



2024:DHC:1719



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 09th February, 2024
Date of Decision: 29th February, 2024

+ RSA 196/2018 and CM APPL. 26390/2019

AJAY CHAWLA Appellant

Through: Mr. Prashant Batra, Advocate

versus

CHANDER BHAN MAKKER & ANR Respondents

Through: Mr. Imran Khan and Mr. Shiv Charan
Garg, Advocates

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T**MANMEET PRITAM SINGH ARORA, J:**

1. This regular second appeal, filed under Section 100 of the Code of Civil Procedure, 1908 ('CPC'), impugns the judgment dated 03.11.2018 passed by the ADJ-02, North District, Rohini Courts, Delhi ('First Appellate Court') in RCA No. 36/2018, titled as '**Sh. Ajay Chawla v. Sh. Chander Bhan Makker and Anr.**', whereby the First Appellate Court dismissed the said appeal filed against judgment and decree dated 19.03.2018 passed by the Civil Judge, North District, Rohini Courts, Delhi ('Trial Court') in Suit No. 75/2016.

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SHARMA RSA 196/2018
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1.1. The Trial Court had, vide judgment dated 19.03.2018, decreed the suit filed by the Respondents herein and consequently, directed the Appellant herein, (i) to vacate the Flat No. 6, Second floor, SFS, Sector – 11, Rohini, New Delhi ('suit property'); (ii) to pay arrears of rent of ₹ 12,000/-; and (iii) to continue to pay rent of ₹ 2,000/- per month from the day of filing of suit until March, 2018 and ₹ 4,000/- per month thereafter, till handing over of the vacant and peaceful possession of suit property.

2. The Appellant herein is the defendant, the Respondent Nos. 1 and 2 are plaintiff nos. 1 and 2 respectively. For ease of reference, the parties are being referred to by their original rank and status as was before the Trial Court.

3. Brief facts, shorn of unnecessary details, are that the plaintiffs had filed the suit seeking possession, recovery of rent, damages, mesne profits and permanent injunction with respect to suit property. The plaintiffs are admittedly, the recorded owner of suit property and the relationship of landlord-tenant between the plaintiffs and the defendant is also admitted. In the plaint, it is claimed that the suit property was let out to the defendant in the year 2004 at rent of ₹ 4,000/- per month and the same was renewed from time to time until the year 2013 i.e., when the plaintiffs sought vacation of suit property by the defendant. The plaintiff in this regard relied upon the copy of a rent agreement dated 01.08.2007 ('rent agreement') executed between the parties. The defendant filed his written statement denying the contents of the plaint. It is contended that at the time of taking over possession of suit property, the defendant spent ₹ 5 lacs for furnishing the suit property and in pursuance thereof the title of suit property was to be transferred to defendant after adjusting the amount of ₹ 5 lacs. It is stated that in these circumstances, the rent was mutually agreed at ₹ 2,000/- per month. The Trial Court after considering



the evidence and arguments of the parties, decreed the suit vide its judgment and decree dated 19.03.2018.

3.1. The said judgment was challenged by the defendant in appeal bearing RCA No. 36/2018, *inter alia*, on the ground that the plaintiff produced photocopy of the rent agreement, which has been denied by the defendant in his evidence as well as pleadings. The Appellant contended that since the said rent agreement has not been proved on record, the Trial Court erred in relying upon it and decreeing the suit. The First Appellate Court vide impugned judgment dated 03.11.2018 dismissed the said appeal holding that the landlord-tenant relationship is admitted between the parties and the defendant, nowhere in his appeal denied that the rent was less than ₹ 4,000/- and the tenancy was, in fact, covered under the Delhi Rent Control Act, 1958 ('DRC Act').

3.2. The defendant being aggrieved by the aforesaid findings, filed this second appeal, wherein the predecessor Bench of this Court on 07.12.2018, after considering the initial submissions of Appellant, had framed the following substantial question of law:

Whether in the facts and circumstances of the instant case, the document Mark-A i.e. the stated lease agreement stated to have been executed on 01.08.2007 has been erroneously relied upon by the learned Trial Court and the Appellant Court and that whether the findings thus on the basis thereof by both the learned Trial Court and Appellate Court are perverse?

