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

+ LPA 122/2023, CM APPL. 7996/2023, CM APPL. 7998/2023

SATPAL SINGH

.....Appellant

Through: Mr. Rahul Sagar Sahay, Mr. Pratham Arora & Mr. Raghav Rajmalani, Advocates.

versus

MOTHER DAIRY FRUIT AND VEGETABLE PVT. LTD.

.....Respondent

Through: Mr. Vivek Sood, Sr. Advocate alongwith Mr. Feroz Khan, Mr. Khalid Saifullah, Mr. Medhavi Judevi, Mr. Amitanshu Satyarthi, & Ms. Pankhuri Jain, Advocates.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

ORDER

19.11.2025

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1. By way of the appeal in hand, the appellant has challenged the judgment and order dated 22.11.2022, whereby learned Single Judge has rejected the writ petition filed by the petitioner-appellant, in which he had challenged the order of withholding of gratuity for the reason that the petitioner-appellant had not vacated the house.
2. The impugned judgement shows that learned Single Judge has disposed of the writ petition by directing the respondents to give a show-cause notice to the petitioner-appellant and pass appropriate order after giving him due opportunity of hearing.
3. Learned counsel for the appellant, at the outset, submitted that it is a settled position of law that for the purpose of recovery of due rent/panel rent



for unauthorized occupation of the residential accommodation, gratuity cannot be withheld.

4. Inviting the Court's attention towards Section 4(6) of the Payment of Gratuity Act, 1972, learned counsel submitted that the gratuity can be withheld only in the contingencies enumerated therein, and since the due rent on account of prolonged or unauthorised occupation of the residential accommodation is not a stipulation therein, the respondents' action of withholding the gratuity is totally arbitrary and illegal.

5. Learned counsel for the respondent, on the other hand, submitted that the appellant's conduct disentitles him from invoking the jurisdiction of this Court and also from preferring the present Intra-Court appeal, which too is a discretionary jurisdiction.

6. He, then submitted that pursuant to the order dated 22.11.2022 passed by the learned Single Judge, a show-cause notice was issued to the appellant, but he chose not to turn up and ultimately, the respondents were constrained to pass an order of recovery of the due rent, which comes to Rs. 9,09,142/-. He submitted that the appellant had never challenged such order by way of appeal or in any other proceedings and therefore, the respondents are justified in withholding the amount of gratuity.

7. Learned counsel for the respondent further submitted that the judgement of Hon'ble Supreme Court, relied upon by the learned counsel for the appellant, do lay down that gratuity cannot be withheld in the event of unauthorised occupation of the residential accommodation, but it is not solely for the reason of unauthorised occupation, that the gratuity of the appellant had been withheld. He added that it is also because of the pending disciplinary proceedings on account of act of moral turpitude.



8. In rejoinder, learned counsel for the petitioner relied upon the judgement of Hon'ble Supreme Court in the case of **Union Bank of India and Ors. vs. C.G. Ajay Babu and Ors.** reported in 2018 (9) SCC 529 to contend that, without establishing the moral turpitude of the appellant, the respondents cannot withhold his gratuity.

9. Having heard the learned counsel for the parties, we are of the view that the appellant has no case worth interference. Firstly, because the learned Single Judge, *vide* the impugned judgment dated 22.11.2022 had simply remanded back the matter with a direction to the respondents to issue a show cause notice to the appellant and take a final decision on the amount of due rent.

10. The respondents have found a sum of Rs. 9,09,142/- to be due against the appellant. The appellant has, admittedly, not laid any challenge thereto, by way of preferring an appeal or fresh writ petition, though he has challenged the same by way of moving an application in the present appeal itself. Such challenge, according to us, is impermissible in law. When the demand was never under challenge before the Writ Court, the same cannot be challenged in the appeal which is continuation of writ proceedings. That apart, the demand of outstanding rent which has been raised post disposal of the writ petition is a separate cause of action, hence, the challenge to subsequent decision cannot be allowed.

11. Adverting to the judgments which the learned counsel for the appellant has cited regarding withholding of the gratuity as held in **R. Kapur vs. Director of Inspection (Painting and Publication) Income Tax and Ors.**, reported in (1994) 6 SCC 589 and **Gorakhpur University and Ors. vs. Shitla Prasad Nagendra and Ors.**, (2001) 6 SCC 591, the legal



position postulates that amount of gratuity cannot be withheld pending the house being vacated. In the instant case, we are informed that the house has been vacated after a period of 7 years of unauthorised occupation and a huge demand of arrears of rent has been calculated, which is Rs. 9,09,142/-.

12. As stated by learned counsel for the respondents, all terminal dues have been paid to the appellant and hence, if the respondents are not allowed to withhold the gratuity, it will be like giving premium to the misdeeds of the appellant-writ petitioner, who has unauthorizedly occupied the residential accommodation for 7 long years.

13. Hence, looking at the conduct of the appellant, we are of the view that no indulgence can be granted to the appellant in a discretionary exercise of jurisdiction of this Court. So far as judgement in the case of **Union Bank of India (Supra)**, reported in, 2018(9) SCALE 622, suffice it to say that para number 20 of the judgement clearly shows that Hon'ble Supreme Court has held that the gratuity cannot be **forfeited**, unless the misconduct is proved. In the instant case, the respondents have not forfeited the gratuity and have simply withheld the same. There is a clear cut distinction between the expression 'forfeiture' and 'withholding'. What the respondents have done in the case in hands is, they have withheld the gratuity and not forfeited it.

14. The respondents are well within their rights to withhold the gratuity pending the disciplinary proceedings, if not for the unauthorised occupation of the house. We do not find any merit and substance in the present appeal, for which it is hereby dismissed.

DINESH MEHTA, J.

VIMAL KUMAR YADAV, J.

NOVEMBER 19, 2025/nk