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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **RSA 22/2023**

**MANJOOR ALAM**

.....Appellant

Through: Mr. Shivang Rawat, Advocate.

versus

**SABIR QURESHI**

.....Respondent

Through: Ms. Payal Jain and Mr. Sumit Kumar,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**ORDER**

**02.12.2025**

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By way of the present second appeal filed under section 100 of the Code of Civil Procedure 1908 ('CPC'), the appellant impugns judgment/order dated 03.09.2022 passed by the learned Additional District Judge - 08, West District, Tis Hazari Courts, Delhi in appeal bearing RCA DJ No.27/2022 whereby the respondent's appeal against judgment and decree dated 04.03.2022 passed by the learned JSCC/ASCJ/GJ (West) in suit bearing No. 8181/2016 has been allowed. The appellant has also challenged judgment dated 03.09.2022 insofar as it dismisses a miscellaneous application bearing No.29553/2016 filed by the respondent under Section 340 of the Code of Criminal Procedure 1973 ('Cr.P.C.').



2. The court has heard Mr. Shivang Rawat, learned counsel appearing for the appellant (plaintiff) as well as Ms. Payal Jain, learned counsel appearing for the respondent (defendant).
3. In this backdrop, Mr. Rawat has drawn attention to the proposed questions of law set-out in para-3 of the memo of appeal. The proposed questions of law are as follows:

*“1. Whether the judgement passed in a civil suit and order passed in application under section 340 of the Code of Criminal Procedure, 1973 can be challenged in same appeal under section 96 read with Order XLI of the Code of Civil Procedure, 1908?*

*2. Whether the defence raised in written statement can be considered in the favour after (sic) the Defendant after the defence is struck off?*

*3. Whether the court can decree the suit under Order 12 rule 6 of the Code of Civil Procedure, 1908 after the landlord and tenant relationship is admitted and the amount of rent is proved in chief and cross examination?*

*4. Whether the plea of section 50 of the DRC Act can be raised after the Defendant's defence is struck off in the absence of any documentary evidence or oral evidence?*

*5. Whether the appeal against dismissal of the application under section 340 of the Code of Criminal Procedure, 1908 can be filed under section 96 read with Order XLI of the Code of Civil Procedure, 1908?*

*6. Whether the Appellant court can set aside passed the order passed under section 340 of the Code of Criminal Procedure, 1973 without giving any reasons?”*

4. Learned counsel for the appellant contends that in the course of his cross-examination on 22.01.2021, the *appellant* has said that the rate of rent of the suit property was Rs.5,000/- per month. In this behalf, Mr. Rawat has drawn attention to the following statement that has



come to be recorded in the course of cross-examination of the appellant before the learned trial court:

*“It is incorrect to say that the property was given on rent @ Rs. 3,000/- per month. Vol. The rent was Rs. 5,000/- per month.”*

5. Counsel submits, that the aforesaid statement amounts to the respondent having admitted that the rate of rent of the suit property was Rs.5,000/- per month. It is argued that since the landlord-tenant relationship stood admitted and the rate of rent was also *admitted* as being Rs. 5,000/- per month, the learned trial court was correct in decreeing the appellant’s suit under Order XII Rule 6 CPC and the learned first appellate court committed error in overturning that judgment.
6. Clearly, the appellant’s submission referred to above, proceeds on a complete misunderstanding and misconstruction of what has come to be recorded in the course of the *appellant’s own cross-examination* before the learned trial court. The rate of rent at Rs. 5000/- per month has come to be recorded as what was *volunteered by the appellant himself*; and *not as a suggestion* put to the appellant on behalf of the respondent. Such a *volunteered* statement made by the appellant himself, cannot possibly be construed as an *admission* on the part of the respondent.
7. Furthermore, the learned trial court has proceeded on the basis of what it has called ‘admissions’ contained in the written statement filed by the respondent; as well as ‘admissions’ made in the respondent’s statement recorded under Order X CPC. In this regard, the learned first appellate court has observed as follows:



*“18. Vide order dt. 12.10.2015 Ld. Trial Court has framed a specific issue of jurisdiction of the Court being barred in view of Section 50 of DRC Act. However, in the impugned judgment, no finding has been given by the Ld. Trial Court on the said issue. On the contrary, the impugned judgment was passed U/o 12 Rule 6 CPC on its own motion after holding that there are admissions on the part of defendant in the Written Statement as well as in his examination conducted Under Order 10 CPC by the Court on 20.11.2017 and also on the basis of overall facts and circumstances of the case. Ld. Trial Court has held that since the case was filed on 22.05.2013, and since then till today, it cannot be assumed that the rent of the tenanted premises shall remain Rs. 3000/- only which comprises ground plus two floors having three rooms, three lobbies, one kitchen, bathroom etc. and from no stretch of imagination it can be said that in today's inflated time, the rent of suit premises can be Rs. 3000/- only. Ld. Trial Court has also observed that even a single room rent in Uttam Nagar locality in unauthorized locality cannot be less than Rs. 3000/- per month and the defence of Appellant was held to be not plausible and believable in any manner. The Ld. Trial Court has also observed that Court has to consider the last 10 years also for increment of the rent and can consider the market rate of rent U/o 15A CPC. However, it has failed to consider the implication of Section 50 Delhi Rent Control Act despite specific plea is taken by the appellant.”*

*(emphasis supplied)*

8. A perusal of the written statement filed by the respondent, as well as his statement dated 20.11.2017 recorded under Order X CPC as available in the trial court record, however show that the respondent has specifically taken the objection as regards maintainability of the suit in view of the rate of rent being Rs. 3,000/- per month. The rate of rent admitted by the respondent in his written statement is only of Rs. 3000/- per month; and in fact, the respondent has challenged the rent agreement sought to be relied upon by the appellant, alleging the same to be forged and fabricated. It was in this context that the



respondent had moved the application under section 340 Cr.P.C. against the appellant.

9. Furthermore, insofar as the respondent's statement dated 20.11.2017 recorded by the learned trial court under Order X Rule 2 CPC is concerned, a perusal thereof shows, that there is nothing by way of any admission that the rate of rent was Rs. 5,000/- per month; and the respondent has only asserted that he paid Rs. 3,000/- per month to the appellant.
10. Learned counsel for the parties also inform the court, that after being remanded by the learned first appellate court, the suit has proceeded further; that evidence has been concluded in the proceedings; and the learned trial court is now awaiting disposal of the present regular second appeal, for it to conclude the matter.
11. Viewed in light of what has been recorded above, this court is of the opinion, that *firstly*, considering the factual narrative obtaining in the matter, the questions of law proposed in the memo of appeal do not require consideration in the present case. *Secondly*, now that the learned trial court has proceeded with the suit after the matter was remitted back to it, and the matter is pending at a very advanced stage before the learned trial court, it is not considered necessary to delve into the questions of law raised in the present appeal, since those have been rendered academic.
12. As a sequitur to the above, this court does not consider it necessary or advisable to entertain the present second appeal, which is accordingly disposed-of.



13. It is clarified that this court has not expressed any opinion on the merits of the matter; and the learned trial court shall be at liberty to decide the matter in accordance with law.
14. The appeal is disposed-of.
15. Pending applications, if any, stand disposed-of.

**ANUP JAIRAM BHAMBHANI, J**

**DECEMBER 2, 2025/ss**