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

% ***Date of decision: 22nd October, 2024***

+ **C.R.P. 305/2024, CM APPL. 62115/2024 (stay)**

JAGDISH KUMAR ARORA

.....Petitioner

Through: Mr. Vishal Bhatnagar, Ms. Lata
Walia and Ms. Reena Kangur,
Advocates.

versus

DINESH MITTAL

.....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 62116/2024 (Seeking Exemption)

1. Allowed, subject to just exceptions.
2. The Application is accordingly disposed of.

C.R.P. 305/2024

1. A Revision Petition under Section 115 of the *Code of Civil Procedure, 1908* ('CPC' hereinafter) has been filed on behalf of the Petitioner against the Impugned Order dated 20.08.2024 *vide* which an Application under Order 7 Rule 11 has been dismissed.
2. ***Briefly stated***, the Respondent (Plaintiff in the main Suit), the owner/landlord of the Suit Property i.e. the basement of C-3/122, Ashok Vihar, Phase-II, Delhi-110052, filed a Suit bearing *CS DJ No. 405/2020* for *Recovery of Arrears of Rent, Damages, Mesne Profits of Rs.64,500/- per month w.e.f. 01.10.2020 along with penalty of Rs. 5,000/- per day till its*



actual payment and interest @ 3% per month.

3. He also filed a subsequent *CS DJ 126/2022 for Possession of the Suit Property* against the Revisionist (Defendant in the Suit). The Plaintiff asserted that the Revisionist agreed to take the suit premises on rent and he also handed over the cheque of Rs.2,50,000/- as security deposit on 14.02.2020 and the keys of the basement were duly handed-over to the Defendant, who got the fitment work carried out in the Suit Property. The Draft Lease Deed was prepared though it did not get signed and it was only on a basis of a written note that the Plaintiff claimed that the Defendant became the tenant in the Suit Property.

4. In the Suit bearing *CS DJ No. 405/2020 for Recovery of Arrears of Rent/Damages*, an Application under Order 7 Rule 11 CPC, was filed for rejection of the Suit essentially premised on *two assertions*; namely that no mesne profits can be claimed without seeking the recovery of possession and that there is no question of a tenancy being created in the absence of the registered Lease Deed.

5. The learned Trial Court has rightly observed that merely because the registered Lease Deed was not executed, cannot be held to conclude that there was no tenancy created in respect of the suit premises. The Law recognizes that the tenancy may be created orally or it may be through a written document. In case it is through a written document, it requires compulsory registration if the rent is more than Rs.100/-.

6. In the present Suit, specific averments had been made by the Plaintiff that a written note was exchanged between the parties and pursuant thereto, the keys of the basement, were handed-over to the Defendant, who also gave a cheque of Rs.2,50,000/- as security. Once the Plaintiff has made these



specific averments in the Plaint, it cannot be said that the Suit for Recovery of Arrears of Rent, could not be maintained.

7. It is pertinent to refer to the Affidavit of the Defendant/Respondent, Mr. Jagdish Arora wherein he has mentioned about a Surveyor's Report indicating four classrooms, one toilet, lobby and one office room etc. in the Suit Property. The averments in the Affidavit fully support his contentions in the Plaint that the Possession was handed-over to the Revisionist, who had modified the Suit premises for the purpose of running the Tuition Centre. Moreover, he also claimed that his goods i.e. the fixtures, fittings and furniture are lying in the property, which cannot be removed. The assertion that there can be no tenancy created without the registered lease deed is not tenable, as the articles in the Suit premises are shown to be that of the Defendant.

8. The Plaintiff may have also sought Recovery of Mesne Profits, but it is for him to prove that there was termination of tenancy or that in addition to recovery of rent, he is also entitled to mesne profits. There are specific averments made in the Plaint and the Suit cannot be rejected under Order 7 Rule 11 CPC.

9. Pertinently, the reliefs claimed in this Suit are for Recovery of Arrears of Rent, Permanent Injunction and for Mesne Profits. It is matter of evidence whether the tenancy stands terminated which makes the defendant liable for mense profits. It is also a matter of evidence whether the possession of the defendant has become that of an unauthorized occupant. Even if the contention of the Revisionist was accepted that the relief of mesne profit, was not maintainable, but then too, the Suit definitely discloses cause of action for Recovery of Arrears of Rent and for Permanent



Injunction. The learned Trial Court had rightly observed that there cannot be part rejection of the Suit under Order 7 Rule 11 CPC.

10. Similarly, in the *Suit bearing No. CS DJ 126/2022 for Possession of the Suit Property* claiming the Revisionist/Defendant to be a tenant, an Application under Order 2 Rule 2 CPC, was filed for rejection of the Plaint, on the ground that the plaintiff had filed earlier Suit No. 405/2022 between the same parties, arising out of identical cause of action in which the relief of possession has not been claimed and thus, this subsequent Suit is barred.

11. This Application also did have any merit as there is no compulsion on the landlord while making a plea for Recovery of Arrears of Rent, to also seek the Possession. The right of recovery of possession is a continuing cause of action and the Second Suit seeking only Recovery of Possession, cannot be termed as barred under Order 2 Rule 2 CPC.

12. The learned Trial Court in the light of the Affidavit, was again right in observing that the documents of the tenant itself *prima facie* establish the possession of the tenant. The learned Trial Court has rightly rejected the Application under Order 7 Rule 11 CPC as well as Application under OII Rule 2 CPC.

13. There is no merit in the present Revision Petition, which is hereby dismissed.

14. The Revision Petition is disposed of accordingly along with the pending Application.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 22, 2024/va/RS