

*

IN THE HIGH COURT OF DELHI

Judgment reserved on : October 15, 2008

%

Judgment delivered on : October 20, 2008

+

RFA 83/2008

TILAK RAJ NARULA

..... Appellant

Through: Mr.D.S. Chauhan, Advocate

VERSUS

OM PRAKASH

..... Respondent

Through: Mr.Satish Sahai with Mr.Madhur
Sapra, Advocates

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.

1. Tilak Raj Narula has lost at the trial. Suit for possession and damages filed by him against Om Prakash has been dismissed.

2. Case of Tilak Raj Narula was that Om Prakash was a tenant under him in respect of the suit property of which he was the owner and that on 1.8.1998 the parties had agreed that the rent of the premises would be raised from Rs.162.50 per month to Rs.4,150/- per month. He claimed that pursuant to the agreement Om Prakash paid him rent for the month of

August 1998 on 1.8.1998 for which a receipt was issued. He claimed that on 19.5.1999 he terminated the tenancy and required possession to be delivered to him.

3. In the written statement Om Prakash pleaded that he was inducted as a tenant about 39 years back and the agreed monthly rent was Rs.162.50 per month. Om Prakash denied having entered into any agreement on 1.8.1998 or having paid rent in sum of Rs.4,150/- per month. He denied having obtained any receipt in said sum.

4. Tilak Raj Narula sought to prove the agreement in question as Ex.PW-1/3. The receipt dated 1.8.1998 was sought to be proved as Ex.PW-1/4.

5. Besides examining himself, Tilak Raj Narula produced two alleged witnesses to the agreement Ex.PW-1/3. The same are PW-1 Som Nath Malhotra and PW-2 Joginder Nath Uppal. Tilak Raj Narula also examined one V.C.Mishra as PW-4 who claimed to be a handwriting expert and proved his report to the effect that the disputed signatures of Om Prakash on Ex.PW-1/3 and Ex.PW-1/4 were those of Om Prakash.

6. It surfaced at the trial that the parties were embroiled in a series of litigation and as of 1.8.1998 an appeal filed by Tilak Raj Narula, registered as No.250/1993, was pending before the learned Rent Control Tribunal. A suit registered as Suit No.923/1995 was pending before the Court of Shri L.K.Gaur, Sub-Judge, Delhi. An Eviction Petition filed by

Tilak Raj Narula registered as No.42/1996 was pending before a learned Additional Rent Controller. An application filed by Om Prakash under Section 27 of the Delhi Rent Control Act registered as No.DR-40/1996 was pending. In none of the aforementioned four proceedings was an application filed drawing attention of any Court to the settlement alleged by Tilak Raj Narula.

7. In respect of the suit, it transpired that Rajesh Narula, Advocate, son of Tilak Raj Narula made a statement on 24.8.1998 simply withdrawing the suit without recording that on 1.8.1998 a settlement was arrived at between the parties. Eviction Petition No.42/1996 was listed on 29.7.1998 and was adjourned thereafter to 20.10.1998 and thereafter to 8.12.1998. On neither date none appeared for Tilak Raj Narula. Counsel appeared for Om Prakash. The petition was dismissed in default on 8.12.1998.

8. Petition filed by Om Prakash under Section 27 of the Delhi Rent Control Act registered as DR No.40/1996 was listed on 29.7.1998. On said date it was adjourned for 8.12.1998 and thereafter to 26.2.1999. None appeared for Tilak Raj Narula on 8.12.1998 or 26.2.1999. Counsel had appeared on both dates for Om Prakash. The learned Additional Rent Controller disposed of the proceedings permitting Tilak Raj Narula to withdraw the rent deposited by Om Prakash without prejudice to the rights of Tilak Raj Narula.

9. The appeal pending before the Rent Control Tribunal was listed on 8.9.1998, 12.1.1999, 26.2.1999 and 13.5.1999. On neither date Tilak Raj Narula entered appearance and on all dates Om Prakash or his counsel appeared. Since on four consecutive dates no appearance was entered on behalf of Tilak Raj Narula the appeal was dismissed in default.

10. Om Prakash examined himself as DW-1. He examined a handwriting expert S.P.Singh as DW-2 who proved his report to the effect that the signatures on Ex.PW-1/3 and PW-1/4 were not those of Om Prakash.

11. Discussing the testimony of PW-1 Som Nath Malhotra learned Trial Judge has held that the witness was tutored and that his being present when Ex.PW-1/3 was allegedly executed was doubtful. Reason for disbelieving Som Nath Malhotra is his statement in examination-in-chief that was known to the parties. In cross-examination he could not state that the son of Tilak Raj Narula was an advocate. In cross-examination he stated that he was neither related to the defendant nor friendly with him.

