he was not in arrears of rent as one year prior to the death of the respondent's father, the respondent collected rent but no rent receipts were issued.

6. The petitioner has further claimed that the rent receipts from February 2013 to September 2019 for an amount of Rs.5,000/- with a 10% increase every three years have been falsely generated by the respondent. The signatures of the petitioner have been falsely obtained in one go, therefore, the suit is not maintainable

7. Upon completion of the pleadings, the respondent moved an application under Order XII Rule 6 of the CPC for judgment on admission. The petitioner filed his reply to the application. Vide order dated 12.05.2022, the learned Civil Judge, North-West District, Rohini Court, Delhi allowed the respondent's application under Order XII Rule 6 CPC and



directed the petitioner to vacate the suit property within two months from the date of order.

8. Dissatisfied by the order dated 12.05.2022, the petitioner preferred a regular civil appeal under Section 97 read with Order XLI of CPC and also filed an application under Order XLI Rule 5 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred as 'stay application') seeking for a stay on the operation of the order dated 12.05.2022.

9. Vide the impugned order, the learned Appellate Court declined to grant stay of the order dated 12.05.2022 passed by learned Civil Judge and rejected the petitioner's stay application. Thereafter, the matter was further listed for consideration on the appeal

10. Aggrieved by the said order of dismissal of stay application, the petitioner has preferred the present petition thereby praying for grant of stay of order dated 12.05.2022 passed by learned Civil Judge as well the setting aside the order dated 05.09.2022 passed by the first appellate court till the final disposal of the appeal pending in the Appellate Court.

11. Mr. R. K. Sharma, learned counsel for the petitioner submits that learned Civil Judge mechanically and erroneously passed the decree on admission ignoring the well-settled principle that such admission has to be clear, unequivocal, unambiguous and unconditional otherwise the discretion ought not to be exercised to deny the valuable right of the defendant to contest the claim. The petitioner in his written statement contested the validity of the rent receipts and alleged that same were fabricated which fact was not considered by the learned Civil Judge as it failed to take into account the circumstances under which the signatures of the petitioner appeared on certain rent receipts. The learned Civil Judge ignored the



totality of facts and explanation attached to the purported signatures which were not accepted by the petitioner voluntarily made and subscribed.

12. It was submitted that the rent of the suit premises being less than 3,500 per month, the suit falls within the purview of Delhi Rent Control Act, 1958 ((hereinafter referred as ‘DRC Act’) and therefore, the suit of the respondent was barred under Section 50 of DRC Act.

13. Learned counsel, thus, submitted that as the learned Civil Judge had erred in passing decree under Order XII Rule 6 CPC, the petitioner challenged the erroneous finding by way of filing an appeal and also moved an application under Order XLI Rule 5 read with Section 151 CPC for stay of operation of the order dated 12.05.2022 passed by learned Civil Judge. However, the learned Appellate Court without even examining the entire material available on record and without appreciating the conduct of the respondent by obtaining back to back signatures on 66 engineered receipts, dismissed the stay application, which caused irreparable loss to the petitioner, as his appeal would have become infructuous by declining the stay of order dated 12.05.2022. The petitioner places reliance on the judgment of the Apex Court in “**Razia Begum vs. Sahebzaade: AIR 1958 SC 886**”.

14. Conversely, Mr. Sandeep Kumar, learned counsel for the respondent contends that the present petition is not maintainable under Article 227 of the Constitution of India. While placing reliance on the judgment of this Court in “**Vikrant Singh vs. Wazir Singh**” in CM(M) 524/2014 decided on 19.12.2014, the respondent states that two orders cannot be challenged in single Petition as has been done by the petitioner in the present petition.

15. Learned counsel further submits that there is no infirmity with both



the orders as the rent receipts have not been challenged as per the provisions of the Specific Relief Act and are still in existence, moreso, the petitioner has admitted the execution of the same. The counsel for the respondent places reliance on judgments in case of “***Bhupinder Jit Singh vs. Sonu Kumar*** in CRP No.176/2017 decided on 12.10.2017” and “***Sh. Vijay Kumar Jain (since deceased through LRs) Madhu Jain & Ors. Vs. Suresh Kumar Jain: 2022 LAWPACK (Del) 88429***”.

16. The short question, before this Court, is whether the order dated 12.05.2022 is to be stayed or the findings of learned Appellate Court is correct vide impugned order dated 05.09.2022.

