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

+ **RFA 294/2011 & CM APPL. 10476/2011**

HS SOUND

.....Appellant

Through: None.

versus

ASHWANI KOHLI

.....Respondent

Through: In person.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

15.04.2026

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1. This hearing has been done through hybrid mode.
2. The present appeal under Section 96 read with Order XLI Rule 1 of the CPC seeks the following prayers:

“A. call for and perused the record of the Court below;

B. set aside the impugned Decree/ Judgment 28.04.2011 of the Court below;

C. accept the appeal of the appellant with costs throughout

D. and pass such other orders as may be deemed just.”

3. On 25.05.2011, the learned Predecessor Bench of this Court had passed the following order:-

“CM No.10476/2011 (Stay)

1. Notice. Counsel for the respondent accepts notice.

2. Even if, the stand of the appellant is believed that the rent was only Rs.11,000/- per month and not Rs.21,000/- per month, the fact of the matter is that such tenancy also would be outside the



protection of Delhi Rent Control Act, 1958 as rent is more than Rs.3500/-per month. The notice terminating tenancy has been found to be duly served upon the petitioner/tenant by the trial court and reference is made to the postal receipts/AD card. In any case, I have had an occasion to consider this aspect in the decision in the case of *M/s. Jeevan Diesels & Electricals Ltd. vs. M/s. Jasbir Singh Chadha (HUF) & Anr.* decided on 25th March, 2011 in RFA No.179/2011 wherein, I have held inter alia, by taking similar reference from suits for partition and suits for rendition of accounts of a dissolved partnership firm that even the service of the plaint can be taken as a notice for vacating the premises, more so, in view of the legislative Amendment as per Act 1 of 2004 which amended Section 106 of the Transfer of Property Act, 1882 whereby the notice of terminating the tenancy is to be held as valid, as long as the suit is filed 15 days after the serving of the notice. I have also held in the said judgment that along with the plaint, documents are served upon the defendant/landlord and such documents include the notice of termination of tenancy and I have therefore, held in the aforesaid judgment of *M/s. Jeevan Diesels & Electricals Ltd. (supra)* that this aspect also can be taken as termination of tenancy. On the basis of above, I have applied the provision of Order 7 Rule 7 CPC to hold that as per the subsequent fact of 15 days period having expired the tenant cannot take up a defence to continue to stay in the tenanted premises.

3. In view of the fact therefore that the relationship of landlord and tenant is admitted, the rate of rent is more than Rs.3500/- per month is admitted and also that the notice was duly served under Section 106 of the Transfer of Property Act by the trial court and more so in view of the decision in *M/s. Jeevan Diesels & Electricals Ltd. (supra)*, I hold that no interference is called for with respect to the decree for possession of the s premises.

4. So far as the issue of the payment of arrears of rent is concerned money decree has been passed by the trial court. I note that the trial co has relied upon the rent agreement entered into the parties which was proved by the respondent/landlord/plaintiff as Ex.PW1/3. This document admittedly contains the signatures of the appellant/tenant/defendant. only contention of the appellant, however was that the signatures were taken on a blank paper, however, nothing was brought on record to prove this fact. The trial



court has dealt with this aspect in para 9 of the impugned Judgment and which reads as under:-

"9. On the other hand defendant has denied the execution of the agreement and submitted to the effect that his signatures were obtained by the plaintiff on blank stamp paper. The contents of Ex.PW1/3 were denied. On score of genuineness of rent agreement Ex.PW1/3 it is found that as per section 106 of the Indian Evidence Act, the burden to prove of fact specifically claimed to be in knowledge of such person lies upon him. In this matter initial burden to prove the rent agreement was on the plaintiff. By filing the original rent agreement and by exhibiting the same, the plaintiff released the initial burden of proof. The defendant took plea that his signature were obtained on blank document. Under these circumstances it was for the defendant to prove that his signatures were obtained on blank paper as it became the matter of personal knowledge of defendant. Accordingly, in view of section 106 of the Indian Evidence Act, burden to prove this fact which was in the specific knowledge of the defendant was upon him. But no sort of evidence whether documentary or oral was led by the defendant nor bring on record any evidence explaining the circumstances under which he had signed the blank papers. The cross examination of PW1 perused carefully. It is found that PW1 has properly replied every query qua the rent agreement put to him during cross examination. There is nothing in the cross examination of PW1 which could make the rent agreement suspicious or doubtful. Hence the plea of easily brushed aside. This discussion lead to the conclusion that rent agreement Ex.PW1/3 is genuine. Once the rent agreement Ex.PW1/3 is found to be genuine the terms of the same are presumed to be settled between the parties. The rent agreement reveals that the parties agreed at the rate of rent to the tune of Rs.21,000/- pm. On the other hand defendant claimed the rent to be @ Rs.11,000/- pm. But there is absolutely no material on record which could prove the rate of rent @ Rs.11,000/- pm. The defendant has not brought on record any rent receipt or even the bank pass book etc. in case the rent has been paid @ Rs.11,000/- pm. Hence it is found that the rate of rent was Rs.21,000/- pm."



5. In terms of the provision of Order 41 Rule 5 CPC, there cannot be an unconditional stay of the money decree more so in the facts of the present case. Accordingly, no grounds are made out for stay of operation of the money decree.

6. Counsel for the appellant states that he will deposit the entire money decree in this court within a period of four weeks from today. There will be a stay of operation of the impugned judgment and decree on such deposit being made to the extent of the money decree only. The amount on being deposited be kept in a fixed deposit by the registry so as to earn maximum rate of interest. The amount deposited along with the accrued interest, if any, be released to the respondent on furnishing security to the satisfaction of the Registrar General of this court.

7. CM is accordingly disposed of.”

4. It is pertinent to note that no decreetal amount was deposited by the appellant.

5. None appears on behalf of the appellant. There was no appearance on behalf of the appellant on the last dates of hearing as well, *i.e.*, 06.12.2024, 18.02.2025, 30.07.2025 and 12.12.2025.

6. Court notice issued to the appellant as well to counsel *vide* order 06.12.2024 passed by the learned Predecessor Bench, has come back unserved with remark that the appellant had left the given address 15 years ago.

7. In view of the above, the present petition is dismissed in default for non-prosecution and disposed of accordingly.

8. Pending application(s), if any, also stands disposed of.

9. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

APRIL 15, 2026/bsr/db