12. Learned Trial Judge has questioned the presence of Som Nath Malhotra in the shop because as per his cross-examination he was not friendly with Om Prakash. His stand that he was known to the parties since long has been disbelieved when he could not even state any fact about the

vocation of the son of Tilak Raj Narula.

13. PW-2 Joginder Nath Uppal has been disbelieved because he has not been recorded as a witness to the agreement Ex.PW-1/3. His testimony that he had gone to Central Market, Lajpat Nagar for shopping and was called by the plaintiff inside the shop has been disbelieved by the learned Trial Judge as being an unnatural conduct of a person who would just enter a shop to witness something and then walk out, more so when said person is not an attesting witness.

14. But, what has substantially weighed with the learned Trial Judge is the self examination by the learned Trial Judge and comparison of the disputed signatures of Om Prakash vis-à-vis his admitted signatures; with a finding that the same do not match. The second reason is that if there was a settlement between the parties there was no reason why the same was not brought to the notice of any Judge who were dealing with the four proceedings noted above; namely, a suit for injunction, a petition for eviction, an appeal before the Rent Control Tribunal and a proceeding under Section 27 of the Delhi Rent Control Act. Further, the fact that the counsel for Om Prakash continued to appear in the proceedings much after 1.8.1998 and none appearing for Tilak Raj Narula resulting in the proceedings being dismissed in default has been found to be a circumstance wherefrom an

inference could be drawn that no such agreement was arrived at.

15. Lastly, the learned Trial Judge has opined that a person would settle a dispute where some benefit would flow to the person. That Om Prakash was a tenant for over 39 years at a rent of Rs.162.50 per month and that Ex.PW-1/3 enhances the same to Rs.4,150/- per month has resulted in a finding that this makes the execution of the agreement Ex.PW-1/3 highly doubtful.

16. Learned counsel for the appellant, Shri D.S. Chauhan urged that a visual comparison of the disputed signatures of Om Prakash on Ex.PW-1/3 and Ex.PW-1/4 with his admitted signatures show complete identity. Counsel urged that there was no reason for Tilak Raj Narula to abandon the proceedings initiated by him except the reason that the parties had settled the disputes.

17. None of the submissions urged by learned counsel for the appellant are sufficient to over rule the impugned judgment and decree.

18. It is settled law that where there is no material infirmity in the appreciation of evidence by the learned Trial Judge, the Appellate Court would not re-appreciate the evidence. It has to be shown in appeal that the Trial Judge has ignored relevant evidence or circumstance or has considered an irrelevant evidence or irrelevant circumstance while

appreciating evidence or that the finding returned is perverse.

19. At a civil trial the evidence has to be evaluated on the test of preponderance of probability.

20. Indeed, if there was a settlement between the parties as alleged by Tilak Raj Narula we see no reason why the same was not brought to the notice of either Court which was seized of the four proceedings noted above. Further, the fact that counsel for Om Prakash continued to appear in the four proceedings much after 1.8.1998 shows that there was no settlement between the parties for had there been one, Om Prakash would have told his counsel not to appear before any court.

21. We are also in agreement with the appreciation of the testimony of PW-1 and PW-2 by the learned Trial Judge. Indeed, PW-1 appears to be a tutored witness for the reason recorded by the learned Trial judge and briefly noted hereinabove by us. Indeed, the presence of PW-2 at the shop of Om Prakash on 1.8.1998 is highly doubtful.

22. There is one more facet which needs to be highlighted. The notice dated 19.5.1999 determining the tenancy referred to by Tilak Raj Narula in his plaint has been proved as Ex.PW-1/9. The same nowhere alleges to any written agreement dated 1.8.1998. While determining the tenancy it simply states that Om Prakash was a tenant at a monthly rent of Rs.4,150/- as mutually agreed between the

parties on 1.8.1998.

23. Even in the notice determining the tenancy Tilak Raj Narula nowhere referred to a written agreement between the parties.

24. Om Prakash replied to the notice Ex.PW-1/9 vide his reply Ex.PW-1/15. He reiterated that he was a tenant at a monthly rent of Rs.162.50 per month. He denied any mutual agreement on 1.8.1998 to enhance the rent to Rs.4,150/- per month. Tilak Raj Narula responded to the reply on 26.7.1999 vide Ex.PW-1/16. In the reply he never referred to any written agreement entered into on 1.8.1998.

25. We find it extremely strange that having received a response vide Ex.PW-1/15 in which Om Prakash refuted any mutual agreement entered into on 1.8.1998 to increase the rent to Rs.4,150/- per month, Tilak Raj Narula while responding vide Ex. PW-1/16, did not refer to any written agreement between the parties.

26. We find no merit in the appeal. The appeal is dismissed with costs.

PRADEEP NANDRAJOG, J.

J.R. MIDHA, J.

October 20, 2008
rk