IN THE COURT OF SH. RAJESH KUMAR: ADDITIONAL DISTRICT JUDGE-03: EAST: KARKARDOOMA COURTS: DELHI.

CS No. 171/21/2021

Smt. Kamla SachdevaPLAINTIFF

Versus

Gauray Arora DEFENDANT

31.01.2023

ORDER

By this order, an application u/o 39 rule 10 CPC filed by plaintiff shall be disposed off.

Order on IA u/o 39 rule 10 r/w section 151 CPC.

1. It is submitted that plaintiff has filed the present suit for recovery of possession, arrears of rent, damages/ mesne profits etc. It is further submitted that after the commencement of the tenancy and possession of the defendant the defendant did not pay rent w.e.f. 25.08.2020 @ Rs.41,000/- p.m. despite demands and requests of the plaintiff and so the plaintiff filed the suit for recovery of possession, recovery of arrears of rent and for damages etc and the defendant is liable to handover the possession of the suit property and also liable to pay the arrears of rent and damages. It is also submitted that though the decision of damages to be paid by defendant is to be taken during the trial but defendant has not paid any money to the plaintiff against the user of premises which he is still using, and at least the defendant is liable to pay the said admitted rate of rent @ Rs.41,000/- per month w.e.f. 25.08.2020 till 24.01.2021 and there after for occupying the premises illegally and is also

liable to pay Rs.41,000/- p.m. till date and he cannot enjoy the fruits of the property without paying anything. It is therefore prayed that the directions may kindly be issued to the defendant to pay the aforesaid arrears of rent as well as amount arising out of illegal occupation of property by the defendant w.e.f. 25.08.2020 onwards till date of vacation and handing over the possession of the suit property to the plaintiff besides making the payment of damages/ mesne profit as prayed in the suit.

2. Reply to the said application was filed by defendant. It is contended that defendant denies all sundry allegations, submission, contentions and averments made, alleged and asserted as set out in the present application under reply filed on by plaintiff, as the same were set out herein and hereunder serially and each are specially denied except to the extent of admissions made. All allegations, assertions, contentions, submission and averments in the said application filed by the plaintiff which are not specifically admitted herein are denied, subject to and without prejudice to the submissions. The present application is without any cause of action as there is no admission of liability by the defendant on account of alleged outstanding rent and hence the provision of order 39 rule 10 CPC does not apply to the present case. The present suit is also bad in law as the plaintiff has concealed one material fact that she has already taken a loan of Rs. 4 lakhs from the defendant in May 2020 in addition to security deposit of Rs.80,000/- which is admitted by the plaintiff and thereafter when in the last week of month December 2020 when defendant asked her to repay the loan amount then she assured him to remain in the suit property till the repayment of the said loan and that too without any rent and thereafter by concocting the false story plaintiff filed the present suit for eviction with malafide intention even before the repayment of said loan hence there is no occasion for the plaintiff to ask for any outstanding rent and hence the present entire suit is not maintainable as per law and hence the

present application is no warranted as per law. It is submitted that it is correct that initially the defendants has taken the premises on rent for Rs.41000/- per month but thereafter she has taken a loan of Rs. 4 lakhs from the defendant in May 2020 in addition to security deposit of Rs.80,000/- which is admitted by the plaintiff and thereafter when in the last week of month December2020 when defendant asked him to repay the loan amount then she assured him to remain in the suit property till the repayment of the said loan and that too without any rent and thereafter by concocting the false story plaintiff filed the present suit for eviction. It is further contended that defendant is ready to hand over the possession of the suit property on the very next day of receiving his loan amount of Rs. 4 lakhs subject to advance notice of 21 days of making the payment of loan amount by plaintiff to defendant. It is therefore requested that the present application be dismissed.

3. Heard. Record perused and considered.

4. As per plaint, plaintiff is the owner of suit property bearing no. G-44, situated at Preet Vihar, Delhi-92. The defendant was inducted as tenant in the entire first floor portion upto the extent of ceiling level comprising of three badrooms and one drawing-cum-dying room, one kitchen, three toilets/bathroom, one balcony with one lift and one car parking a part of the suit property, on a monthly rent of Rs.41,000/- excluding electricity and water charges for a fixed period of 11 months, commencing from 25.11.2019 to 24.10.2020 by virtue of rent agreement dated 26.09.2019 for residential purposes. The tenancy of the defendant/ tenant started from 25 day of each English Calender month and ended on 24 day of succeeding English Calender month. Rent was payable in advance every month. It is also averred in the plaint that the defendant proved to be habitual defaulter in making payment of

