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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: February 04, 2010

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04.02.2010

M/s. Doctor Beli Ram & Sons

...Petitioner

Through: Mr. J.P. Sengh, Sr. Advocate with Mr. Vivek Nandwani, Advocates

Versus

Shri Ram Kishore Aggarwal

...Respondent

Through: nemo

JUSTICE SHIV NARAYAN DHINGRA

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?

ORAL

1. By way of this petition under Article 227 of the Constitution of India, the petitioner has assailed an order dated 9th November 2009 passed by learned Additional District Judge, Delhi in Suit No.716 of 2008 dismissing an application under Section 10 of Civil Procedure Code whereby the application of the petitioner was dismissed.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner was a the tenant in respect of part of the premises bearing number 3/17, Grover Mansion, Ground Floor, Asaf Ali Road, Delhi-11002 measuring approximately 800 sq ft. The tenancy was created on 1st April, 2006. The documents reveal that at the time of entering into the tenancy agreement, the parties had decided to enter into a registered lease deed for a period of three years. The petitioner seems to have occupied the premises without entering into a registered lease deed and the tenancy started. Later on, a lease deed was prepared on stamp paper showing tenancy with effect from 1st April, 2006 for a period of three years ending on 31st March, 2009. However, this lease deed was signed only by the petitioner and was not signed by the respondent herein. The respondent was sent the leased deed. He scored off 'three years' and made it 'two years' and the date of commencement was changed from 1st April, 2006 to 1st April, 2007. It looks that the lease deed could not be registered due to some disputes.

3. The averments made by respondent in the suit show that the petitioner was not paying

rent. Subsequently, the respondent terminated the tenancy and filed a suit for possession and mesne profits. The petitioner herein filed a suit for specific performance of the aforesaid lease agreement in the year 2008, sometime before filing the suit by respondent for possession. Thereafter, the petitioner filed an application under Section 10 CPC for staying of the suit for possession and recovery of rent filed by respondent. The learned trial court dismissed this application observing that the pendency of the suit for specific performance cannot be a reason for staying the suit for recovery of possession and recovery of rent. He observed that even if the written agreement between the parties was considered a valid agreement despite the fact that it was signed only by the petitioner and not signed by the respondent, it provided for a lease of three years with effect from 1st April, 2006. The period of lease as stated in the written agreement has already come to an end. There was no further agreement for extension of lease and even if the suit of specific performance was decreed, the same would not have effect on the suit filed by the respondent since the period of three years expired on 31st March, 2009 itself.

4. The learned counsel for petitioner has argued that by his order, the learned ADJ has non-suited petitioner in the suit filed by the petitioner and the observations made by learned ADJ in respect of the said suit were uncalled for.

5. I consider that the plea taken by the petitioner is a frivolous plea. In an application under Section 10 CPC before the Court for stay of the suit, the Court has to consider the pleadings of the two suits and the issues involved and see whether a case for stay of the suit was made out or not. Where an application for stay of a suit is filed on the ground of pendency of another suit, the Court cannot help but to make observations about the nature of the suit relying on which the stay of the suit by the party is sought. I consider that the Court below was duty bound to consider the nature of the suit filed by petitioner, its effect, relief sought in the suit while deciding application under Section 10 CPC.

6. In the present case, the subject matter of the other suit filed by the petitioner is specific performance to an agreement for lease. The period of lease had already come to an end. Further extension of lease for subsequent period was on the discretion of the parties. No specific performance can be enforced against the party if one party has not agreed to extend the period of lease. Under these circumstances, I consider that the trial court was right in observing that in the earlier suit for specific performance no cause of action even survived after 31st March, 2009.

7. I find no force in this petition. The petition is hereby dismissed in limine.

February 04, 2010
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SHIV NARAYAN DHINGRA J.