

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

% **Date of decision: 22nd October, 2021.**

+ **CM(M) 2/2020 & CM No. 46/2020 (for stay)**

SUNIL DUTT SHARMA

..... Petitioner

Through: Mr. Rajesh Kumar Sharma,
Advocate.

Versus

RAJNI SHARMA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

JUDGMENT

AMIT BANSAL, J. (Oral)

1. The present petition under Article 227 of the Constitution of India impugns the order dated 8th May, 2018 passed by the Additional District Judge, Shahdara, Karkardooma Courts, Delhi in CS No.2193/2016 whereby the application filed on behalf of the respondent/plaintiff under Order XV-A of the Code of Civil Procedure, 1908 (CPC) has been allowed.

2. Briefly, the facts recorded in the impugned order are hereinafter.

(i) The suit from which the present petition arises was filed for possession, recovery of arrears of rent, damages, interest and permanent injunction in respect of a property at Ram Nagar, Shahdara, Delhi (suit property).

(ii) The suit property was let out to petitioner for a period of eleven months with effect from 1st May, 2015 for rent of Rs.20,000/- per month exclusive of electricity, water and other charges.

(iii) A registered Rent Agreement was executed between the parties on 8th May, 2015.

(iv) The petitioner used to make payment of rent through monthly cheques but was a chronic defaulter and had defaulted in payment of monthly rent and other charges since June, 2015.

3. Counsel appearing on behalf of the petitioner has filed additional documents after the last date of hearing on 10th August, 2021, which include an Agreement to Sell dated 12th February, 2007, which was not filed before the Trial Court. He contends that (i) the petitioner had been living for more than ten years in the suit property; (ii) in terms of the Agreement to Sell, the owner of the suit property, Sh. Inderjeet Sharma, who is the husband of the respondent herein, had agreed to sell the suit property to the petitioner for a sum of Rs.10,00,000/-, and various amounts have been paid by the petitioner towards the said amount; and (iii) the Rent Agreement between the petitioner and the respondent was signed on account of a mistaken belief that it was an Agreement to Sell.

4. The Trial Court while allowing the application of the respondent under Order XV-A of the CPC has observed/held that (i) the defence raised by the petitioner in his written statement was vague; (ii) the petitioner in his written statement had stated that he had been residing in the suit property for the last twelve years and the initial rate of rent was Rs.2,000/- per month but there was nothing on record to suggest that any rent of Rs.2,000/- was paid by the petitioner to the respondent; (iii) the defence raised by the petitioner that he had agreed to purchase the suit property from the respondent for a sum of Rs.10,00,000/- based on an oral agreement was found to be without any merits; (iv) no particulars of payments already made by the petitioner towards the total sale consideration of the suit property had been mentioned in the written statement; (v) the contention of the petitioner that he was the owner of the suit property was not tenable as he had pleaded in his written statement that he was in possession of the suit property in part performance of the oral Agreement to Sell and had nowhere pleaded the payment of the entire sale consideration; (vi) a duly registered Rent Agreement dated 8th May, 2015 was executed between the petitioner and the respondent in terms of which the rent payable by the petitioner to the respondent was Rs.20,000/- per month; (vii) the petitioner had not denied his signatures on the Rent Agreement; (viii) even if the defence of the petitioner was to be believed, then the petitioner would have remedies in law to enforce the same; and (ix) under Order XV-A of the CPC, the Court is empowered to direct deposit of rent at such rate as the tenant may have agreed to pay the landlord as per the material on record, even if such rate of rent is controverted by the tenant.

5. I have considered the submissions made by the counsel for the petitioner and the documents placed on record. The document now filed by the petitioner before this Court, purporting to be an Agreement to Sell dated 12th February, 2007 was not filed before the Trial Court. No cogent reasons have been given by the counsel for the petitioner as to why the same was not placed on record before the Trial Court. The reliance now placed by the petitioner upon the Agreement to Sell is inconsistent with the defence raised before the Trial Court in his written statement, where he had stated that the Agreement to Sale and Purchase of the suit property was an oral agreement. No reliance can be placed on such a document filed before this Court at this stage. Further, it is an admitted position that the Rent Agreement between the parties was a registered document and that the petitioner has not denied his signatures on the said document. It is also a matter of fact that in terms of the said registered Rent Agreement, the petitioner made payments of Rs.20,000/- towards rent by way of cheques which were dishonoured.

6. As has been held by a Division Bench of this Court in ***Raghubir Rai Vs Prem Lata and Anr.*** 2014 SCC OnLine Del 3045 : (2014) 211 DLT 516 (DB), in exercise of powers under Order XV-A of the CPC, Courts are empowered to direct deposit of rent at a rate at which the tenant is found to have agreed to pay rent to the landlord on the basis of documents on record even if the tenant disputes or controverts the same. In the present case, the Trial Court has correctly fixed the deposit of rent under Order XV-A of the CPC on the basis of the rent agreed between the parties in the registered Rent Agreement.

7. Accordingly, there is no infirmity in the impugned order passed by the Trial Court which requires interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

Dismissed.

AMIT BANSAL, J

OCTOBER 22, 2021

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HIGH COURT OF DELHI



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