

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

+ **RFA 255/2001**

ASHOK KUMAR KARAN Appellant
Through: Mr.Vijay Tandon, Adv.

versus

SATISH GUPTA Respondent
Through: Mr.Madan Lal Sharma, Adv. and
Mr.Brijesh Saini, Adv.

% DATE OF DECISION:
23.09.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog
Hon'ble Mr.Justice J.R. Midha

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J. (Oral)

CM No.6192/2008

1. This is an application under Order 41 Rule 27 read with Section 151 CPC filed by the appellant praying that the

appellant be permitted to lead additional evidence.

2. Without arguing the application, learned counsel for the appellant and the respondent state that the application may be disposed of recording their consent, by allowing the same to a limited extent, in that, reply to a legal notice sent by the respondent as received to by the appellant on 10.9.2000, copy whereof has been filed along with the application, may be taken on record and treated as a proved document.

3. For facility of reference the said document has been marked as Mark 'X'.

4. The application stands disposed of.

RFA No.255/2001

1. Learned counsel for the parties state that the appeal may be heard for final disposal.

2. Heard learned counsel for the parties.

3. Appellant has suffered a decree in a suit filed by respondent-landlord who claimed that the appellant was in arrears of rent, water and electricity charges in sum of Rs.1,01,546/-. Case of the landlord was that the appellant was inducted as a tenant in respect of 2 rooms, toilet, kitchen and

bathroom on the second floor of property No.693/1, Gali No.3, Punjabi Basti, Anand Parbat at a monthly rent of Rs.2,300/- and exercising right under the Delhi Rent Control Act, after 3 years of the tenancy a legal notice dated 2.9.2000 was served calling upon the appellant to pay rent increased by 10% of the agreed rent with effect from 15.10.2000. Thus, rent with effect from 15.10.2000 was stated to have been increased to Rs.2,530/-.

4. In the written statement, it was pleaded by the appellant that he was inducted as a tenant at a rent of Rs.500/- per month. The rent was stated to have been paid till 14.6.2000.

5. In respect of the charges payable for electricity and water it was stated that the appellant was always willing to pay the same but the landlord was intentionally not accepting the same.

6. The notice referred to in the plaint towards increase of rent was responded to by accepting receipt thereof but justification for non-compliance thereof given was that the notice was illegal as it sought enhancement of rent from Rs.2,300/- to Rs.2,530/- but rent was Rs.500/- per month.

7. Needless to state, on the rival pleadings of the parties, the only material issued which arose for determination was whether the rent of the tenanted premises at the time of inception of the tenancy was Rs.2,300/- per month or Rs.500/- per month.

8. It be noted that there is no written lease executed between the parties.

9. The landlord sought to prove his case with reference to Ex.PW-1, a receipt stated to have been signed by the appellant while tendering rent. The receipt is dated 20.4.1998. It records the rent at Rs.2,300/- per month. It records tender of rent from 15.3.1998 to 14.4.1998.

10. The second evidence relied upon by the landlord was Ex.PW-1/8 being a lease executed between the appellant and one Hans Raj where-under appellant took on lease, for a period of 11 months, 2 rooms on the first floor and 1 room on the second floor of property bearing No.661/1B, Ghatni Ghati Road, Anand Parbat, New Delhi.

11. With respect to PW-1/1, since appellant has denied his signatures thereon, both parties i.e. the landlord and the appellant led opinion of an expert witness. Needless to state

the expert witness of the appellant gave justification in support of his report that the signatures of the appellant on the receipt were forged. The expert examined by the respondent gave evidence that the signatures of the appellant on the receipt Ex.PW-1/1 are those of the appellant.

12. Learned Trial Judge has accepted the opinion of the expert cited by the respondent. Thus, the first piece of evidence held against the appellant is the receipt Ex.PW-1/1.

