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

+ **RSA 68/2025 & CM APPL. 23296/2025**

JYOTI SHARMA

.....Appellant

Through: Mr. Gautam Malik, Advocate.

versus

KARAMJEET SINGH

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **22.04.2025**

CM APPL. 23297/2025 (exemption)

Exemption allowed, subject to just exceptions.

The application stands disposed-of.

RSA 68/2025

By way of the present regular second appeal filed under section 100 of Code of Civil Procedure 1908 ('CPC'), the appellant impugns order dated 07.03.2025 passed by learned District Judge-07, West District, Tis Hazari Courts, Delhi in regular first appeal bearing RCA DJ No.3/25.

2. By way of the first appeal, the appellant (defendant) had impugned judgment and preliminary decree dated 16.11.2024 passed by the learned Civil Judge-02, West District, Tis Hazari Courts, Delhi in suit bearing CS SCJ No.564/2023 titled *Karamjeet Singh vs. Jyoti Sharma*, on an application filed by the respondent (plaintiff) under Order XII Rule 6 CPC seeking judgment on admissions.

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3. Briefly, by way of the suit the respondent had *inter-alia* claimed recovery of possession alongwith arrears of rent and *mesne profits* for use and occupation of a shop in property bearing No.3/245, Subhash Nagar, New Delhi, ad-measuring about 13 ft x 7 ft, which was claimed to have been initially rented-out to the appellant *vide* Rent Agreement dated 14.01.2021 at a rent of Rs.13,000/- per month.
4. It was claimed in the suit that the appellant's tenancy was subsequently extended till November 2022 at a monthly rent of Rs. 14,300/-, whereafter she was asked to vacate the suit property by 14.01.2023. It was further claimed in the suit that the appellant had furnished to the respondent a written undertaking to the effect that the subject property would be vacated by 14.01.2023, which the appellant failed to do.
5. Based on order and preliminary decree dated 16.11.2024, in impugned order dated 07.03.2025, the learned first appellate court recorded as follows:

“5. The perusal of the trial Court record reveals that the plaintiff filed a suit seeking recovery of possession of shop no.2, part of property bearing no. 3/245 admeasuring 13x7, Subhash Nagar, New Delhi-110027 (hereinafter referred to as suit property) alongwith a decree for arrears of rent and mesne profit on the premise that the suit property was initially rented out to the defendant vide rent agreement dated: 14.01.2021 at a monthly rent of Rs.13,000/- and thereafter, the tenancy of the defendant was extended till November, 2022 at the monthly rent of Rs.14,300/-, however, the defendant committed default in making payment of the monthly rent and upon this, she was asked to vacate the suit property and the defendant assured the plaintiff that by 14.01.2023, she would handover the possession of the suit property to him. The plaintiff has further pleaded that despite the expiry of

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the tenancy and the time provided in the written undertaking dated: 07.12.2022, the defendant did not vacate the suit property and owing to which, he is constrained to file the present suit.

“6. In support of his averments, the plaintiff has placed on record the lease agreement dated: 04.02.2022 executed with the defendant qua the suit property for a period of 11 months, the legal notice dated: 11.04.2023 thereby asking the defendant to vacate the suit property, speed post and delivery receipts for establishing the delivery of legal notice to the defendant, ownership documents of the suit property and the hand written undertaking dated: 07.12.2022 given by the defendant.

“7. In her written statement, the defendant has opposed the plea of plaintiff regarding her eviction from the suit property and has averred that the present suit is an abuse of process of law and the plaintiff has deliberately concealed the fact that he extended the tenancy of the defendant of the suit property by way of an oral agreement and since then, she has been regularly paying the agreed rent. The defendant has further pleaded that the plaintiff is not entitled to seek her eviction from the suit property as she had advanced a friendly loan of Rs.3,00,000/- to him on 30.12.2021 and the amount is still outstanding.”

(bold in original)

6. Thereafter, the learned first appellate court proceeded to dismiss the appeal for the following essential reasoning :

“17. Firstly, in para 9 of the written statement, she has pleaded that her tenancy in respect of the suit property was extended by the plaintiff through an oral agreement and owing to which, she is not liable to be evicted from the suit property. However, this Court does not find any merit in the aforesaid plea as it is a well settled position of law that in case of oral lease agreement, the tenancy would be month to month tenancy and the same could be terminated by serving a legal notice under Section 106 Transfer of Property Act, 1882 and the plaintiff has pleaded that the defendant was served with a legal notice thereby terminating her tenancy and asking her to vacate the suit property,

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the fact which has not been disputed by the defendants. So, it is clear that the defendant cannot retain the possession of the suit property on the premise of the plea of oral tenancy.

“18. Secondly, the defendant has taken the plea that she is not liable to be evicted from the suit property as she had advanced a friendly loan of Rs.3,00,000/- to the plaintiff on 30.12.2021, which is still outstanding. The said plea of the defendant also lacks merit as the issue of friendly loan is a separate transaction between the parties and the same could not confer any right upon her to remain in the possession of the suit property against the wishes of the landlord/ plaintiff.”

7. In the above-referred backdrop, when queried as to what ‘substantial question of law’ arises for consideration of this court in the present second appeal, learned counsel appearing for the appellant submits that the order passed by the learned trial court on the application under Order XII Rule 6 CPC culminating in preliminary decree dated 16.11.2024 could not have been passed without first considering the appellant’s defence that she had advanced a friendly loan of Rs.3 lacs to the respondent, which was to be adjusted towards future rent for the period after expiration of the rent agreement.
8. Without delving into the correctness of the above submission, a perusal of the impugned order shows that the learned first appellate court has correctly observed that the said plea raised by the appellant lacks merit since the issue of friendly loan, if any, is a *separate transaction* between the parties and could not confer any right to the appellant to continue in possession of the subject premises *as a tenant*.
9. In any event, the aforesaid plea, which appears to be the only defence cited by the appellant, is a purely factual matter and does not give rise

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to any question of law, much less to any substantial question of law, that may justify entertaining a second appeal under section 100 CPC.

10. In view of the above, this court finds no merit in the present second appeal, which is dismissed at the stage of issuance of notice itself.
11. Pending applications, if any, stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

APRIL 22, 2025

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