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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 06th March, 2025***+ **C.R.P. 115/2024 & CM APPL. 18331/2024****MST. KANTA GOSWAMI (DECEASED)****THROUGH LEGAL HEIR****.....Petitioner**Through: **Mr. Shams Khwaja,**
Advocate.**versus****ROSHAN ARORA****.....Respondent**Through: **Mr. Digvijay Singh Jawal**
and Mr. Manik Sood,
Advocates.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J.**

1. The present petition is filed challenging the order dated 25.07.2023 (hereafter '**the impugned order**') passed by the learned Additional District Judge, Rohini Courts, Delhi in CS (DJ) 878/2018 titles as '*Roshan Arora v. Smt. Kanta Goswami (deceased) through legal heirs*'.

2. The suit is filed by the respondent/ plaintiff for recovery of possession, recovery of arrears of rent, and damages/mesne profits, and by the impugned order, the learned Trial Court in an application filed by plaintiff under Order XV-A of the CPC read with Order XXXIX Rule 10 of the Code of Civil Procedure, 1908

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Signed By: **HARMINDER KAUR**
Signing Date: 25.03.2025
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(‘CPC’) directed the legal heirs of the deceased defendant (petitioner herein) to pay ₹30,000 per month as occupation charges.

3. Briefly stated, the present dispute pertains to property no. M-3/30, third floor, Mohan Park, Model Town, Delhi (**‘suit property’**) which the respondent, Roshan Arora, claims to be the owner and landlord of. The respondent asserts that the suit property was originally let out to Ms. Nidhi Goswami @ Dimple, daughter of the deceased defendant, Smt. Kanta Goswami, through a Lease Deed dated 04.01.2006 for a period of eleven months at a monthly rent of ₹6,000/-, starting from 01.01.2006 to 30.11.2006. After the expiry of this lease, the tenancy allegedly continued on a month-to-month basis. At the time of the lease, Ms. Nidhi Goswami resided in the suit premises along with her mother (the deceased Defendant) and two sisters.

4. It is pleaded that upon Ms. Nidhi Goswami’s marriage in January 2007, she shifted to her matrimonial home, following which her mother, Smt. Kanta Goswami, requested the respondent to let out the suit premises to her at an enhanced rent of ₹10,000/- per month, excluding electricity and water charges. The respondent agreed to this request, and the tenancy was allegedly continued on these terms, with the defendant and her two daughters residing in the property.

5. It is the respondent’s case that from November 2016 onwards, the defendant stopped paying rent, despite repeated



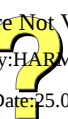
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requests and demands. The respondent, claiming personal necessity for his son's use, asked the defendant to vacate the premises on 01.08.2018. The defendant, however, failed to do so. Consequently, the respondent issued a legal notice dated 04.09.2018, terminating the tenancy and granting 15 days' time for vacating the premises. However, the defendant refused to vacate the property, leading to the filing of Civil Suit No. 878/2018 before the learned Trial Court, seeking recovery of possession, arrears of rent, and mesne profits/damages.

6. During the pendency of the suit, the original Defendant, Smt. Kanta Goswami, passed away, and her legal heirs, Ms. Archana Goswami and Ms. Neha Goswami, were brought on record. The respondent then filed an application under Order XV-A of the CPC read with Order XXXIX Rule 10 of the CPC, praying for a direction to the legal heirs to pay ₹30,000/- per month as occupation charges from the date of filing of the suit. The learned Trial Court, by the impugned order dated 25.07.2023, allowed this application and directed the petitioner (Legal Heir of the deceased defendant) to pay ₹ 30,000/- per month as mesne profits/occupation charges till the disposal of the suit, which led to filing of the present petition.

7. The learned counsel for the petitioner submits that the plaintiff/respondent does not have legal ownership of the suit property, and the learned Trial Court erred in concluding





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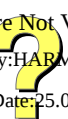
otherwise. He submits that the plaintiff relied on four documents to assert ownership:

- a) A General Power of Attorney (GPA)
- b) An Agreement to Sell and Purchase
- c) A Registered Will
- d) An Affidavit and other documents

However, of these, only the GPA was a registered document, and it was executed in favour of Varun Arora, not the plaintiff, Roshan Arora. The learned Trial Court erroneously found ownership in favour of Roshan Arora despite the GPA not conferring any ownership rights upon him.

8. The learned counsel submits that the Agreement to Sell and Purchase, Affidavit, and other unregistered documents are inadmissible as per Section 49 of the Registration Act, 1908, since they seek to create an interest in immovable property but were never registered. It was emphasized that the only registered document (GPA) does not favour the Plaintiff, making the learned Trial Court's finding of ownership legally flawed.

9. He submits that the respondent failed to produce any valid proof of rent payments made by the defendant. He submits that the learned Trial Court erred in assuming the existence of an oral tenancy without any supporting documentary or financial evidence. The burden of proof was on the respondent to establish that Kanta Goswami was a tenant, which was not discharged.





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10. He submits that the impugned order was passed under Order XV-A of the CPC, which allows the Court to direct a tenant to pay occupation charges and in the absence of respondent proving a valid landlord-tenant relationship, the learned Trial Court wrongly invoked this provision.

11. He submits that since the petitioner has asserted adverse possession, the question of tenancy should have been first decided through proper trial, before granting relief under Order XV-A of the CPC.

12. He submits that the respondent sought an unreasonably high mesne profit amount (₹ 30,000/- per month) without any supporting market valuation or past rental history, making the impugned order arbitrary and excessive.