Submissions of counsels for parties

4. Learned counsel for the Appellant i.e., defendant, stated that the Courts below misconstrued the admission made by the defendant in paragraph no. 2 of the written statement while replying on merits to paragraph no.2 of the plaint. He stated that concededly, the defendant admitted the execution of the rent agreement, however, there was no admission to the contents of the said rent agreement. He stated that the defendant in the said reply of paragraph no.2 had



specifically pleaded that the rent was mutually decided between the parties at ₹ 2,000/- per month. He stated that, therefore, the admission of the execution of the rent agreement in the written statement could not have formed the basis of the finding of the Courts below with respect to the monthly rent agreed between the parties.

4.1. He stated that the secondary copy of the rent agreement was tendered in evidence by the plaintiff as Mark-A. He stated that the factual foundation for leading secondary evidence in the facts of the present case has not been satisfied. He stated the allegation that the defendant has the custody of the original of this rent agreement was pleaded for the first time in the evidence affidavit of the plaintiff. He stated that the notice dated 05.08.2017 issued by the plaintiff under Order XII Rule 8 of CPC is not sufficient for satisfying the ingredients of Section 65 of the Evidence Act, 1872.

4.2. He stated that the rent agreement on the face of it is forged and fabricated for the reason that the stamp paper used for preparation of the said agreement is indicated to have been purchased on 10.06.2008, whereas, the rent agreement was purportedly executed on 01.08.2007.

4.3. He stated that since the plaintiff had failed to lead foundational evidence to prove that the rent agreement is a true copy of the original, the said agreement was inadmissible in evidence. He relies upon the judgments of the Supreme Court in *H. Siddiqui (dead) by LRs. v. A. Ramalingam*¹ and *U. Sree v. U. Srinivas*².

5. In reply, learned counsel for the Respondent i.e., plaintiff, stated that in the entire written statement, the defendant has not disputed or denied the rent

¹ (2011) 4 SCC 240

² (2013) 2 SCC 114



agreement. He stated that, in fact, the defendant admitted the said agreement in reply to paragraph no.2 on the merits, of the written statement.

5.1. He stated that neither at the time of framing of issues nor during the recording of evidence, any challenge was laid to the veracity of the rent agreement produced by the plaintiff. He stated that, therefore, the admitted position as per pleadings and evidence, remained that the rent agreement filed by the plaintiff as Mark-A was, in fact, the true copy of its original.

5.2. He stated that plaintiff no.1 who examined himself as PW-1 was cross examined at length by the defendant's counsel on 16.08.2017, however, no objection with respect to the correctness of the rent agreement was raised during the cross examination. He stated that the plaintiff no.1 was not cross-examined with respect to the correctness of the contents of rent agreement filed as Mark-A. He stated that to the contrary the suggestion given by the defendant to the witness was in the affirmative and the answer to the said suggestion records that the rent agreement was executed and the rent reserved was ₹ 4,000/- per month.

5.3. He stated that the defendant filed his own evidence affidavit on 26.09.2017 (Ex. DW-1/A) and was examined as DW-1. He stated that in his evidence affidavit, the defendant has not disputed the existence and the correctness of the rent agreement produced by the plaintiff.

5.4. He stated that the plaintiff duly served a notice dated 05.08.2017 under Order XII Rule 8 of CPC (Exhibit PW-1/6) on the defendant for production of the original rent agreement for the hearing before the Trial Court on 16.08.2017. He stated that, however, the defendant failed to produce the originals of the rent agreement on 16.08.2017. He stated that the plaintiff no.1, who appeared as PW-1 was cross examined on 16.08.2017, tendered the



aforesaid notice as Exhibit PW-1/6 and the receipt evidencing dispatch as Exhibit PW-1/7. He stated that there was no cross-examination of the plaintiff with respect to issuance and service of the notice dated 05.08.2017.

5.5. He stated that the judgments of the Supreme Court, relied upon by the defendant is inapplicable to the facts of the present case as the contents of the rent agreement were not denied by the defendant either in its pleadings or in its evidence.

