

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

Date of Reserve: 8th March, 2010

Date of Order: 12th March, 2010

CM(M) No. 539/2009

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12.03.2010

Smt. Leena Joseph

... Petitioner

Through: Mr. Jos Chiramel, Advocate and
Mr. Ramesh Kumar, Advocate

Versus

Mohd. Fazil & Anr.

... Respondents

Through: Mr. Usman Chaudhary, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

By this petition, the petitioner has assailed an order dated 20th January, 2009 of the trial Court whereby trial Court dismissed an application under Section 151 CPC made by the petitioner directing defendant no.1 (respondent no.1 herein) to pay arrears of rent/mesne profits of the premises at Rs.4000/- p.m. w.e.f. 12th March, 2007 till date and directing respondent to pay pending electricity charges to the electricity department.

2. Brief facts relevant for disposing of this petition are that the petitioner/landlord filed a suit for possession of a two-room set on third floor left side portion of property No. XVII/2253/D-1 Guru Nanak Nagar, Mandirwali Gali Shadipur, New Delhi after termination of tenancy of respondent by a legal notice. In the suit it was stated that respondent Mhd. Fazil was a tenant at monthly rate of Rs.4,000/- p.m. Tenancy of 11 months was created by the previous owner by virtue of a written rent agreement dated 27th April, 2006 for a period starting from 30th April, 2006 for

11 months for residential purpose. Defendant No.1 in the WS alleged that tenancy was not created in his favour but it was created by the previous owner in favour of his mother and the rent of the premises was only Rs.400/- and not Rs.4,000/-. No written agreement was executed, the rent agreement relied upon by the petitioner was a forged document. It was stated that defendant no.1 was a minor at that time he could not have entered into rent agreement. He also stated that Shakeela Begum, his mother was a proper party and she was not made a party. The other stand taken by him was that at the time of creation of tenancy, a security of Rs.1 lac was given to defendant no.2, the previous owner, and this amount was not returned by defendant no.2. Regarding electricity, it was stated that electricity bills were being paid directly to the electricity department by mother of defendant no.1 and she had recently paid Rs.6,000/- to the electricity department. It was stated that notice of termination of tenancy issued by the plaintiff was not a valid notice as the premises was covered by Delhi Rent Control Act and suit be barred.

3. The trial Court observed that since the defendant was not admitting rent @ Rs.4,000/- p.m. and a defence had been taken that there was no rent agreement between petitioner and defendant no.1 thus there was no admission on the part of defendant no.1 about rate of rent and therefore no order could be passed under Section 151 CPC. The trial Court also observed that trial Court had no power under Section 151 CPC to pass such an order.

4. During arguments the Counsel for the petitioner drew my attention to the fact that tenant verification was done in this case at the time when premises was let out. Name of the tenant in the tenant verification register maintained by the police was Md. Fazil and not Shakeela Begum. He submitted that his age was shown as 20 years; his identification was also given in the tenant verification. In the 'relatives' column, it was shown that his father, mother would be living at this address. He submitted that this tenant verification form was filed before the trial Court and the trial

Court totally ignored this document as well as the rent agreement which was executed between the parties and failed to pass an order as per law. It was submitted that the trial Court did have power under Section 151 CPC to pass such an order even if there was no clear cut admission. On the other hand, the Counsel for the respondent argued that the rent agreement relied upon by the petitioner looked forged since the signature on the rent agreement did not tally with the signature of tenant as appearing in the tenant verification form. It is not the case of the respondent that tenant verification form was also a forged document.

5. Looking at the fact that the trial Court had before him, an admission made by defendant no.1 (respondent no.1 herein) by way of tenant verification form wherein he (defendant no.1) had given not only his particulars but particulars of his parents and employer's phone number. The trial Court could not have brushed aside the rent agreement, placed on record by the plaintiff showing that the defendant no.1 was the tenant. Admission on the part of a defendant does not mean only admission categorically made in the WS. Admission can be inferred from the documents and from the conduct. It is also surprising that the trial Court did not take into account the fact that in 2006, the rent of a two-room set in any area in Delhi could not have been Rs.400/-. The rent of even a *jhuggi* in Delhi slums where *jhuggis* are put unauthorisedly vary between Rs.500/- and Rs.1,000/-. The trial Court is supposed to aware of not only law but also the ground realities of the state in which he or she is a judge and he/she has to consider the allegations in the light of ground realities. Where plaintiff was relaying on a written document duly signed by the defendant and a tenant verification form admitted by the defendant., there was no reason for the trial Court to brush aside the written documents filed by the plaintiff for the purpose of interim relief and to rely upon oral submission of the defendant, far away from the ground reality that the rent was Rs.400/- in the year 2006 of a two-room set. More so when admittedly electricity charges were Rs.6,000/- for some past period.

6. I, therefore, set aside the order dated 20th January, 2009 of the trial Court. The application under Section 151 CPC of the petitioner made before the trial Court is allowed. The respondent no.1 (defendant no.1) is directed to pay arrears of rent @ Rs.4000/- p.m. from 12th March, 2007 till date. The amount already paid by the respondent no.1 under a subsequent order @ Rs.400/- p.m. shall be adjusted.

March 12, 2010
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SHIV NARAYAN DHINGRA, J.