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

+ **C.R.P. 350/2024 & CM APPL. 69271-72-73-74-75/2024**

MOHD. ASLAM

.....Petitioner

Through: **Ms. Rekha Rani Dey &
Mr. Siddharth Kumar, Advocates**

Versus

SHAKEEL AHMED & ANR.

....Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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27.11.2024

CM APPL. 69275/2024

1. There is delay of 107 days in re-filing the revision Petition.
2. For the reasons stated, the Application is allowed and accordingly disposed of.

CM APPL. 69274/2024

3. There is delay of 137 days in filing the revision Petition.
4. For the reasons stated, the Application is allowed and accordingly disposed of.

C.R.P. 350/2024 & CM APPL. 69271-72-73/2024

5. The present Revision Petition under Section 115 read with Section 151 of the *Code of Civil Procedure, 1908* ('CPC' hereinafter) has been filed against the Order dated 13.10.2023 passed by the learned Civil



Judge, whereby the Application under Order XVA filed by Respondent No.1 (Plaintiff) was allowed and the Revisionist Mohd. Aslam has been directed to deposit Arrears of Rent/ User charges for unauthorized occupation of Suit property, situated on the fourth floor of property bearing No. 592-593 (old) and 902- 903 (new), Ward no. X, Kamra Bangash, Tiraha Behram Khan, Darya Ganj, New Delhi-110002, from November 2015 and to continue depositing Rs. 15,000/- p.m. till the pendency of this suit or till the handing over the arrears of rent and future mesne profits or till the possession of the property is handed over to the plaintiff, whichever is earlier.

6. The impugned Order has been challenged on the *ground* that Respondent No.2- (Defendant No.1), who is admittedly the owner of the property in question, had represented to the Revisionist (Defendant No.2) that he had purchased the property from Respondent No.1 (Plaintiff) and he has to pay remaining amount of Rs.5,00,000/- towards full and final remaining amount to Respondent No.1 (Plaintiff) and if he i.e. Revisionist (Defendant No.2), gives Rs.5,00,000/- to him, he shall permit him to reside in the Suit Property without any rent for one year and thereafter, Respondent No.2 (Defendant No. 1) shall return the said amount to him. In case he fails to do so, the Revisionist (Defendant No.2) can continue to reside in the Suit Property. It is submitted that even the Tenant Verification Form was also filed by Respondent No.1 (Plaintiff) in his own handwriting. However, subsequent to being put in possession, Respondent No.1 (Plaintiff) has falsely filed a Suit for possession and arrears of rent, user charges, etc. against the Revisionist (Defendant No.2). It is further contended that the Revisionist was made to sign some



documents in order to record the transactions *inter se* the parties.

7. It is further urged that in the same manner, Respondent No.1 has harassed the other occupants of first to third floor of the suit property in question. It is asserted that the Respondent was never inducted as tenant but has been permitted to stay in the suit property. There is no merit in the impugned Order whereby Revisionist has been directed to pay rent and user charges, which is liable to be set aside.

8. **Submissions heard.**

9. *The brief background of the case*, as spelt out in the impugned Order, is that the Respondent No.1 (Plaintiff) had filed a Suit for Possession of suit property, Injunction and arrears of Rent, contending that he is the absolute owner of the property bearing No. 592-593 (old) and 902- 903 (new), Ward no. X, Kamra Bangash, Tiraha Behram Khan, Darya Ganj, New Delhi-110002 *vide* Registered Sale Deed dated 14.05.2013. He had inducted Respondent No.2 (Defendant No. 1) namely, Mohd. Ashaq Khan, as tenant on the Fourth Floor of the property in question for a period of three years w.e.f. 15.08.2015 *vide* registered Lease Deed dated 21.09.2015 at a monthly rent of Rs.15,000/- per month. It was agreed that Respondent No.2 (Defendant No. 1) shall pay the rent regularly and shall not sub-let any portion of the property let out to him, failing which the Lease Agreement shall be terminated.

10. According to Respondent No.1 (Plaintiff), the Respondent No.2 (Defendant No. 1) paid rent till October, 2015 and defaulted since November, 2015. It is further averred that when he visited the subject property on 20.02.2016, he was shocked to find that the Revisionist (Defendant No.2) was residing in the property thereby indicating that he



had been inducted as a sub-tenant without his consent. When Respondent No.1 (Plaintiff) confronted the Respondent No.2 (Defendant No. 1), he was threatened with dire consequences.

11. Accordingly, Respondent No.1 (Plaintiff) issued Notice dated 26.02.2016 terminating the tenancy of Respondent No.2 (Defendant No. 1) and called upon him to pay arrears of rent as well as hand over the vacant possession of the suit property. Since he failed to get the possession of the property, he filed the Suit for Possession/Damages and Mesne Profits, against the Defendants.

12. **Respondent No.2 (Defendant No.1)** failed to appear before the learned Civil Judge despite service and also did not file the Written Statement.

13. On the other hand, Revisionist (Defendant No.2) filed the Written Statement wherein he took the defence that he had approached Respondent No.2 (Defendant No.1) for taking the Suit property on rent, who represented that he needed Rs.5,00,000/- to pay Respondent No.1 (Plaintiff) towards full and final payment for purchase of the said property and since he paid the said amount, he was permitted to live in the suit property without rent for a period of one year. He had thus, taken the suit property on rent by Respondent No.2 (Defendant No.1) *vide* General Agreement dated 11.08.2015 and had paid a sum of Rs.5,00,000/- by undated cheque as security deposit to him. The Rent Agreement dated 11.08.2015 was however, executed. Further, the police Verification Form was also filled by Respondent No.1 (Plaintiff) and the Revisionist took possession of the Suit property, on 12.08.2015.

14. The Revisionist (Defendant No.2) asserted that despite having paid



amount of Rs.5,00,000/- to Respondent No.2 (Defendant No.1), the Respondent No.1 (Plaintiff) has filed an abusive Suit against him in connivance with Respondent No.2 (Defendant No.1).

15. **Respondent No.1 (Plaintiff)** moved an Application under Order XVA CPC claiming deposit of user/ occupation charges.

16. The learned Civil Judge considered the assertions made by Revisionist (Defendant No.2) whereby he admitted to have taken the possession of the Suit property from Respondent No.2 (Defendant No.1). Further, it was noted that he had alleged to have given an amount of Rs.5,00,000/- to Respondent No.2 (Defendant No.1) for enjoyment of the Suit property, and held that Revisionist (Defendant No.2) cannot be held to be entitled to continue in occupation of the Suit property without paying the rent to Respondent No.1 (Plaintiff), who is the owner. Furthermore, reference was made to Section 91 of the *Indian Evidence Act, 1872* to hold that the explanation given by Revisionist (Defendant No.2) by way of oral claims to contradict the terms of the contract, was not admissible under Section 92 of the *Indian Evidence Act, 1872*. The contents of the Rent Agreement between Respondent No.2 (Defendant No.1) and Revisionist (Defendant No.2) were considered and the Revisionist (Defendant No.2) has been directed to deposit the rent/occupation charges @Rs.5,00,000/- per month from November, 2015 till the disposal of the suit, by the impugned Order.

17. Considering the written Agreement and the admission of Revisionist (Defendant No.2) in his own Written Statement that he has taken the property from defendant No.1, learned Civil Judge has rightly directed the Revisionist (Defendant No.2) to deposit the occupation



charges, in terms of the impugned Order.

18. There is no infirmity in the impugned Order and the Revision Petition is hereby, dismissed.

19. Pending Applications are disposed of accordingly.

NEENA BANSAL KRISHNA, J

NOVEMBER 27, 2024

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