Findings and analysis

6. This Court has considered the submissions of the learned counsel for the parties and perused the record.

7. The admitted and undisputed facts are as follows:

- (i) The plaintiffs are the owners of the suit property. The said suit property was allotted by Delhi Development Authority to the plaintiffs on 28.11.2001 and the registered conveyance deed was executed in their favour on 06.06.2003 (Ex. PW-1/1).
- (ii) The plaintiffs let out the suit property to the defendant and there exists a relationship of landlord-tenant between the parties. Thus, the first condition for passing decree of eviction stands satisfied.
- (iii) Disputes arose between the parties and the defendant-tenant issued a notice dated 15.10.2016 (Ex. PW-1/4) admitting the tenancy, however, calling upon the plaintiffs to not interfere in his physical possession except by following the due process of law.
- (iv) The plaintiffs issued a reply-notice dated 24.10.2016 (Ex. PW-1/6) disputing the allegations raised in the notice dated 15.10.2016. By this reply notice, the plaintiffs terminated the tenancy and called upon the



defendant-tenant to vacate the premises and pay the arrears of rent. The Trial Court held that in view of the judgment of this Court in *Nopany Investment Pvt. Ltd. v. Santokh Singh (HUF)*³ the filing of the suit for eviction by landlord under Transfer of Property Act, 1882, is a notice of quit to the tenant. Therefore, the tenancy stood validly terminated vide reply notice dated 24.10.2016 as well as the filing of the suit. Therefore, the second condition for passing the decree of eviction also stands satisfied.

8. In his pleadings, the defendant had raised disputes with respect to termination of tenancy and rate of monthly rent. The issue of termination of tenancy was held against the defendant and the said finding has not been assailed in the present second appeal. The issue of termination has, therefore, attained finality.

9. The defendant contended in the written statement that the agreed rent for the suit property was ₹2,000/- per month and therefore, the tenancy is protected under the Delhi Rent Control Act, 1958 ('DRC Act').

10. In this second appeal, the defendant has disputed the concurrent findings of the Courts below holding that the rent reserved was ₹ 4,000/- per month and, therefore, the tenancy is not protected under the DRC Act. The defendant has contended that the rent reserved under the tenancy was ₹ 2,000/- per month and to prove the said fact, the defendant has solely relied upon his oral testimony. The defendant has not led any documentary evidence to prove the payment of rent at ₹ 2,000/- per month.

³ (2008) 2 SCC 728



10.1. In fact, the defendant pleaded a justification for fixation of rent at ₹ 2,000/- per month, to the effect that since he had allegedly incurred ₹ 5 lacs towards the refurnishing the suit property, and the parties had mutually agreed to fix the (low) monthly rent at ₹ 2,000/- per month so as to adjust the said expenditure of ₹ 5 lacs. The defendant, admittedly, failed to lead any evidence, documentary or otherwise to prove the said alleged expenditure of ₹ 5 lacs. Therefore, the Trial Court returned a finding that the defendant had been unable to prove his plea that the rate of rent was fixed at ₹ 2,000/- per month. The said finding of the Trial Court negating the alleged expenditure of ₹ 5 lacs was neither assailed in the first appeal nor assailed before this Court, by the defendant and therefore, the said finding has attained finality. The relevant extract of the Trial Court's judgment dated 19.03.2018 reads as under:

"12.4 As per the DRC Act, Sec-3, a tenancy where monthly rent is less than Rs. 3500/-, is protected tenancy and the eviction can be sought only on one of the grounds, as mentioned u/s 14 of the DRC Act. To adjudicate, whether or not the tenancy is protected under the DRC Act, the quantum of the monthly rent, needs to be examined.

12.5 The burden of proof, to prove the aforementioned issue was upon the plaintiff. It is the case of the plaintiff that the monthly rent of the suit property is Rs. 4000/- per month and thus the tenancy is not protected under the provisions of Delhi Rent Control Act. On the other hand, the defendant has argued that the rent of the suit property is Rs. 2000/- per month and hence, the suit property is governed by the provisions of Delhi Rent Control Act and accordingly, this court has no jurisdiction to try the present suit.

12.6 In order to prove this case, the plaintiff has placed on record, lease agreement, Mark A, dated 01.08.2007. The said rent agreement, as per the plaintiff was executed in the year 2007 though the suit property was rented in the year 2004. As per the said rent agreement, the monthly rent is Rs. 4000/-.

