

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

+ RFA (OS) No.10/2009 and CM 1085/2009

% Date of decision: 27.01.2009

M/S. YOUR KIDS 'R' OUR KIDS ...APPELLANT
Through: Mr. Midhanshu Tripathi and
Mr. A.K.Singh, Advocates.

Versus

MAHARAJ KUMAR KAUSTUVMANI PRATAP SAHI ...RESPONDENT
Through: Mr. Reetesh Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA, J.

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

CAV No.9/2009

Learned counsel for the respondent has entered appearance
and thus the caveat is discharged.

CM 1087/2009

The application has been filed seeking exemption from paying
the deficient court fees. In fact, a nominal court fee has been paid.
The counsel for the appellant undertakes to this Court to pay the
deficient court fees on behalf of the appellant within a maximum
period of 15 days from today. The undertaking given by the counsel
is accepted.

The application stands disposed of.

CM 1086/2009

The application has been filed seeking condonation of 42 days delay in re-filing the appeal. Though there appears to be no proper explanation for such an inordinate in re-filing the appeal, which is actually of 99 days as calculated by the Registry and not of 42 days, we consider it appropriate not to take a technical approach in the matter and allow the application subject to payment of Rs. 3,000/- as costs to the respondent within a period of 15 days from today.

The application stands disposed of.

RFA (OS) 10/2009 and CM 1085/2009

1. The respondent had filed a suit for ejectment on determination of tenancy and possession with claim of mesne profit against the appellant.
2. It is the case of the respondent that the appellant was inducted as a tenant in pursuance of a registered lease deed dated 05.08.2002 in respect of the entire property known as 17, Jor Bagh, New Delhi inclusive of all the structure for a period of 5 years starting from 01.08.2002 to 31.07.2007 on a monthly rent of Rs.1,75,000/-. A provision was made for enhancement of rent by 10 per cent on the expiry of fixed period of three years, i.e. 31.07.2005, and thus for the subsequent two years of lease, the rent became Rs.1,92,500/- per month. Three-months rent was kept as interest free security deposit to be repaid on completion of tenure of the tenancy.
3. The lease so executed contained a clear provision for handing over possession on the expiry of the lease and in

case of failure to do so, the appellant agreed to pay a sum of Rs.20,000/- per day as damages and compensation for any extended period of occupation. The appellant failed to vacate the property resulting in filing of the suit. It may be noticed at the inception itself that the lease deed dated 05.08.2002 is an exhaustive document containing various clauses determining the rights and liabilities of the parties. The pre-requisites for any extension of lease are dealt with in para 27 of the lease deed, which reads as under:

“ 27. That it is agreed that after the expiry of the instant lease, the lease may be renewed for another term as may be agreed by the lessor on the terms and conditions which maybe mutually agreed by both lessee and lessor. It is agreed that the renewal of lease shall also be made by way of execution of a fresh lease deed which shall be registered.”

4. The aforesaid clause thus makes it clear that for an extension of the lease, there must be an agreement between the parties which should culminate in execution of a registered lease deed. We also deem it appropriate to refer to two clauses of the lease deed which deal with the aspect of any misuse charges since undisputedly the property was sealed with the allegation of misuse and it is the case of the learned counsel for the appellant that the appellant was kept in the dark about the actual permissible user. The said clauses are as under:

“12. The lessee hereby agrees and also undertakes to pay misuse charges which may be levied or imposed in future by any authority including New Delhi Municipal Corporation, L&DO or any other Government of Statutory Body towards the misuse charges for electricity and water against the lessor for the period when the lessee was in use and

occupation of the said premises notwithstanding the fact that when the demands were so made, the aforesaid misuse of electricity and water in the demised premises had ceased or that the lessee had already vacated the said premises.

13. That the demised premises is being taken by the lessee exclusively for residence-cum-child care centre. However, the lessee undertakes that if any penalty, charges, duty etc. is imposed or levied upon the lessor by the Land and Development Department, Delhi Development Authority, New Delhi Municipal Corporation or by any other authority or Government Department on account of lessee's using the demised premises either partially or totally for the purposes other than for residence, the same shall be reimbursed by the lessee to the lessor. The lessee shall not be entitled to claim from the lessor either in full or in part any amount so paid. The lessee agrees and undertakes to pay misuse charges which may be levied or imposed in future for the period when the lessee was in use or occupation of the demised premises notwithstanding the fact that when the demands so made, the aforesaid misuse of the demised premises had ceased or that the lessee had already vacated the demised premises."

5. The aforesaid clauses show that the parties were *ad idem* on the issue of a possibility of misuse charges being levied and the liability in such a case being borne by the appellant. Thus, the parties were fully conscious of the fact that possibly the user of the premises was not strictly in terms of the permissible user. The user prescribed is residence-cum-child care centre and thus the parties envisaged a situation where the user for such child care centre may not be construed as a residential user and that was the reason for the specific inclusion of a liability clause for the appellant to make payment of misuse charges.
6. The grievance of the appellant is that by the impugned order dated 15.09.2008, the learned Single Judge on the

Original Side has decreed the suit insofar as the relief of possession was concerned on an application under Order 12 Rule 6 of the Code of Civil Procedure, 1908 ('the said Code' for short) filed by the respondent.

