

CS no.56703/16

Atma Ram Properties VS Embassy Restaurant & Anr.

12.02.2018

Present: Ld. Counsel Sh. Amit Sethi for plaintiff.

Ld. Counsel Sh. Mohit Paul and Ms. Anjali for defendant.

At this stage, it is submitted by Ld counsel for defendant that the present Court does not have jurisdiction in view of the judgment of Hon'ble Supreme Court title 'Atma Ram Properties Vs Oriental Insurance Company'.

On the other hand, it is argued by Ld counsel for plaintiff that the said judgment is regarding NDMC Act Section 67. It is further argued by Ld counsel for plaintiff that in the present case in his replication there are specific averments regarding oral agreement between the parties that house Tax was to form part of the rent.

I have heard both the counsels and gone through the record.

In the present case, there is specific issue which is being framed which is issue no.2 as follows:

2. Whether plaintiff had admitted in the past that the property Tax is not part of the rent being paid by the defendant to the plaintiff?

Moreover, there are specific averment regarding oral agreement between the parties in the replication that house tax was to form of the rent and trial is already going on. Moreover the said judgment of Hon'ble Supreme Court has dealt with the issue of rent where there is no agreement between the parties, and or written.

Contd...2/-

In my considered opinion, the said judgment is not applicable in those cases where plaintiff is able to prove agreement between the parties. At this stage, going on by the pleadings of the plaintiff, it cannot be said that the present suit is maintainable.

Now to come up for arguments on u/O 7 rule 11 CPC application on **16.04.2018**.

(Twinkle Wadhwa)
ADJ-03/PHC/NEW DELHI.
12.02.2018