13. With respect to Ex.PW-1/8, learned Trial Judge has noted that the rent disclosed therein is Rs.2,700/- per month. It has been noted that it relates to a tenancy in Anand Parbat and with respect to the tenancy between the respondent and the appellant it has been noted that the same consists of 2 rooms, a toilet, a bath-room and a kitchen. Inference drawn is that Ex.PW-1/8 is good evidence to show the rentals in the area.

14. Since rental shown in Ex.PW-1/8 is Rs.2,700/- per month, the learned Trial Court has held that the version of the landlord appears to be correct that the agreed rent was Rs.2,300/- per month.

15. The notice dated 2.9.2000 enhancing the rent proved by the landlord as Ex.PW-1/4 has also been brought into aid inasmuch as the same records the monthly rent to be Rs.2,300/-.

16. We note that the appellant did not prove the reply sent by the appellant to the notice Ex.PW-1.4.

17. We note that we have today taken on record the said reply as a proved document and for identity have assigned to it Mark 'A'.

18. In the document Mark 'A' we find that the appellant has disputed that the agreed rent was Rs.2,300/- per month.

19. Thus, the third reasoning of the learned Trial Judge would not be available to sustain the finding returned by the learned Trial Judge.

20. Learned counsel for the appellant has made 3 submissions.

21. The first submission made is that the entire receipt book of the landlord was available and it was the duty of the Court to have got expert opinion pertaining to the signatures of the appellant on the counter-foils available in the entire rent receipt book.

22. Second contention urged is that the learned Trial Judge ought to have referred the disputed signatures for opinion of a neutral expert.

23. The third contention urged is that it was incumbent upon the learned Trial Judge to ensure that all relevant evidence was brought on record.

24. In an adversarial litigating adjudicatory process, as followed in India, it is the duty of the respective parties to bring on record their evidence and it is not the duty of a Court at a civil trial to direct evidence to be led in one form or the other.

25. No doubt, in the interest of justice Courts have been vested with powers to summon evidence which is not being produced by the parties but that does not mean that in every case it is the duty of a Court to summon all and sundry evidences.

26. Evidence of expert is nothing more than an opinion under Section 45 of the Evidence Act. It guides the Court in forming an opinion. But, the primary duty is still of the Court to see with its own eyes the disputed signatures and the

admitted signatures. In the instant case, parties had cited their expert witnesses to support the opinion given by the expert. We see no reason why the learned Trial Court should have referred the dispute to a neutral expert.

27. We have ourselves seen Ex.PW-1/1 and Ex.PW-1/8.

28. The signatures of the appellant on Ex.PW-1/1 are similar to the signatures of the appellant which stand appended on Ex.PW-1/8.

29. We are satisfied that the person who has signed as Ashok on PW-1/1 is the same person who has signed as Ashok on Ex.PW-1/8.

30. Ex.PW-1/1 thus concludes the issue between the parties, namely that the agreed rent was Rs.2,300/- per month.

31. No corroborative evidence thus needs to be looked into.

32. However, to satisfy the judicial conscience we may record that for 2 rooms on the first floor admeasuring 12' x 12' and 6½' x 8' and a room on second floor admeasuring 9' x 9', the appellant was paying a rent of Rs.2,700/- per month pertaining to a property in Anand Parbat. (Ex.PW-1/8).

33. 2 years later the appellant took on rent the second floor of property bearing Municipal No.693/1, Gali No.3, Punjabi Basti, Anand Parbat.

34. The rental thereof as claimed by the landlord is Rs.2,300/- per month.

35. The rental of the tenanted premises in comparison with the rental as disclosed in Ex.PW-1/8 shows the comparative rent, justifying the same to be Rs.2,300/- per month and not Rs.500/- per month.

36. It is settled law that at a civil trial the evaluation of evidence has to be on pre-ponderance of probabilities and not proof beyond reasonable doubt.

37. No other contention has been urged.

38. We find no merits in the appeal.

39. The appeal is dismissed.

40. Costs shall follow in favour of the respondent and against the appellant.

PRADEEP NANDRAJOG, J.

J.R. MIDHA, J.

SEPTEMBER 23, 2008
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