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

Date of Decision:- 20.05.2020

+ RFA No.197/2020

SANJAY SAXENAAppellant.
Through: Mr. Charanjeet Singh, Adv.

versus

VIKRAM VASUDEVA í ..Respondent.
Through: Mr. Apoorv Agarwal, Adv.

**CORAM:
HON'BLE MS. JUSTICE REKHA PALLI**

REKHA PALLI, J (ORAL)

CM No.10588/2020 (exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CM No.10587/2020 (for recalling the order dated 30.04.2020)

3. The present application has been taken up for hearing through video conferencing.
4. Vide this application under Section 151 Code of Civil Procedure, 1908 the appellant seeks recall of the order dated 30.04.2020, whereunder his appeal assailing the judgment and decree dated 17.12.2019 passed by learned Additional District Judge, Patiala House Court, New Delhi in Civil Suit No.448/2019 was disposed of by a consent order. Under the impugned judgment, the respondent/original plaintiff's suit for possession was decreed along with directions for

payment of arrears of rent and the matter was thereafter kept pending for determination of mesne profits.

5. Recall of this consent order is sought firstly on the ground that para 7 of the order wherein it has been recorded that the appellant was giving up his plea of having made any cash payment to the respondent, was incorrectly recorded as owing to network connectivity issue in the last few minutes of the hearing, when this part of the order was being dictated, the appellant and his counsel were unable to hear the same. It has also been urged in the application that despite his undertaking to pay a sum of Rs.10 lacs to the respondent on or before 04.05.2020, the appellant is not in a position to honour the same and will be in a position to make some part payment only after 30.06.2020.

6. At the outset, it would be appropriate to state that the application under consideration is wholly misconceived and frivolous. Infact, keeping in view the fact that the consent order granting the appellant time to vacate the premises subject to payment of arrears of rent, was passed after hearing the parties at length, the application deserves to be rejected with exemplary costs. However, in view of the appellants plea that connectivity issues during the video conference hearing prevented him from hearing the complete order, I deem it appropriate to recall my order dated 30.04.2020, and pass an order on merits in the main appeal to discourage unscrupulous litigants like the appellant from circumventing judicial orders by abusing the process of law, as would become evident from the discussion here-in-below.

7. The admitted position is that the applicant had entered into possession of the built up front side portion of Bungalow No.A 1/12, Shanti Niketan, New Delhi as a tenant pursuant to the agreement dated

05.09.2018 entered into with the respondent/landlord at a monthly rent of Rs.3 lakhs besides electricity and maintenance charges. As per the terms of the agreement, the rent was payable in advance for every quarter commencing from September, 2018. The appellant admittedly did not pay the rent w.e.f March, 2019 and was consequently served with a legal notice dated 23.04.2019 issued by the respondent, terminating his tenancy. It may be noted that at this stage, before the notice of termination of tenancy was issued to the appellant, three cheques issued by him stood dishonoured on account of insufficient funds. In reply to the termination notice, the appellant categorically admitted his default in paying the rent w.e.f. March, 2019 but pleaded that the same was on account of huge financial losses suffered by him in his gold and diamond jewelry business as also the heavy expenditure incurred by him while contesting the Lok Sabha elections on 29.04.2019 from the constituency of Rampur, Uttar Pradesh which he ultimately lost. The appellant also prayed for further time to clear the amounts due, which request was made by him in his reply dated 05.08.2019 to the respondent's subsequent notice dated 24.07.2019.

8. However, as the appellant continued to be in default of payment of rent, despite his admission thereto, the respondent instituted a suit for possession, arrears of rent and mesne profits. Before the learned Trial Court, though the appellant initially failed to appear, he subsequently, through his counsel, on 11.10.2019, expressed his willingness to pay to the respondent the arrears of rent of Rs.30 lakh in three monthly installments of Rs.10 lakh each. Thereafter, on 30.11.2019, the appellant handed the respondent a cheque in Court, in discharge of the first installment of Rs.10 lakhs, which cheque was admittedly

dishonored. Such was the conduct of the appellant before the Trial Court.

9. On 17.12.2019, when the suit came up for consideration before the learned Trial Court, the learned Court, after noticing all the aforementioned facts and observing that the appellant despite being given opportunities to pay the arrears of rent as agreed by him, had neither paid the arrears nor filed a written statement within the stipulated time, proceeded to decree the respondent's suit for possession and arrears of rent under Order VIII Rule 10 CPC, while adjourning the matter for respondent/plaintiff's evidence for determining the mesne profits.

