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

+ C.R.P. 234/2019

PRABHAKAR KUMAR SHAW Petitioner
Through: Mr.S.P.Gupta, Advocate.

versus

PREMWATI Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER
% **21.10.2019**

CM APPL. 46086/2019 (Exemption)

Allowed, subject to all just exceptions.

C.R.P. 234/2019 & CM APPL.46084/2019

1. Learned counsel for the petitioner has filed in Court photocopy of the appeal paper book along with its annexure, impugning order dated 15.03.2019 of the Trial Court. The same is taken on record.
2. Petitioner impugns order dated 21.09.2019 passed by the Appellate Court whereby the Appellate Court has directed that in case petitioner undertakes to vacate the premises by 31.03.2020, he shall continue to pay rent at the admitted rate and in case premises is not vacated by 31.03.2020, respondent shall be entitled to claim arrears of rent at the rate of ₹5200/- per month.
3. Respondent had filed the subject Suit for recovery of possession, arrears of rent and permanent injunction against the petitioner contending that she had purchased the subject property in the year 1991 and that the

petitioner had taken one room on rent on the ground floor in September, 1999 at a monthly rent of ₹1500/- per month besides electricity charges.

4. It is contended in the plaint that subsequently the rent was voluntarily increased from time to time and it increased to ₹5200/- per month in the month of January, 2014.

5. It is contended in the plaint that the petitioner stopped paying the rent for a long time and ultimately on 16.04.2014 a settlement was arrived at between the parties and petitioner agreed to pay ₹30,000/- to the respondent and issued 10 cheques in the sum of ₹3000/- and besides it agreed to pay ₹5200/- per month as increased rate of rent.

6. It is contended in the plaint that the petitioner once again defaulted and failed to clear the arrears and accordingly the subject Suit was filed claiming possession and recovery of arrears of rent.

7. Written statement was filed by the petitioner disputing that the rate of rent was ₹5200/- per month and contended that the rate of rent was only ₹3000/- per month.

8. By order dated 15.03.2019 on an application under order 12 Rule 6 CPC filed by the respondent, the Trial Court noticed that an order on an application under Order 39 Rule 10 was passed by the Trial Court directing the petitioner to pay the arrears of rent at the admitted rate and since the order was not complied with, respondent was entitled to a decree of the Suit based on admission. Trial Court has noticed that the rate of rent is disputed as the case of the petitioner is that the rent is Rs.3000/- per month and the case of the respondent was that rent was Rs.5200/- per month.

9. Trial Court by the order dated 15.03.2019 has held that as the rate of

rent is disputed, same is a matter of trial. Trial Court has noticed that the service of legal notice is admitted. With regard to the objection of the petitioner that the Suit is barred under the Delhi Rent Control Act, 1958, Trial Court has held that as no such objection has been raised by the petitioner in the written statement, hence the same is not worth consideration. With regard to arrears of rent, it is recorded that even at the admitted rate, petitioner has not paid the arrears in compliance of the orders of the Court, however, it is held that the same is a matter of trial and would be decided on the basis of respective evidence of the parties.

10. However the Trial Court has held that based on the above findings respondent is entitled to possession of the suit property and thus has allowed the application under order 12 Rule 6 partly and partly decreed the suit and directed petitioner to hand over the vacant physical possession of the subject property.

11. Aggrieved against this order, petitioner had filed the subject appeal. In the appeal, by the impugned order the Appellate Court has recorded that petitioner has handed over Rs.20,000/- in terms of an understanding dated 30.08.2019 towards arrears of admitted rent of Rs.85000/-. Rs.25,000/- already stood paid and the balance Rs.40,000/- is to be paid on or before 20.11.2019.

12. Further Appellate Court has held that in case petitioner undertakes to vacate the premises by 31.03.2020, he shall pay the rent at the admitted rate and in case by 31.03.2020, the premises is not vacated respondent shall be within her rights to claim arrears of rent at the rate of Rs.5200/- per month.

13. Perusal of the record shows that there is complete non application of mind. On the one hand, Trial Court in its order dated 15.03.2019 has

noticed that there is a dispute with regard to the rate of rent and petitioner is claiming the rent to be Rs.3000/- and the respondent landlord has stated that the rent is Rs.5200/- per month and has held that it is a matter requiring trial. On the other hand, Trial Court has rejected the plea of the petitioner that the suit is barred under the provisions of Delhi Rent Control Act, 1958 holding that no such objection has been raised in the written statement.

14. Section 50 of the Delhi Rent Control Act bars the jurisdiction of a Civil Court in case of premises which are covered by the Delhi Rent Control Act. In case the rate of rent is Rs.3000/-, the premises would be covered under the Delhi Rent Control Act and no proceedings for recovery of possession of the premises would lie in a Civil Court and the jurisdiction of the civil Court would be barred. Since the bar to jurisdiction is a statutory bar, even if the same is not specifically pleaded in the written statement, petitioner could have taken it at any stage of the proceedings. Trial Court has clearly erred in rejecting the same holding that it is not worth consideration.

15. Further it may be seen that there is no finding of the Trial Court as to how the respondent has become entitled to possession of the suit property. The Trial Court has itself held that the issue with regard to rate of rent and also of non compliance of the orders directing petitioner to pay the admitted rate are matters of trial to be decided on the basis of evidence of the parties.

16. Further the error is compounded by the Appellate Court when the Appellate Court in the impugned order dated 21.09.2019 held that in case petitioner gives an undertaking that petitioner shall vacate the premises by 31.03.2020, he shall continue to pay rent at the admitted rate and in case he does not vacate by 31.03.2020 respondent shall be entitled to recover

arrears at the rate of Rs.5200/- per month. It is not clear as to how the appellate court has directed the Petitioner to file an undertaking to vacate the premises.

17. It is informed by learned counsel for the petitioner that a bailiff has been appointed and bailiff is presently at the subject property to recover possession from the petitioner.

18. Issue notice, returnable on 17.03.2020.

19. In the meantime, operation of order dated 15.03.2019 of the Trial Court as also order dated 21.09.2019 of the Appellate Court shall remain stayed till the next date of hearing.

20. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

OCTOBER 21, 2019

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