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

+ RSA 45/2025

SMT SAVITA

.....Appellant

Through: Mr.Gurmit Singh Hans and
Ms.Gurman Kaur, Advocates

versus

SMT POOJA

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

% **04.03.2025**

CM APPL. 12772/2025 (Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

RSA 45/2025, CM APPL. 12773/2025 (directions) & CM APPL. 12774/2025 (u/S-149 CPC)

1. The present second appeal under Section 100 read with Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the appellant challenging the judgment/order dated 16.01.2025, whereby, the appeal filed against the order dated 02.09.2024 in CS SCJ No. 48812024 titled as *Savita vs Pooja*, has been allowed.
2. Briefly stated, the facts are that the appellant had filed a suit for peaceful and vacant possession, recovery of arrears and rents and *mesne* profits. It was stated that the defendant, along with her family,



is occupying one of the said rooms of the suit property bearing no.302/4, First Floor, Gali No.2, Than Singh Nagar, Anand Parbat, Karol Bagh, Delhi-110005, as a tenant since 2014 at the rent of Rs. 4500/- per month. It was alleged that though, initially, the rent was paid, however, since 2018, the rent was not paid on one excuse or the other. In September 2023, the plaintiff asked the defendant to vacate the suit property. However, the defendant did not vacate the same. In the meantime, on the threat being extended, a police complaint dated 27.11.2023 was filed against the defendant. The defendant, in the written statement, took a defence that she had been residing in the suit property along with her family members and had paid the security amount to the owner of the property 13 years ago and is paying only water and electricity charges. It was alleged that the plaintiff had filed the present suit with an ulterior motive. All other allegations made in the plaint were also denied. However, on 02.09.2024, on a *suo moto* application under Order XII Rule 6 CPC, the learned Trial Court, after quoting certain judgments on Order XII Rule 6 CPC, *inter alia*, noted that the claim of the defendant that she had given Rs.5,00,000/- as security to the plaintiff, does not help the case of the defendant in light of the judgment passed by the Supreme Court in the case titled ***Smt. Shakuntla Tiwari vs. Hem Chand M. Singhania***, (1987) 3 SCC 525. The learned senior Civil Judge has also noted that the defendant had claimed the tenancy in the written statement and, *inter alia*, held that the present tenancy is an oral tenancy and stood terminates at the time of filing of present suit, which acts as a notice. With these observations, the suit was decreed.



3. The Court is alarmed by the reasoning given by the learned senior Civil Judge in order dated 02.09.2024. In the order passed by the learned senior Civil Judge, the reasoning that the defendant had not denied the tenancy itself amounts to perversity and self-contradiction. During the course of the submissions, learned counsel for the appellant invited the attention of the Court to the order dated 28.05.2024, wherein a submission of the respondent and her father was recorded that they are tenants and they will vacate the property after the plaintiff returns the amount of Rs.5,00,000/-. Though the aforesaid submission cannot be taken as an admission.
4. The learned First Appellate Court, in RCA DJ No. 1/2025, rightly noted that for passing a judgment on admission under Order XII Rule 6 CPC, the admission must be clear, unambiguous and unequivocal. It was rightly noted that in the written statement, there was no clear admission of tenancy by the appellant herein and in the absence of an admission of tenancy, there was no admission pertaining to any admission of rent as well. The order passed by the learned senior Civil Judge is basically self-contrary as well as contrary to the record, as noted by the learned District Judge-06, West District, Tis Hazari Courts, Delhi.
5. High Court can exercise its jurisdiction under Section 100 CPC only when substantial questions of law arise, which must be specifically formulated when the second appeal is first heard. The hearing and determination of the second appeal are strictly limited to these duly framed substantial questions of law, as per the amendment made in 1976. Sub-section (3) of Section 100 imposes a statutory obligation



on the appellant in a second appeal to formulate the substantial question of law in the memorandum of grounds of appeal. In **Hero Vinoth v. Seshammal** (2006) 5 SCC 545, the Apex Court clarified the standard for determining substantial questions of law and *inter-alia* held that a question must be evaluated based on whether it holds general public importance or substantially affects the parties' rights directly. Additionally, a substantial question of law may arise when an issue remains undecided, presents significant difficulty, or requires consideration of alternative viewpoints. The Court further specified that a question would not be deemed substantial if it has already been conclusively resolved by the highest court, if it merely involves applying well-established principles to the facts, or if the argument raised is clearly absurd. These guidelines help courts determine which legal questions warrant consideration in second appeals under Section 100 CPC.

6. In view of the foregoing discussions, this court is of the view that the questions which are framed by the appellant in the memorandum of appeal do not fall under the category of substantial question of law as they have been already dealt with by the appellate court and have been of generic nature for which well-established principles of law have already been applied by the First Appellate court. Therefore, there is no substantial question of law. Further, in **Union of India & Ors vs Diler Singh** AIR 2016 SC 3131, the apex court *inter-alia* held that the existence of a substantial question of law is the *sine qua non* for the exercise of the jurisdiction under the amended Section 100 CPC.



7. Accordingly, the present appeal, along with the pending applications, stands dismissed.

DINESH KUMAR SHARMA, J

MARCH 4, 2025

Dy/ht..