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

+ RSA 89/2025 & CM APPL. 31018/2025 (for stay)

SHRI ISHWAR SINGHAppellant

Through: Mr. Sachin Mittal with Ms. Bhawna
Nanda and Mr. Sayam Arora,
Advocates.
Appellant in-person.

versus

PRAVEEN KUMARRespondent

Through: Mr. M. K. Sharma with Mr. Abhinav
Sharma and Ms. Vishakha,
Advocates.
Respondent in-person.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **15.07.2025**

CM APPL. 31019/2025

Exemption allowed, subject to just exceptions.

The application stands disposed-of.

RSA 89/2025

By way of the present second appeal filed under section 100 of the Code of Civil Procedure 1908 ('CPC'), the appellant impugns judgment dated 08.04.2025 passed by the learned District Judge-01, New Delhi District, Patiala House Courts, New Delhi in RCA DJ No.50/2023 titled "*Sh. Ishwar Singh vs. Praveen Kumar*," whereby the learned First Appellate Court has disposed-of the appeal, by which the appellant had impugned judgment dated 10.10.2023 passed by the learned trial court in suit bearing CS (OS) No. 692/2022.



2. By judgment dated 10.10.2023, the learned trial court had decreed the suit filed by the respondent seeking recovery of possession of the subject premises, being 01 Shop on the Ground Floor of property bearing No. WZ-393, Village Nangal Raya, New Delhi.
3. Mr. Sachin Mittal, learned counsel appearing for the appellant contends, that both the learned trial court and the learned First Appellate Court have committed errors of law in having cast the burden of proving the rate of rent upon the appellant (defendant in the suit) though that burden was upon the respondent (plaintiff in the suit).
4. Mr. Mittal further submits, that in sum and substance, the appellant's case before the learned trial court was that the rent of the subject premises was less than Rs.3,500/-; and that therefore, the appellant was a 'protected' tenant under the Delhi Rent Control Act, 1958.
5. Counsel states however, that the respondent contended that the rate of rent was Rs.6,050/- per month, but the respondent was unable to prove that rate of rent.
6. Mr. Mittal submits, that though the respondent had cited Rent Agreement dated 22.01.2018 as well as several rent receipts to support the contention that rent was Rs.6,050/- per month, the respondent failed to prove those documents.
7. After a detailed hearing in the matter however, it is noticed that in the Affidavit of Evidence dated “__/11/2022” filed by the respondent, he had categorically stated the following :

“4. That the deponent says that the defendant started paying the rent to deponent. The rent of the said property increased from time to time and at present the rate of rent is Rs.6,050/- p.m. (Rupees Six Thousand and fifty only) excluding electricity and water



charges etc. The rent receipts are **EXB.PW1/C. (OSR) (Colly)**.

“5. That a rent agreement dt.22/1/2018 was also executed between the deponent and defendant in respect of the tenanted premises when the defendant told the deponent that he required a written rent agreement to be submitted to some authority. The copy of the rent agreement is **EXB.PW1/D.**”

(underscoring and bold in original)

8. On the other hand, in the course of the respondent’s cross-examination conducted on 21.12.2022, the appellant asked the following questions :

“The tenanted premises was let out during the lifetime of my father. I do not remember what was the rate of rent at the time when the tenanted premises was let out initially. The rent of tenanted premises in the year 2010 Rs.1000/- per month. It is correct that in the year reply of the notice (sic, was) sent by the respondent, the rate of rent was written as Rs.1000/- per month. (Vol. I say the rate of rent of (sic, was) Rs.6050/-). It is wrong to suggest that no rent agreement was executed on 22.01.2018. It is wrong to suggest that the rent agreement dated 22.01.2018 does not bear the signature of respondent. It is wrong to suggest that the signature of the respondent in the rent agreement dated 22.01.2018 is forged and fabricated.”

9. Clearly therefore, the cross-examination of the respondent in relation to the tenancy was restricted *only to the rent agreement*, which the appellant contended was forged and fabricated; and not a single question was put to the respondent in relation to the *rent receipts* which the respondent had cited, proved and exhibited *vide EXB.PW1/C (OSR)(Colly)*, as part of the affidavit evidence filed by the respondent.
10. The court is informed that despite the noting in the affidavit evidence that the original rent receipts had been ‘seen and returned’ (*viz.*, OSR), the original rent receipts were in fact placed on record before the learned trial court.
11. In these circumstances, even on point of fact, the existence of a rent agreement is wholly irrelevant, since the appellant had only raised the



jurisdictional issue that the rate of rent was below Rs.3,500/- per month, and therefore the possession suit filed under the Transfer of Property Act 1882, was not maintainable.

12. That being said, this court reminds itself that the present appeal is a *second appeal* filed under section 100 CPC and can only be entertained if the appellant raises a substantial question of law.
13. In the memo of appeal, the appellant has proposed the following questions of law:

“(I) Whether the burden to prove a document (Rent agreement and Rent Receipts produced by a party on record (herein by Respondent/Plaintiff) was lying upon the producing party (Respondent)?

(II) Whether a party is said to have discharged the initial burden to prove the rent agreement and rent receipts even though he has failed to produce any kind of evidence either in the form of documents or witness or anything?

(III) Whether the onus to prove the rate of rent of the tenanted premises can be shifted upon the party disputing it (Appellant/Defendant) when the party claiming it (Respondent/Plaintiff) has failed to discharge the initial burden to prove the same through disputed Rent Agreement and Rent Receipts filed by him (Respondent/Plaintiff)?

(IV) Whether an unregistered rent deed which is not even proved according to law can be considered to determine the rate of rent?

(V) Whether the Trial Court can compare the disputed signatures of a party (Appellant/Defendant) on a document which is photocopied from the signatures on the document which is also photocopied and not the original one?

(VI) Whether the Trial court can compare the admitted signatures of a party (Appellant/Defendant) which are in Hindi from the disputed signatures which are in English?

(VII) Whether the Trial Court can substitute a relief of Mandatory Injunction in place of the relief of Eviction or recovery of possession as prayed by the party in his suit?

(VIII) Whether the Trial Court can grant the relief to the Plaintiff when the relief sought by him in the Plaint is vague and ambiguous?”

(bold in original)



14. In view of what has been discussed above, the proposed questions of law at serial numbers I, II, and III *do not* arise in the present case inasmuch as the learned trial court as well as the learned First Appellate Court have proceeded correctly in the matter, since the respondent had duly discharged his burden to prove the rate of rent by way of the original rent receipts produced before the learned trial court and had deposed to the authenticity of those rent receipts, and no cross-examination was conducted by the appellant on those rent receipts.
15. Insofar as the proposed questions of law set-out at serial numbers IV, V, and VI are concerned, in view of the fact that the rent agreement was not central to a decision of the case, since the rent receipts had been duly proved, these proposed questions of law, yet again, *do not* arise in the present case.
16. Insofar as proposed questions of law at serial numbers VII and VIII are concerned, a perusal of the plaint would show that the respondent had indeed claimed a decree of possession; and therefore there was nothing amiss or vague or ambiguous in the relief sought by way of the suit.
17. Accordingly, no question of law, much less a substantial question of law arises in the case.
18. In view of the foregoing discussion, the court finds no merit in the present regular second appeal, which is *dismissed* at the stage of issuance of notice itself.
19. Pending applications, if any, also stand disposed-of.



20. Needless to add that the respondent shall be at liberty to seek enforcement of the impugned judgment and decree, in accordance with law.

ANUP JAIRAM BHAMBHANI, J

JULY 15, 2025
ds