rent and has neither paid nor tendered the arrears of rent of the aforesaid premises to the plaintiff w.e.f. 25.08.2020 despite demands. The plaintiff did not want the defendant to continue as tenant in the said premises anymore and therefore by virtue of notice dated 30.12.2020 sent by the plaintiff to the defendant, the tenancy of the defendant was terminated and defendant was asked to vacate and hand over physical possession of suit premises. The entire arrears of rent w.e.f. 25.08.2020 to 24.01.2021 comes to Rs.2,05,000/- and after deducting Rs.80,000/- deposited by the defendant with the plaintiff, the remaining arrears of rent comes to be Rs.1,25,000/-, which the defendant is liable to pay. Hence, the present suit.

- 5. The defendant filed the written statement. The defendant admitted the contents of para 2 of the plaint. Hence, the defendant admitted that the defendant was inducted in the suit property as tenant on a monthly rent of Rs.41,000/- excluding electricity and water charges for 11 months commencing from 25.11.2019. It is further contended by the defendant that plaintiff has concealed a material fact that in the month of May 2020 plaintiff borrowed a sum of Rs. 4 lakhs from the defendant for a limited time period and plaintiff further assured the defendant that she would charge nothing on account of rent in lieu of interest accrued on the said loan in addition to the security amount of Rs.80,000/- and plaintiff further assured to the defendant that she would continue to give acknowledgment of the rent paid in lieu of interest accrued upon the said loan and therefore she did not ask for the rent till 30.12.2020, and when the defendant asked her to repay the loan amount and security amount, the plaintiff concocted a false story and filed the present suit. Hence, it is prayed the present suit be dismissed.
- 6. On perusal of pleadings of parties, it is evident that the defendant was inducted in the suit property as tenant for a monthly rent of Rs.41,000/-. The defendant has admitted that he is the tenant in the said premises. The

defendant has also admitted that he did not pay the rent. However, the defendant contends that the rent was not paid because in the month of May 2020, plaintiff had borrowed a loan of Rs. 4 lakhs for a limited period and in pursuance of the same the plaintiff agreed that she would charge nothing on account of rent in lieu of interest accrued on the said loan. In the replication filed by the plaintiff, plaintiff denied to have ever received a loan of Rs. 4 lakhs from the defendant and plaintiff further contended that the question of repayment of said loan does not arise and allegations of the defendant are false, groundless and malafide. The plaintiff however admitted to have received security of Rs.80,000/- from the defendant. The defendant in the written statement has not mentioned that any written agreement with regard to payment of loan amount of Rs. 4 lakhs was executed between plaintiff and defendant. Further even if the defendant that has given a loan amount of Rs. 4 lakhs to the plaintiff, as claimed by him in the present matter, he may recover the alleged payment from the plaintiff through separate legal proceedings and not in the present suit for possession, arrears of rent, damages and mesne profit. Hence, at this stage, the defendant cannot take the plea that he is not liable to pay any due rent to the plaintiff. Hence, this court is of the view that when the defendant himself has admitted that he was inducted as a tenant in the suit property for a monthly rent of Rs.41,000/- and he did not pay rent, the defendant is liable to pay the arrears of rent to the plaintiff. The plaintiff has prayed that the plaintiff has also prayed that the defendant is also liable to pay damages/ mesne profits @ Rs.3000/- per day for unauthorized used and occupation of the tenanted premises w.e.f. 25.01.2021 till the date of handing over the possession of the suit property. But this court is of the view that granting of damages/ mesne profit is subject matter of trial and this can only be granted after evidence from both the sides are led in this regard.

In view of above discussion, the application of the plaintiff is partly allowed with regard to the payment of admitted rent @ Rs.41,000/- p.m. Hence, the defendant is directed to pay admitted rent @ of Rs.41,000/- per month w.e.f. 25.08.2020 till 24.01.2021 which comes to Rs.2,05,000/-. After deducting security amount of Rs.80,000/-, the plaintiff is liable to pay Rs.1,25,000/-. The defendant is also directed to pay monthly rent of Rs.41,000/- from 25.01.2021 till date. The defendant is also directed to pay future rent of Rs. 41,000/- p.m. till the possession of the suit property is handover to the plaintiff.

Put up for further proceeding on 25.03.2023.

Typed to the dictation directly, corrected and pronounced in open court on 31.01.2023

(Rajesh Kumar) Additional District Judge-03, East/KKD Courts, Delhi.