12.7 As per the defendant, the suit property was given on rent by the plaintiff, with the understanding that Rs. 5 lacs, which were spent by the defendant upon the suit property, will be adjusted in the monthly rent.

12.8 The onus of proving the aforementioned adjustment of rent or the aforementioned expenditure of Rs. 5 lacs, was upon the defendant, however, the defendants has not placed on record any evidence, documentary or



otherwise, to the said effect. Accordingly, I am obligated to disbelieve the said averment of the defendant.”

(Emphasis supplied)

The defendant, therefore, clearly failed to discharge the burden of proof with respect to his plea that the quantum of monthly rent was fixed at ₹ 2,000/- per month, as he allegedly incurred an expenditure of ₹ 5 lacs. No iota of evidence was led to prove the tender or receipt of ₹ 2,000 per month.

11. On the other hand, the plaintiff produced along with the plaint, at the first instance, a copy of the rent agreement dated 01.08.2007 (Mark-A) running into three (3) pages, which is duly signed by the parties herein i.e., plaintiff no.1 and defendant on each page. The said rent agreement was specifically pleaded at paragraph 2 of the plaint in conformity with Order VI Rule 9 of CPC. The defendant in his written statement while responding to paragraph no.2 of the plaint did not dispute the existence and execution of the said rent agreement. Therefore, in view of Order VIII Rules 3 and 5 of CPC as well as the relevant provisions of the Indian Evidence Act, 1872 ('Act of 1872') the Courts below rightly concluded that the copy of the rent agreement filed with the plaint has been admitted by the defendant. The relevant pleading in the plaint and in the written statement is set out hereinbelow:

Plaint	Written Statement
<i>That the plaintiffs had let out the suit property to the defendant in the year 2004 @ Rs.4000/- (Rupees Four Thousand Only) per month excluding electricity and water charges. The tenancy has been renewed from time to time. <u>It is pertinent to mention here that an agreement dated 01-08-2007 was also executed in this regard between plaintiff no.1 and defendant.</u></i>	<i>2. That the contents of para no.2 of the plaint are wrong and denied. <u>Rest contents regarding rent agreement is matter of record.</u> However, it is submitted that the rent was mutually decided between the parties @ Rs.2000/- pm exclusive of all charges. It is further submitted that the submissions made in the preliminary objections be read as parcel of this para also as the same are not repeated herein for the sake of brevity and to avoid repetition.</i>



(Emphasis supplied)

12. In the written submissions filed on 17.11.2023, as well, the defendant has unequivocally admitted the execution of the rent agreement. Therefore, the existence of the rent agreement is undisputed in the facts of the present case.

The relevant portion reads as under:

“6. ... It is pertinent to mention herein that appellant has admitted the contents of the para 2 with regard to execution of rent agreement but appellant has nowhere admitted the contents of the rent agreement Dt. 01.08.2007 rather appellant has disputed the contents of the alleged rent agreement by specifically saying that the rent as mutually decided between the parties @ Rs. 2,000/-.”

(Emphasis supplied)

13. The stand of the defendant that he disputed the contents of the rent agreement in the written statement is an afterthought.

14. Pertinently, the defendant, who examined himself as DW-1, in his examination in chief did not dispute the existence or the contents of the rent agreement. As noted above, the defendant had unequivocally admitted the existence and execution of the rent agreement in his written statement. In the considered opinion of this Court, in view of Section 58 and Section 70 of the Indian Evidence Act, 1872 ('Act of 1872'), this admission is sufficient to uphold the findings of the Trial Court admitting the rent agreement in evidence and relying upon the same to hold that the rate of rent was ₹ 4,000/- per month.

