



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

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Judgment reserved on: 22.01.2024
Judgment pronounced on: 20.03.2024

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CM(M) 1568/2019

MANJEET SINGH KOHLI

..... Petitioner

Through: Mr. S.K. Sharma and Mr. Tejas
Singh, Advs.

versus

BALVEEN SINGH CHADHA @ BALVEEN SINGH CHAWLA &
ANR

..... Respondents

Through: Ms. Sangeeta Jain, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition has been filed under Article 227 of the Constitution of India, 1950 by the petitioner assailing the order dated 22.10.2019 passed by the court of Learned Additional District Judge-01 Tis Hazari Courts (West), New Delhi (hereinafter referred to as "Trial Court") in Civil Suit No. 814/2017, titled as "*Manjeet Singh Kohli v. Balveen Singh Chadha @ Balbveen Singh Chawla & Anr.*" whereby the learned Trial Court dismissed petitioner's application under Order XV-A read with Section 151 of Code of Civil Procedure, 1908 (*hereinafter referred as "CPC"*).

2. The petitioner filed suit for recovery of possession, recovery of arrears of rent of Rs. 4,97,330/-, recovery of damages and mesne profits and



permanent injunction against the respondents. The respondents filed their written statement to the plaint to which the petitioner filed the replication.

3. The relevant facts for the purpose of adjudication of the present petition are, that, the petitioner is the owner of the entire ground floor of the property bearing no. J-11/99 Rajouri Garden, New Delhi. Respondent no. 1 was inducted as tenant in respect to the entire 2nd floor by the brother of the petitioner namely; Nirmal Singh Kohli at a monthly rent of Rs. 8,000/- vide registered rent agreement dated 27.10.2006 for a period of 12 months commencing from 01.11.2006. Brother of the petitioner decided to sell his property i.e. 2nd floor of the suit property and hence, asked the respondent no. 1 to vacate the same as it was under his tenancy by virtue of the above-mentioned rent agreement. The respondent no.1 agreed to vacate the suit property on or before 31.12.2007

4. It is the case of the petitioner that the suit premises of the petitioner was lying vacant. Respondent no. 1 approached the petitioner and requested him to let out the suit premises to him initially for a period of 1 year commencing from 01.01.2008 at a monthly rent of Rs. 12,000/- excluding electricity and water charges. The said agreement was executed however, no written rent agreement was executed between the said parties as respondent no. 1 was already a tenant with the brother of the petitioner and proved to be a good tenant.

5. It is the further the case of the petitioner that on expiry of the aforesaid 12 months, respondent no. 1 requested petitioner to extend the lease of the suit premises for 1 more year. Accordingly, the agreement



between the parties was extended orally from 01.01.2009 with an enhancement of rent by 10% and the respondent no. 1 started paying rent @ Rs. 13,200/- per month excluding electricity and water charges. Thereafter, every year the lease has been extended orally by the petitioner on request of the respondent no. 1 with enhancement of rent @ 10% every year. Respondent no. 1 has been paying rent in cash. Petitioner has been issuing the acknowledgement of receipt of rent on a pre-typed receipt brought by respondent no. 1 at the time of payment of rent without retaining any copy of the same.

6. It is further the case of the petitioner that since February 2016, respondent no. 1 has failed to pay rent to the petitioner despite receiving several demands by the petitioner on one pretext or the other.

7. The brother of the petitioner sold his second floor of the property on 09.04.2008 to Neelam Khurana w/o B. S. Khurana by a registered sale deed dated 09.04.2008.

8. Since the respondent no. 1 filed a suit CS SCJ No. 418/2017 for injunction against petitioner in the name of his wife who is respondent no. 2, therefore, the petitioner was not interested to continue respondent no. 1 as his tenant in the suit premises and vide notice dated 24.04.2017, the petitioner terminated the tenancy of the respondent no. 1 and also demanded the arrears of rent from the respondent no. 1.

9. It is the case of the petitioner that on the day of filing of the suit, respondent no. 1 was in due for arrears of rent from February, 2016 to



December, 2016 @ Rs. 25,700/- per month and from January, 2017 to May, 2017 @ Rs. 28,270/- per month and therefore is liable to pay a sum of Rs.4,24,050/- towards arrears of rent to the petitioner alongwith interest @ 18% per annum till the amount is paid.