10. When the appellant still failed to vacate the premises, the respondent instituted execution proceedings before the learned Trial Court wherein warrants for possession were issued for 13.03.2020. On this date, although the appellant once again prayed for time to clear the rent arrears and handed over a cheque dated 18.03.2020 for a sum of Rs.10,00,000/- drawn on Yes Bank Limited, his prayer was rejected in view of his past conduct. I may note here that the learned counsel for the respondent has pointed out that even this cheque dated 18.03.2020 has been dishonoured. The matter was thereafter adjourned from time to time, and was last listed on 04.05.2020 for taking possession of the suit premises by the bailiff.

11. It is at this stage that the appellant preferred the present appeal before this Court on 28.04.2020 along with an application seeking condonation of 43 days' delay in filing the appeal.

12. The appeal came to be heard by this Court on 30.04.2020 in the presence of the learned counsel for the respondent. After the matter

was argued at great length by learned counsel for the appellant on video conferencing, in the presence of the appellant, he prayed for time to vacate the premises. Even though, learned counsel for the respondent initially opposed grant of any time to the appellant, but keeping in view the appellant's undertaking to clear the arrears of rent w.e.f. March, 2019 by 15 June, 2020 and to pay a sum of Rs.10 lakhs on or before 04.05.2020, the respondent agreed for grant of time to the appellant to vacate the premises by 31.10.2020.

13. Since the appellant had in paragraph 17 of the appeal taken a vague plea that he had paid a sum of Rs.30 lakh to the respondent in cash, this was vehemently denied by the learned counsel for the respondent for which purpose, my attention was drawn not only to the appellant's reply dated 05.08.2019 to the legal notice but also to his averments in paragraph 9 of his alleged written statement dated 06.09.2019. A perusal of these documents revealed that no cash payment towards rent arrears was ever made to the respondent, much less to say on 02.02.2019 as alleged in the appeal. When questioned on this aspect, learned counsel for the appellant, on instructions from the appellant, gave up his plea of having made any payment in cash to the respondent, which was specifically recorded in the consent order dictated in the presence of not only his counsel but also the appellant himself.

14. Having noted the above and having carefully gone through the impugned judgment of the learned Trial Court and all the attending circumstances leading upto the application for recall, I have no manner of doubt that the appeal under consideration is meritless, both in law and facts; the appellant who is an admitted and continuing defaulter and

owes a huge sum to the respondent, continues to occupy the suit premises without paying any rent to the respondent since March 2019. The appellant, as per his own case, is not only dealing in the business of gold and diamond jewelry but is also an aspiring politician and claims to have incurred huge expenditure while contesting the Lok Sabha elections in April 2019, which he lost and is stated to be the major reason for his inability to pay the admitted arrears of rent. This, however, cannot at all be a permissible reason to evade payment of rent and still to continue to occupy the rented premises. Before me, even though the appellant has vehemently urged that the written statement was filed on 12.05.2019 and ought to have therefore been considered by the learned Trial Court, interestingly the copy of the written statement filed along with the appeal paperbook shows that the same was signed on 06.09.2019. Be that as it may be, even if the written statement were to be taken into consideration, the appellant has absolutely no defence much less to say any plausible or legal defence to oppose the respondent's claim. Furthermore, it is an admitted position that repeated cheques issued by the appellant even in the course of ejectment proceedings as also in execution proceedings towards arrears of rent were dishonoured. In the light of the aforesaid facts, the learned trial Court was fully justified in decreeing the suit in favour of the respondent. The appellant has already stalled execution proceedings instituted by the respondent on one pretext or the other, for the last many months, and does not deserve to be shown any further indulgence.

15. At this point, I would be remiss not to mention that when this application was listed before this court for the first time on 18.05.2020, the learned counsel for the appellant failed to join the proceedings

despite being granted repeated pass overs and specific telephonic messages from the court master. In the interest of justice, the matter was adjourned for today.

16. Today, after lengthy arguments were addressed by the learned counsel for the appellant, when this judgment was being dictated in the presence of both counsel through video conferencing, learned counsel for the appellant was curiously found missing in the last few minutes. As a result, the dictation was deferred for a few minutes, in wait for the learned counsel for the appellant to reconnect with the proceedings. However, the counsel failed to do so, despite repeated telephonic conversations with the Court Master and the learned counsel for the respondent. Having noted the conduct of the learned counsel for the appellant, I have consciously refrained from saying anything further on this aspect.

17. Accordingly, while allowing the appellant's application being C.M. No. 10587/2020 for recall of the order dated 30.04.2020, the appeal, being meritless, is dismissed with costs of Rs.1 lakh.

18. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

REKHA PALLI, J

MAY 20, 2020

SDP