15. The plaintiff stepped into the witness box and was examined PW-1. However, a perusal of the cross-examination would reveal that the witness (PW-1) was cross-examined on behalf of the defendant with respect to the 'existence' of the rent agreement. The defendant's line of cross-examination was intended to prove non-existence of the rent agreement. This was the defence raised before the Trial Court and was negated by the Trial Court in



view of the written statement. The Trial Court returned a finding that the plaintiff had proved the existence of the rent agreement and, therefore, read the contents thereof to hold that the rent was ₹ 4,000/- per month. The relevant finding of the Trial Court reads as under:

*“12.13 In view of the aforementioned discussion, **keeping in mind that the defendant has not evasively denied the averments qua the written rent agreement and also keeping in mind the suggestions given by the Ld. Counsel for the defendant in the cross examination,** this Court holds that the plaintiff has successfully proved the existence of rent agreement showing the rent of the suit property @Rs.4000/- per month.”*

(Emphasis supplied)

15.1. The said defence of ‘non-existence’ of the rent agreement has since been abandoned by the defendant and for the first time in the first appeal it was sought to be contended that the ‘contents’ of the rent agreement had not been proved in accordance with law. However, there was no cross-examination of PW-1, by the defendant with respect to the contents of the said rent agreement.

16. The objection of absence of foundational facts for leading secondary evidence of the rent agreement was raised by the defendant for the first time in the grounds of the first appeal. No such objection was raised when the rent agreement was tendered in evidence by PW-1 on 16th August, 2017. The objection of non-production of primary evidence is the objection of mode of proof and as held by Supreme Court in ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple and Anr.***⁴, the same has to be raised when the evidence is tendered and cannot be permitted to be raised after the document has been admitted in evidence. In this case, no objection was raised before the Trial Court to the admissibility of the said document at any

⁴ (2003) 8 SCC 752



stage. The defendant is, therefore, precluded from raising this objection of 'mode of proof' in the first appeal and the second appeal.

17. A perusal of the pleading in the written statement would also show that no objection was raised to the version of the rent agreement filed by the plaintiff with the plaint. The defendant in the corresponding paragraph 2 of the written statement alleged that the rate of rent agreed between the parties is ₹ 2,000/- and not ₹ 4,000/- as written in the said agreement. Therefore, with reference to Section 92 of the Act of 1872, the nature of defence proposed to be raised by the defendant was to allege an oral agreement, which is contrary to the terms of the written agreement. However, the defendant was unable to prove the said alleged oral agreement was of ₹ 2,000/- and it was rightly rejected by the Trial Court.

18. The judgments relied upon by the defendant are also not applicable to the facts of the present case. In the matter of *U. Sree v. U. Srinivas* (supra), the photocopy of letter alleged to have been written by the wife to the father therein was summoned from the father, who disputed its 'existence'. However, in the present case, the defendant in paragraph no.2 of the written statement has admitted the existence of the rent agreement. Similarly, in contrast to the present case, in *H. Siddiqui* (supra), only the signatures on the power of attorney were admitted and not the contents thereof. In *H. Siddiqui* (supra), the trial court did not examine that whether the contents of the said power of attorney had any probative value, however, in the present case, the Trial Court had duly considered the pleadings and evidence led by parties to arrive at the finding of admission of the contents of the said rent agreement by the defendant. As noted hereinabove, the defendant has not disputed the contents



of the rent agreement and has instead sought to set up an oral agreement in terms of proviso (4) of the Section 92 of Act of 1872.

19. The defendant has raised a plea with respect to mismatch of the date on the stamp paper and the date of the rent agreement. This mismatch was not put to the plaintiff, who appeared as PW-1 during cross examination. It is trite law that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into grant any relief⁵. Further, in view of the fact that the execution and existence of this rent agreement is admitted by the defendant, the mismatch of the dates is of no consequence.

20. The plaintiffs issued a notice under Order XII Rule 8 of CPC to the defendant on 05.08.2017 calling upon him to produce the original of the rent agreement. The said notice was duly served on the defendant and was admitted in evidence as Ex. PW 1/6. The defendant did not reply to the said notice and instead as noted above, cross-examined PW-1 to the effect that no such agreement was executed between the parties, which defence has since been abandoned. In this background, a perusal of the rent agreement itself is enlightening. The lease agreement which runs into three (3) pages has been typed and the blanks in the agreement is only in the first recital with respect to the personal details of the plaintiff-landlord. The name of the father of the landlord and his residential address have been written by hand. In contrast, in the second recital all personal details of the tenant have been duly typed out. This contrast in the first and the second recital clearly evidence that the party responsible for having this agreement typed out was the defendant herein i.e., the tenant. In this background a perusal of the stamp paper is also relevant

⁵ Bachhaj Nahar v. Nilima Mandal (2008) 17 SCC 491



which records that the stamp paper was issued at the request of the defendant tenant. These facts, therefore, substantiate the plea of the plaintiff that the original of the rent agreement is in custody of the defendant tenant and the mismatch in the stamp paper and the date of the agreement was in the knowledge of the defendant, who did not raise any such question on mis-match during cross-examination to PW-1 during the trial. This Court, therefore, finds that the issue of mismatch in the stamp paper and the rent agreement, is a red herring and, has no bearing on the concurrent finding of Courts below that the rent was agreed at ₹ 4,000/- per month.