17. Before considering this question, it is necessary to note the findings of learned Predecessor Bench recorded on 12.09.2022 at the time of admission of the petition, which are as follows:

“8. The interlocutory application filed by the petitioner for stay of the operation of the judgment dated 12th May 2022 passed by the learned Civil Judge stands rejected by the impugned order dated 5th September 2022 of the learned ADJ. In rejecting the petitioner’s appeal, the learned ADJ has also relied on the aforesaid rent receipts, reflecting the rent as ₹ 6000/- per month on which the learned Civil Judge relied.

9. Ordinarily, this Court would not interfere with an interlocutory order passed by the Appellate Court, while exercising jurisdiction under Article 227 of the Constitution of India. Though Article 227 jurisdiction is limited, it has however to be exercised where the interests of justice so warrant.

10. The rejection of the petitioner’s interlocutory application would effectively result in the petitioner having to vacate the suit property, in which event the appeal would not survive for further consideration.

11. As the petitioner has relied on rent receipts reflecting the rent in respect of the premises to be ₹ 1100/- per month on which there is no finding by the learned Civil Judge, the issue is arguable. Even otherwise, where there were mutually contradictory rent receipts relied upon by both parties, there may be substance in the contention of learned Counsel for the petitioner that a triable issue arose and that, the suit ought not to have been decreed under



Order XII Rule 6 of the CPC.

12. It is made clear that these observations are not meant to influence the exercise of jurisdiction by the learned ADJ in adjudicating RCA 36/22 and are being returned only for the purposes of justifying the order which is being passed today. The learned ADJ would, while adjudicating RCA 36/22, proceed uninfluenced by any observation contained in the present order.

13. xxxxxxxxxxxx

14. xxxxxxxxxxxx

15. xxxxxxxxxxxx

16. Mr. Sandeep Kumar, learned Counsel for the respondent at this juncture submits that, applying the law laid down by the Supreme Court in Atma Ram Properties (P) Ltd. v. Federal Motors Pvt. Ltd.¹, once, in proceedings under the DRC Act – as the petitioner seeks to contend that these proceedings were amenable to the DRC Act, a decree of eviction is passed, the tenancy of the tenant stands terminated and the tenant, if he continues in the premises thereafter, has to pay rent at the market rate. The landlord in such event would not be bound by the contractual rate of rent.

17. No evidence regarding the market rent which the suit property would command has been placed on record, though Mr. Sandeep Kumar, learned Counsel for the respondent would seek to contend that the suit property would command around ₹ 25,000/- per month. No evidence to that effect being on record, it is not possible for this Court to accept the said figure as a basis to fix mesne profits.

18. That apart, there is a dispute regarding whether the suit property is governed by the DRC Act or by the Transfer of Property Act. The respondent has filed the suit under the Transfer of Property Act. The petitioner contends that the DRC Act would be applicable.

19. In these circumstances, I am of the opinion that the interests of justice would be subserved if the petitioner is directed to pay rent in respect of the suit property @ ₹ 6,000/- per month, which was the rate of rent stipulated in the plaint filed by the respondent. The petitioner would continue to pay rent at the said rate to the respondent during the currency of this petition. The petitioner would also pay, to the respondent, arrears of rent @ ₹ 6,000/- per month within a period of eight weeks from today.

20. Subject thereto, the operation of the order dated 12th May 2022 of the learned Civil Judge shall stand stayed pending disposal of the present petition.”



18. The learned Predecessor Bench on considering the maintainability of present petition under Article 227 of the Constitution of India also considered some facts with respect to justification of impugned order passed by learned Appellate Court. Hence, in view of the above order dated 12.09.2022 by the learned Predecessor Bench, the case is remanded back to the learned Appellate Court to decide the application under Order XLI Rule 5 CPC afresh. The directions passed in paragraph nos. 19 & 20 vide order dated 12.09.2022 of this Court shall continue till disposal of the application under Order XLI Rule 5 CPC or the appeal filed by petitioner, whichever is earlier. The observation of this Court in paragraph 12 of the order dated 12.09.2022 is reiterated. However, respondent is at liberty to file an application in terms of judgment of Apex Court in case of ***Atma Ram Properties (P) Ltd. v. Federal Motors Pvt. Ltd.*** for increase / variation of rent while hearing the application under Order XLI Rule 5 CPC.

19. Accordingly, the impugned order dated 05.09.2022 is set aside and the present petition along with pending application, if any, is disposed of.

SHALINDER KAUR, J

FEBRUARY 27, 2024
SU