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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA 150/2009 & CM Nos.17069-71/2009

SURJIT SINGH & ANR

..... Appellants

Through: Ms.Namita Roy, Advocate with
Appellant in person.

versus

BALBIR SINGH DECD THR ITS LRS & ORS.

..... Respondents

Through: Mr.B.V.Niren, Central
Government Standing Counsel
for Respondents No.5.

CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

ORDER

26.11.2009

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CM No.17071/2009 (for delay) in RSA No. 150/2009

Heard.

For the reasons stated in this application, the same is
allowed and delay of 14 days in filing the appeal is hereby condoned.

CM No.17070/2009 (for exemption) in RSA No. 150/2009

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

RSA No. 150/2009 & CM No.17069/2009 (for stay)

Appellants (defendants in the suit) are the owner of property bearing No.37/2, Double Storey, Ashok Nagar, New Delhi, which is a residential house. Respondents are residing in premises bearing No.36/2A, Double Storey, Ashok Nagar, New Delhi. Both the houses are situated in front of each other, separated by a road in between. Appellants allegedly raised unauthorized construction and covered the open space in front of the courtyard of their house by raising super structure and started running a workshop in the name and style of 'M/s Ranbir Automobiles'. There are also, allegations that appellants covered half of the road falling in front of their house, meant for use of general public. They have installed heavy duty machines including electric welding machine for doing denting and painting jobs. Appellants are also running a service centre for the vehicles and have installed a jet pump in the back lane for the said purpose. Seeing the illegal activities of the appellants in violation of the terms and conditions of the Lease Deed, executed by the Land & Development Office (for short 'L&DO'), respondents filed a suit for permanent and mandatory injunction against the appellants. The suit was decreed by the Trial Court vide its judgment and decree

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dated 2nd March, 2009, and the findings of the Trial Court were concurred by the Appellate Court in its judgment dated 15th July, 2009. Hence, this second appeal has been filed before this Court.

Ms. Namita Roy, learned counsel for the appellants submitted that the Lease Deed is silent about any re-entry by the Department in the suit property, though there is a penal clause and only monetary penalty could have been imposed by the Department; however, Department has taken steps to re-enter the suit premises, which are still in possession of the appellants.

These submissions are devoid of any merits. Para II of the Lease Deed reads as follows:-

"II. If the yearly rent hereby reserved or any part thereof shall at any time be in arrear and unpaid for one calendar month next after any of the said days whereon the same shall have become due, whether the same shall have been demanded or not, or if there shall have been in the opinion of the Lessor or the Chief Commissioner of Delhi whose decision shall be final, any breach by the Lessee or by any person claiming through or under him or any of the covenants or conditions hereinbefore contained and on his part to be observed or performed then and in any such case it shall be lawful for the Lessor or any person or persons duly authorised by him notwithstanding the waiver of any previous cause or right of re-entry upon any part of the premises hereby demised or of the building thereon in the name of the whole to re-

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enter and thereupon this demise and everything here in contained shall cease and determine and the Lessee shall not be entitled to any compensation whatsoever, nor to the return or any premium paid by him." (emphasis supplied).

Thus, it is clear that the Government reserved its right to re-enter the premises, in case of breach of any of the terms and conditions of the Lease Deed. The premises were leased out by the Government only for residential purposes, however, appellants admittedly, misused the premises, raised unauthorized construction on the same and started running an auto-mobile business in utter violation of the terms and conditions of the Lease Deed.

Learned counsel for the appellants has tried to submit that a substantial question of law requires to be formulated in this case because the nature of business, which was carried out by the appellants in the suit property was condonable, instead of condoning the same, Department has decided to re-enter the suit premises.

To emphasize her submissions, she has referred to Item 74 appearing in the list of condonable items, which was notified by the L&DO on 21st November, 1975. Item 74 reads:-

"74. Self employed lessees, occupants/tenants such as journalists/goldsmiths/photographers

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and small technicians and mechanics such as welders / cycle / watch / pen / radiostore/umbrella/ locks etc. repairs."

In no manner, the business of auto-parts, or automobile denting and painting, services of motor vehicles etc. can be construed as a technician's or mechanic's job. It may be relevant to point out that small technician and mechanics have been defined as welders/ cycle/watch/pen/radio store/umbrella/locks etc. repairs. It is absolutely silent about any repairs, denting-painting or servicing of the motor vehicles. It is not disputed by the appellants that they had raised unauthorized construction in the suit premises, which according to them have now been removed. Admittedly, appellants never approached the Department for condonation of their business being carried in the suit premises. However, it is submitted that, now the appellants have stopped running their business in the suit premises.

It was for the appellants to make a representation to the Department to get their illegal activities condoned by the Department and seek waiver of re-entry into the suit premises, which they did not choose to do. Resultantly, they have suffered the consequent results.

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It is relevant that L&DO re-entered the property in suit, in view of the decree for mandatory injunction passed in the suit on 2nd May, 2009, followed by the impugned order dated 15th July, 2009, passed in RCA No.5/2009, whereby respondents/Department were directed to remove the illegal encroachment on the road and to demolish the unauthorized construction raised by the appellants with further directions to L&DO to cancel the lease for misuse of the said flat.

A letter dated 19th October, 2009, issued by L&DO to the appellants is annexed to the appeal by appellants themselves. Perusal of this letter indicates that the Department re-entered in the suit premises on 2nd September, 2009. Vide this letter, appellants were also informed that their all rights and title in the suit property had been ceased under the court order pursuant to cancellation of Lease Deed in respect of the said property. Para 2 of the letter indicates that the physical possession of the premises was to be taken by Sh.A.K.Chopra A.E. on 30th October, 2009, in between 11.00 A.M. to 1.00 P.M. However, appellants have disputed that L&DO has taken physical possession of the suit property and claimed that they are still in possession of the same.

Be that as it may, after the cancellation of the Lease Deed, occupation of the suit property by the appellants can at best be termed as "unauthorized and illegal".

Learned counsel for the appellants has tried to submit that this Court vide its order dated 12th August, 2002, had allowed the appellants to carry on their business of auto-parts in the suit property and had condoned the violation of the terms and conditions of the Lease Deed. To my mind, the order of this Court dated 12th August, 2002, has been misinterpreted by the appellants. Appellants had filed a civil revision before this Court against the order of the Appellate Court, whereby application of the appellants under Order 41 Rule 5 of the Code of Civil Procedure, 1908, was dismissed and operation of the order of the Trial Court was not stayed. This Court, initially, stayed the order of the Trial Court only to the extent that the appellants might carry on only sale of the spare parts and no other activities of whatsoever nature would be carried out by them. Since the appeal was still pending adjudication, Civil Revision No.710/2001 was disposed of by the said order dated 12th August, 2002. Thus, it is clear that only an interim relief was granted to the appellants by way of the aforesaid order to

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the extent of permitting them to carry on only sale of spare parts whereas, remaining part of the order of the Trial Court was continued to operate. It cannot, therefore, be termed that this Court, while granting interim relief to the appellants, condoned their unauthorized and illegal activities i.e. commercial user of the residential premises, in violation of the terms of the Lease Deed.

Under these circumstances, I do not find any substantial question of law in this second appeal, which needs formulation and consequent adjudication by this Court, as there is none. The appeal as well as the application, being without merits, is hereby dismissed.


ARUNA SURESH, J.

NOVEMBER 26, 2009
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