21. The overwriting in Clause 1 of the rent agreement, upon using the zoom feature in the e-file of the Court shows that initially the rate of rent was typed as ₹ 4,500/-, however, the same was agreed at ₹ 4,000/- and therefore, the overwriting of ₹ 4,000/- is consistent with the stand of the plaintiff. The defendant has not raised any issue in this regard.

22. In view of the findings recorded hereinabove with respect to admissibility of the rent agreement dated 01.08.2007, this Court is of the opinion that the Courts below have rightly relied upon the contents of the said rent agreement to conclude that the rate of rent was agreed at ₹ 4,000/- per month and, therefore, the findings of the said Courts are in conformity with the evidence led by the plaintiffs and does not suffer from any infirmity or perversity. The defendant has not led any evidence to show that orally the rent was agreed to be paid at a lower amount of ₹ 2,000/- per month. The question of law framed vide order 07.12.2018 is answered accordingly in favour of the plaintiffs and against the defendant.

23. In view of the aforesaid observations, this Court does not find any merit in this appeal. The defence raised by the defendant that the rate of rent was



₹ 2,000/- is without any merits and has been raised to wrongfully deprive the plaintiff of its property. Accordingly, the present appeal is without any merits and is hereby dismissed.

Direction of mesne profits

24. The Trial Court while passing the judgment dated 19.03.2018 had directed the defendant to pay mesne profits at ₹ 4,000/- per month until the date of the handing over of the vacant peaceful possession. The plaintiff had sought determination of mesne profits at ₹ 17,000/- per month. The defendant has continued to be in possession of the tenanted premises despite concurrent findings of the Courts below. The plaintiff in the present proceedings has sought enhancement in the mesne profits as recorded in order dated 25.02.2022. The plaintiff has also filed CM APPLs. 10070-71/2022 seeking enhancement of the mesne profit to ₹ 17,000/- with effect from 17.03.2018. The plaintiff has filed a copy of the registered rent agreement dated 28.07.2016 to substantiate the said rate of rent. The rent agreement pertains to a residential flat situated in the same locality of Sector 11 of the Rohini. This Court vide order dated 08.11.2023 had directed that the orders in this application will also be passed at the time of final disposal.

25. The registered rent agreement dated 28.07.2016 substantiates the contention of the plaintiff that the prevalent rate of rent during the period FY 2016-2017 was ₹ 17,000/- per month. The first appeal was dismissed on 03.11.2018, however, despite concurrent judgments the defendant has continued to remain in possession. The rent of ₹ 4,000/- was agreed between the parties in the year 2004. Keeping in mind the inflationary trends and the prices of increasing rents in the city of Delhi, with the passage of 20 years the



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rent would have certainly increased to ₹ 17,000/- per month in year 2018 as contended by the plaintiff.

26. CM APPLs. 10070-71/2022 was filed on 22.02.2022. The defendant was directed to file its reply vide order dated 18.05.2022, however, the defendant elected not to file any reply, further confirming the contents of the application as regards the prevalent rate of rent being ₹ 17,000/- per month. In these facts, it is further directed that the defendant is liable to pay enhanced mesne profits at ₹17,000/- per month with effect from 01.03.2022 i.e., after the filing of the said application until handing over of possession of suit property. It is clarified that the defendant will be entitled to a set-off the payments of ₹ 4,000/- per month made for the period 01.03.2022 onwards.

27. With the aforesaid directions, the CM APPLs. 10070-71/2022 along with pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 29, 2024/aa/msh

Signature Not Verified

Signed By: MANJIMA
SHARMA

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Signing Date: 02.03.2024
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