10. The petitioner further demands damages @ Rs. 40,000/- per month exclusive of electricity water charges with effect from 01.06.2017 to 31.10.2019 amounting to Rs. 11,60,000/- along with Rs. 40,000/- per month as user charges till possession of the suit premises is handed over to the petitioner. In view of these demands, petitioner filed an application before the learned Trial Court dated 10.07.2017 under Order XV-A CPC for directions to the respondents to deposit arrears of rent and also with a direction to continue to deposit in each succeeding month the damages/user charges. Respondents filed their reply to the said application and accordingly, the learned trial Court after hearing both the parties dismissed the aforesaid application vide impugned order dated 22.10.2019.

Submissions by the Petitioner

11. The learned counsel for the petitioner submitted that the learned Trial Court gravely erred in dismissing the application of the petitioner merely on the ground that the relationship of the landlord and tenant has been denied as it is not a mandate of law that relationship of the landlord and tenant should be undisputed. It was the contention of the petitioner that applying the provisions of Order XV-A CPC to an admitted relationship of landlord and tenant would make the provision redundant.



12. The learned counsel for the petitioner submitted that the purpose of Order XV-A CPC is to mitigate the hardship of the landlord on account of pendency of eviction suit during which the lessor should not be deprived of the rent paid by the lessee or mesne profits that might accrue. He further submitted that provisions of Order XV-A CPC are different from that of Order XXXIX Rule 10 CPC. Reliance placed on the case of ***Raghubir Rai v. Premlata & Anr.: 2014 SCC Online Del 3045.***

13. It is further submitted that learned Trial Court gravely erred because in case no order is passed under Order XV-A CPC and respondent at the end of the litigation suddenly vacates the suit premises, leaving huge arrears it will become impossible for the petitioner to recover the same, thus the impugned order be set aside.

Submissions by the Respondent:

14. Conversely, learned counsel for respondents outrightly denied existence of landlord and tenant relationship between both the parties. It was contended that there exists no registered rent agreement filed on record by petitioner to show creation of tenancy initially for one year at a monthly rent of Rs. 12,000/- per month or subsequent thereto. It was also submitted that there are no rent receipts filed by petitioner to support his plea that respondent no. 1 was the tenant of the petitioner.

15. It was also submitted that respondent no. 1 has filed a separate suit for recovery of Rs. 50,00,000/- with interest from petitioner which is also pending adjudication in another court. Moreover, the petitioner has not filed a single document in support of his contentions pertaining to the monetary claims that he has made, therefore, the petitioner has failed to show any



illegality in the impugned order, which requires any interference by this Court.

Reasons & conclusion

16. For ready reference, Order XV-A of the CPC may be reproduced as under:

“ORDER XV-A STRIKING OFF DEFENCE IN A SUIT BY A LESSOR

(1) In any suit by a owner/lessor for eviction of an unauthorized occupant/lessee or for the recovery of rent and future mesne profits from him, the defendant shall deposit such amount as the court may direct on account of arrears upto the date of the order (within such time as the court may fix) and thereafter continue to deposit in each succeeding month the rent claimed in the suit as the court may direct. The defendant shall continue to deposit such amount till the decision of the suit unless otherwise directed.

In the event of any default in making the deposit as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.

(2) Before passing an order for striking off the defence, the court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.”

17. The Order XV-A as amended by the Court of Commercial Act, 2015 was introduced in the CPC and applicable to Delhi vide a notification dated 14.11.2008 published in the Delhi Gazette.

18. The Order XV-A provides that in a suit for possession by an owner or lessor for eviction of an unauthorized occupant/lessee or for recovery of rent and future mesne profits from him. Such an unauthorized occupant/lessee shall deposit such amount as the court may direct on account of arrears upto the date of the order and thereafter continue to deposit in each succeeding month as may be directed by the Court. It



further provides that upon default by such lessee/unauthorized occupant, in making the deposit, the defence of such person may be struck off.

19. The basic purpose of Order XV-A CPC is to provide the owner/landlord with some amount for use and occupation of the property by the unauthorized occupant/lessee during the pendency of the suit.