13. He submits that the learned Trial Court failed to consider that the defendant and her legal heirs have been in long, continuous, and uninterrupted possession of the property, thereby acquiring rights through adverse possession.

14. Lastly, he submits that even though a written statement was not filed, it does not amount to an automatic admission of the plaintiff's claims. The burden was still on the plaintiff to prove ownership and tenancy, which was not done.

15. *Per Contra*, the learned counsel for the respondent argued that the respondent initially let out the suit property to Ms. Nidhi Goswami under a written lease deed executed in 2006 for 11 months. When Nidhi Goswami shifted to matrimonial home upon



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her marriage in 2007, her mother, Smt. Kanta Goswami (the deceased defendant), requested to continue as a tenant. He submits that the tenancy continued orally from 1st February 2007, with rent agreed at ₹10,000/- per month. He states that the defendant's family continued residing in the suit premises, thereby implying acceptance of the tenancy terms.

16. He submits that starting July 2015, the defendant stopped paying rent. Despite multiple demands, the defendant refused to vacate the suit premises, prompting the plaintiff to terminate the tenancy on 01.08.2018 through a legal notice.

17. He submits that Order XV-A of the CPC empowers the Court to direct an occupant to deposit occupation charges during the pendency of a suit when it is established on preponderance of probabilities that the occupant has no legal right to continue possession. He relies on the judgment passed by the Division Bench of this Court in *Raghubir Rai v. Prem Lata and Ors.* : **MANU/DE/1307/2014**.

18. He submits that since the petitioner failed to file a Written Statement, the learned Trial Court was justified in relying on *prima facie* evidence of tenancy and directing payment. He states that a tenant cannot challenge the title of the landlord, and therefore, the petitioner's objections regarding ownership are irrelevant.

Analysis



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19. Order XV-A of the CPC empowers the Court to direct an occupant of the property to deposit occupation charges, even if the occupant may not have admitted or disputed / controverted the same.

20. The crux of the argument advanced on behalf of the petitioner is that the plaintiff has failed to establish ownership of the suit property, and that the petitioner/defendants are claiming adverse possession, having occupied the suit property for a prolonged period without any demand for rent.

21. The argument advanced on behalf of the petitioner, however, is without any merit.

22. It is relevant to note that the petitioner failed to file a written statement, resulting in the striking off their defence. This, in the opinion of this Court, at least *prima facie* indicates the correctness of the averments made in the plaint.

23. The plaintiff has claimed himself to be the owner of the suit property by virtue of Agreement to Sell, Registered Will, Affidavit and other documents executed by the erstwhile owner in his favour. Additionally, the plaintiff's rights are also claimed on the basis of Registered General Power of Attorney executed by the erstwhile owner in favour of the plaintiff's son.

24. At the stage of considering an application under Order XV-A of the CPC, the Court is required to take a *prima facie* view regarding the entitlement of occupation charges. Given that the defendants did not file a written statement which led to their



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defence being struck off, the presumption lies in favour of the plaintiff.

25. Undisputedly, the defendant is entitled to take defence including the absence of a lessee – lessor relationship, and the learned Trial Court will adjudicate upon these issues after the completion of the trial.

26. However, at this stage, when the defence of the defendants' has already been struck off, the averments made in the plaint will have to be taken on a demurrer. Moreover, the petitioner, even in the present proceedings, has not denied that the Lease Deed was executed between the plaintiff as a landlord and Ms. Nidhi Goswami as a tenant.

27. Ms. Nidhi Goswami, at the time of the existence of the tenancy, was staying in the suit premises along with the defendants. Thus, the defendants have been occupying the property on the strength of the lease agreement executed between the plaintiff and Ms. Nidhi Goswami, being the family members who were residing with the tenant.

28. It is not the case of the plaintiff that any subsequent lease deed was executed between him and the defendants. However, it cannot be denied that the occupancy of defendants in the suit property stems from their status as successors-in-interest of the original tenant.

29. In the absence of a written statement and with the defendants' defense being struck off, this Court is of the opinion



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that the plaintiff has been able to *prima facie* establish his right over the suit property.

30. The ground urged by the petitioner to continue the possession of the suit property is by virtue of being in adverse possession.

31. In the absence of any written statement and the defense being struck off, the said argument cannot be considered at this stage. The only factor which was required to be *prima facie* established for the purpose of an order under Order XV-A of the CPC was the interest of the plaintiff in the suit property which, as noted above, has been established.

32. This Court, however, finds merit in the contention raised by the petitioner that the occupation charges have been awarded by the learned Trial Court at a higher rate.

33. It is undisputed that under Order XV-A of the CPC, the Court has the power to direct the occupant to deposit occupation charges based on the material available on record. For this purpose, it is not relevant whether the defendant admits to being a tenant or not. However, the Court must assess the material on record before determining the amount, and it cannot arbitrarily fix an excessive amount that is significantly higher than what the defendant had been paying or had agreed to pay.

34. It is the case of the plaintiff himself that the defendants had been paying the occupation charges at the rate of ₹10,000/- per



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month and on refusal of defendants to vacate the premises, the suit was filed.

35. Although the defendants have failed to file a written statement and their defense has been struck off, nothing in the plaint, at this stage, establishes that the defendants had agreed to pay more than ₹10,000 per month.

36. The learned Trial Court erred in directing the defendants to pay ₹30,000 per month from the date of filing of the suit without attributing any reason to justify such an increase.

37. Accordingly, the impugned order is modified to that extent, and the defendants are directed to pay ₹10,000 per month as occupation charges from the date of filing of the suit.

38. The present petition is partly allowed and disposed of in the aforesaid terms. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

MARCH 06, 2025