7. We have heard learned counsel for the parties as the respondent is on caveat.
8. It is not in dispute that the lease deed dated 05.08.2002 is a registered document. It is not in dispute that by efflux of time, the period of lease has expired. It is also not in dispute that clause 27 of the registered lease deed envisages further extension of lease only by consent of parties and by execution of a fresh registered lease deed. No such further registered lease deed has been executed as there has been no agreement to extend the lease. Thus, there is admittedly no further lease deed executed in compliance of the said clause. On a specific query being posed by the Court, learned counsel for the appellant states that the appellant has not filed any proceedings for specific performance or otherwise to enforce any rights, if he has such rights, arising out of the lease deed which may entitle the appellant to a further extension of the lease. The legal notice sent by the respondent dated 11.10.2007 also remained unanswered.
9. The impugned judgment has taken note of these facts and thus rightly came to the conclusion that there is practically no defence which the appellant has at least insofar as the relief of possession is concerned. The only plea of the

appellant is that the original understanding between the parties envisaged continuation of the lease for a period of nine years and that the appellant should be permitted to continue to occupy the premises for that period. Such a plea has only to be stated to be rejected when the written document in respect of the immovable property, which is duly registered, itself envisages only a lease of five years with extension clause being applicable only by consent of parties through a fresh registered document.

10. Learned counsel for the appellant had pleaded before the learned single Judge and does so even now that the respondent had accepted rent even after the term of the lease had ended. This aspect has been dealt with in para 8 of the impugned order. It emerges that the appellant had deposited the cheque for one (1) month in the account of the respondent at Patna. The respondent instructed the banker not to accept any further amounts and asked them to return the amount received. Thus, it has been rightly held that there could not be any plea of estoppel available to the appellant on the basis of such alleged deposit.
11. We also find some disturbing aspects in the manner in which the present appeal has been filed and contended before us. The appellant has filed a complete set of documents along with this appeal while the fact remains that these documents were never on record before the Trial Court while passing the impugned order. It is stated that these documents have been filed subsequently. No

application seeking leave to file these additional documents as additional evidence or otherwise has been filed. On the contrary, a certificate has been issued in the appeal, as is required, by the counsel that “all annexures filed with the appeal are part of the trial court record”. It is admitted before us today that this certificate is erroneous. If the learned counsel for the respondent had not been on caveat and pointed out this fact to us, we would have presumed that the documents sought to be referred to were on record before the learned Single Judge on the basis of this certificate given by the counsel for the appellant.

12. The appeal has been filed by two counsels – Mr. Midhanshu Tripathi and Mr. Manoj Sehgal – and this certificate has been given by Mr. Manoj Sehgal, Advocate. These counsels were also the counsels on record before the learned Single Judge. Learned counsel for the appellant sought to contend before us that these documents were not in his power and possession as the premises were sealed. It is, however, not disputed that no application was filed before the learned Single Judge bringing these facts to light or seeking some directions for obtaining the documents. In fact, the impugned order has repeatedly referred to the fact that no documents were filed with the written statement. Even the written statement was filed belatedly and permitted to be taken on record subject to costs. Learned counsel for the respondent points out that even these costs have not been paid, which is not disputed by learned counsel for the

appellant. The time period for paying the costs is over and thus really not even a written statement is on record before the learned Single Judge. We may notice that the respondent has claimed damages. The appellant apparently has no assets in this country as it claims to be based in the USA. It would thus be appropriate in any case for the learned Single Judge to examine as to what form of security should the appellant be asked to furnish for purposes of satisfaction of the decree which may be passed qua the remaining reliefs against the appellant as the appellant is based in the USA and also taking into consideration the past conduct of the appellant.

13. We must deprecate filing of such meritless appeals with mis-disclosures and non disclosures specifically the certificate given by the counsel which is a clear misrepresentation to this Court. It is all the more unfortunate that an officer of this Court has indulged in such a practice.
14. We were inclined to direct that a copy of this Order be sent to the Bar Council of Delhi for considering appropriate action against the counsel who has made a misrepresentation before us in the form of a certificate given at the beginning of the appeal but as we are informed that the counsel has been only two years in the profession and has tendered unconditional apology before us, we let the matter rest.

15. We find that the appeal is without any merit and dismiss the same with costs of Rs.50,000/- to be paid within fifteen days from today.
16. Dasti to learned counsel for the parties under the signatures of the Court Master.

SANJAY KISHAN KAUL, J.

JANUARY 27, 2009
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SUDERSHAN KUMAR MISRA, J.