



\$~87

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

+ **RFA 768/2025 & CM APPL. 51198/2025**

SYED KAMAL NASIR

.....Appellant

Through: Mr. Vikasdeep Sharma and Ms.
Tanya Sharma, Advocates.

versus

B R MALIK

.....Respondent

Through: Mr. Shashwat Roy and Mr. Abinash
Agrawal, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **20.08.2025**

CM APPL. 51197/2025 (exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

RFA 768/2025

By way of the present regular first appeal filed under Order XLI read with sections 96 and 151 of the Code of Civil Procedure 1908 ('CPC'), the appellant impugns order dated 07.08.2025 passed by the learned District Judge-02, South-West District, Dwarka Courts, New Delhi in Civil Suit bearing CS DJ ADJ 435/2024.

2. *Vide* impugned order dated 07.08.2025, an application filed by the respondent (landlord) under Order XII Rule 6 CPC in his suit (seeking eviction, recovery of arrears of rent, damages and *mesne profits*), has been allowed to the extent of recovery of possession of the suit



premises; and the suit is now pending only insofar as the reliefs of arrears of rent, damages and *mesne profits* are concerned.

3. At the outset, Mr. Vikasdeep Sharma, learned counsel appearing for the appellant submits, that as the impugned order itself would show, learned counsel representing the appellant (defendant) was not present on the date of hearing of the application under Order XII Rule 6 CPC *i.e.*, 07.08.2025; and proxy counsel who had appeared on behalf of the defendant had sought an adjournment citing unavailability of the arguing counsel.
4. Mr. Sharma submits, that on the date when arguments were heard on the application under Order XII Rule 6 CPC, *i.e.*, 07.08.2025, learned counsel appearing for the appellant was pre-occupied in conducting cross-examination in an in-camera proceedings in case titled “*State vs. Arun Goel*” arising from FIR bearing No.307/23 registered at P.S.: Maya Puri, Delhi under provisions of the POCSO Act, in which his presence was required considering the sensitive nature of the case. A copy of order dated 07.08.2025 passed in the said other matter has been appended to the present appeal.
5. Learned counsel submits that the aforesaid notwithstanding, the learned trial court declined the request for adjournment, observing that the application had been pending for 06 months and that the date had been given as per convenience of counsel; and thereafter proceeded to decide the application under Order XII Rule 6 CPC against the appellant.
6. Issue notice.



7. Mr. Shashwat Roy, learned counsel is present on behalf of the respondent (plaintiff) on advance copy; accepts notice; and submits, that learned District Judge had declined the appellant's request for adjournment considering the previous conduct of the appellant, whereby on 02 previous dates viz., on 15.02.2025 and 04.06.2025, adjournments had been sought on behalf of the appellant in an effort to stall the proceedings in the suit. Copies of order dated 15.02.2025 and 04.06.2025 have been shown to the court.
8. From a perusal of the orders it transpires that on 15.02.2025, the respondent had filed the application under Order XII Rule 6 CPC; and on that date a reply was called to that application. The matter was thereafter posted to 01.04.2025; on which date the Presiding Officer of the court was on leave. Thereafter, the matter was listed on 04.06.2025, when the appellant sought further time to file reply to the application under Order XII Rule 6 CPC and the court permitted the appellant to do so; clarifying however, that no further opportunity would be granted to the appellant for the said purpose.
9. It is in this backdrop that on 07.08.2025, reply to the application under Order XII Rule 6 CPC was filed; however an adjournment was sought, submitting that the arguing counsel for the appellant was unavailable.
10. Though a perusal of the impugned order shows that the learned trial court has considered the grounds taken by the appellant in the written statement; and has observed that there was an unequivocal admission as regards tenancy agreement dated 19.10.2015, fixing rent at the rate of Rs.21,000/- per month, which would bring the tenancy dispute



outside the provisions of the Delhi Rent Control Act 1958, in the opinion of this court, the grant of a hearing in the matter to the appellant was still desirable.

11. In view of the foregoing, without delving further into the merits of the contestations between the parties, the present regular first appeal is disposed-of, remanding the matter back to the learned trial court to grant to the appellant *one opportunity* of hearing on the application under Order XII Rule 6 CPC on 23.09.2025, the next date of hearing fixed before the learned trial court, *or* on any other date of convenience to the learned trial court within 02 months from today.
12. This order shall be subject to the appellant paying to the respondent costs of Rs.15,000/- within 02 weeks from today.
13. It is made clear that *no further opportunity* is to be granted to the appellant to make submissions on the application under Order XII Rule 6 CPC.
14. Needless to add, that the learned trial court shall be at liberty to decide the application, in accordance with law, unhindered by any observation made in the present order.
15. Order dated 07.08.2025 is set-aside to the above *limited extent*, without any comment on the merits of the order otherwise.
16. The appeal is disposed-of in the above terms.
17. Pending applications, if any, stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

AUGUST 20, 2025/ss