20. Relevantly, the purpose of Order XV-A CPC has been dealt in the case of ***Prem Lata vs. Raghubir Rai: 2013 SCC Online Del 4886*** wherein this Court held as follows:

".....In the first place, it requires to be observed that Order XV A CPC has been titled 'Striking off defence in a suit by a lesser'. It is, therefore, a provision intended to benefit the lessor. The object is to mitigate the hardship to the landlord on account of long pendency of an eviction suit, during which the lessor should not be deprived of the rent payable by the lessee or the future mesne profits that might accrue. The omission of any reference to an 'admitted' rent is deliberate. It accounts for the possibility that the market rent, during the pendency of the litigation, might be much higher than the 'admitted rent'. It therefore gives discretion to the Court to require the tenant to pay rent commensurate with the market rent or, in any event, higher than the admitted rent. While the word 'rent' is relatable to the amount payable by a lessee, the provision also talks of an occupant'. On termination of the lease, the lessee would become an unauthorised occupant. In such case, the amount directed to be deposited by such unauthorised occupant, for use and occupation, cannot be termed as 'rent'. This explains the use of the term 'such amount' occurring in the provision.

11. The provision states that apart from the arrears, the Defendant can be required to continue to deposit "in each succeeding month the rent claimed in the suit as the Court may direct". If Order XV A Rule (1) CPC had stopped here, then it is possible to contend, a has been done by the learned counsel for the Defendants, that the provision envisages deposit only of arrears of rent and nothing else. However, a further sentence in Order XV A rule 1 CPC states "the Defendants shall continue to deposit such amount till the decision of the suit unless otherwise directed:

When this sentence read with the previous sentence in Order XV A rule 1 CPC, and the object of the provision is kept in mind, it is



possible to interpret the term 'such amount' as not being limited to an 'admitted' amount of 'rent'. "

21. It is relevant to notice the observations made by the learned Trial Court in the impugned order which reads as follows:

"36. However, as discussed hereinabove, in the present case, there is no document filed on record from which this court can draw an inference regarding existence of relationship of landlord and tenant and rent being paid by defendant to the plaintiff.

37. earlier registered agreement filed on record by plaintiff alleged to have been executed between brother of plaintiff and defendant no. 1 is of no help to the case of plaintiff as the same was regard to second floor of the suit property and it was between brother of plaintiff and defendant and on the basis of the said document, no inference can be drawn that oral tenancy was created between plaintiff and defendant no.1. Therefore, the application filed by the plaintiff under Order 15A CPC is lacking merits. The same is accordingly, dismissed."

22. Reverting back to the facts of this case, in the written statement, the respondents, in essence denied the relationship of landlord and tenant between the petitioner and themselves. They have submitted that they had never occupied the property of the petitioner or of his brother as tenant. The position of law is well-settled that denial of title of the petitioner and denial of relationship of landlord and tenant between the petitioner and the respondent, simplicitor does not and cannot absolve the lessee/tenant to deposit the due amount of rent/mesne profits for use and occupation as by a denial simplicitor of relationship of landlord and tenant, a tenant could not enjoy the property during the pendency of the suit without depositing the amount of rent.

23. It is undisputed that the petitioner has not filed even a single document on record to *prima facie* show that there had been a relationship



of landlord and tenant between the parties to the lis or that after termination of the tenancy, the occupation of the respondents in the suit property was unauthorised since 01.06.2017, apart from being in arrears of rent, they were not paying any money towards user charges. The case of the petitioner rests on oral tenancy between the parties and that the respondents were paying rent in cash for which the petitioner was issuing acknowledgment of receipt of rent on a pre-typed receipt brought by the respondent no.1 at the time of payment of rent. Thus, the petitioner has no document to rely upon to support his contentions, whereas the plea of the respondents is that they were residing in the suit premises in their own right for having advanced a loan of Rs.50 Lacs to the petitioner which he has failed to pay and thus, have instituted a suit for recovery of the suit amount.

24. In view of the above, the impugned order does not suffer from any illegality and thus, requires no interference by this Court. Consequently, the present petition, along with pending application, if any, is dismissed.

25. It is needless to state that the observations made herein shall not tantamount to be an observation on the merits of the case before the learned Trial Court.

SHALINDER KAUR, J.

MARCH 20, 2024/d/ab