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* **HIGH COURT OF DELHI : NEW DELHI**

CM (M) No.855/2010 & CM No.11613/2010

% Judgment reserved on: 7th July, 2010

Judgment delivered on: 9th July, 2010

Mrs. Neelam Malhotra,
D/o. Sh. K.C. Malhotra,
R/o. Flat No.2 (Back Portion)
Ground Floor,
12, West Patel Nagar,
New Delhi-110 008

....Petitioner.

Through: Mr. O.P. Khadaria and Mr. Deepak
Khadaria, Advs.

Versus

Vidya Nath Seth,
S/o. Sh. Radha Kishan Seth,
R/o. A-108, Defence Colony,
New Delhi 110 024

....Respondent.

Through: Nemo.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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

Yes

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V.B.Gupta, J.

Present petition under Article 227 of the Constitution of India, has been filed by the petitioner for setting aside order dated 20th May, 2010 passed by Additional District Judge, Delhi.

2. Brief facts of this case are that respondent herein, filed a suit for possession as well as for recovery of rent and damages against petitioner on the ground that he is the owner of property in question. The petitioner was inducted as tenant on the portion of second floor on 1st March, 2006 @ 9,000/- p.m. The lease deed was executed between the parties in this regard. Petitioner, thereafter without taking the permission of the respondent, shifted on the ground floor portion. In order to avoid litigation, respondent accepted the petitioner as tenant on ground floor and another lease deed for 11 months was executed @ Rs. 9,000/- p.m. The petitioner is in arrear of rent amounting Rs.13,500/- upto 28th February, 2007 and from 1st March, 2007, the possession of petitioner has become unauthorised and is liable to pay damages @ Rs.25,000/- per month.

3. The defence taken up by the present petitioner is that, premises were rented @ Rs.2500/- per month. The lease deed dated 1st March, 2006 is forged and fabricated document. Petitioner never agreed to pay rent @ Rs.9,000/- per month. The petitioner spent a sum of Rs.4,10,000/- in renovation and thereafter, rent of Rs.3,500/- was reduced to Rs.2,500/- per month.

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4. Respondent filed an application under Order 39 Rule 10 Code of Civil Procedure (for short as 'Code') in the trial court. That application was dismissed. Thereafter, respondent filed an appeal against that order and vide impugned order, Additional District Judge accepted the appeal of the respondent. Against order of Additional District Judge, petitioner has filed this petition.

5. It is contended by learned counsel for petitioner that the lease deed dated 1st March, 2006 has been forged by the respondent/landlord.

6. Other contention is that, order 39 Rule 10 of the Code, would be applicable only when there is admission on the part of the petitioner. Petitioner is disputing the execution of lease deed dated 1st March, 2006 @ Rs.9,000/- per month. Thus, direction of Additional District Judge, to pay rent @ Rs.9,000/- per month is liable to be set aside.

7. In support of its contention, learned counsel for petitioner cited following judgments;

(i) ***Sneh Vaish & Ors. v. Mod Travels & Tours (P) Ltd., 2002 IV AD (Delhi) 722;***

(ii) ***Harish Ramchandani v. Manu Ramchandani & Ors., 91 (2001) DLT 480.***

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8. Execution of lease deed dated 1st March, 2006, has been admitted by petitioner herself, as in the written statement filed by the petitioner, in the trial court she took the plea that;

“The plaintiff got the signatures of the defendant on one standardized lease term on 1st March, 2006 without specifying any amount of the rent or the period with a malafide to create a false evidence.”

9. Another interesting fact to be noticed in this case is that, petitioner herself is not sure as to what is the rate of rent of the premises in question. In lease deed dated 1st March, 2006 (on page 51 of the paper book), monthly rent of the premises has been mentioned as Rs. 9,000/- in figures, as well as in words. Tenancy period has been mentioned for 11 months.

10. However, in the written statement petitioner states that;

“the rent of Rs.3,500/- p.m. was reduced to Rs.2,500/- p.m. by the plaintiff which was so entered in the said Rent Agreement and the same has been changed to Rs.9,000/- p.m. by the plaintiff by putting fluid on the said amount of Rs.2,500/-.”

11. In view of the contradictory stand taken up by the present petitioner, relevant portions of her written statement filed before the trial court are reproduced as under;

“PRELIMINARY OBJECTIONS:

1. That the present suit is barred u/s 50 of the DRC Act since the rent of the premises is only Rs.2,500/- p.m. and the said rent has been tendered by the defendant to the plaintiff through Payee's Accounts Cheques in the month of June as well as July, 2006.

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2. That the alleged Lease Deed dated 1.3.2006 is a forged document because the stamp paper was purchased on 23rd March, 2006 by the plaintiff and the defendant was never in any know-how of the same. The plaintiff got the signatures of the defendant on one standardized lease term on 1st March, 2006 without specifying any amount of the rent or the period with a malafide to create a false evidence. It appears that the stamp paper has been purchased on 23.3.06 whereas the signatures of the defendant have been taken on 1.3.06. The para No.12 has been deleted whereas the Clause No.1 & 2 carries the forged amount of Rs.9,000/- and March, 2006 which are hand-written and without the signatures of the parties. The defendant reserves her right to challenge the same being a forged one on the examination of the original documents which the plaintiff has produced along with the plaint. The plaintiff has committed a forgery by causing material alteration in the said document with a view to defraud the defendant to create a false evidence with the purpose to evict the defendant from the suit premises. The plaintiff is liable to be prosecuted for the above said forgery as per law.
 3. That the plaintiff sent a notice dated 5.2.07 through his lawyer Sh. Vir Vikram Malhotra which was duly replied on 12th March, 2007 giving the circumstances under which the defendant was called upon to vacate the premises on the second floor and to make the ground floor habitable by causing material alteration and renovation. The defendant has spent a sum of Rs.4,10,000/- in causing total renovation of the ground floor to make it habitable. Therefore, the rent of Rs.3,000/- p.m. was reduced to Rs.2,500/- p.m. by the plaintiff which was so entered in the said rent agreement and the same has been changed to Rs.9,000/- p.m. by the plaintiff by putting fluid on the said amount of Rs.2,500/-. However, the said Lease Deed has got only 1 witness and as such, the said document cannot be read in evidence and the same is also not registered with the office of the Sub-Registrar as per law. The tenancy is in perpetuity and not for 11 months, as reflected in the first page of

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the forged Lease Deed. Therefore, the present suit is liable to be dismissed with costs."

12. Section 91 of the Indian Evidence Act, deal with the exclusion of oral by documentary evidence. This Section, therefore, lays down that when the terms and conditions of a contract have been set out in writing by agreement of parties, the document is intended to be a record of the transaction and therefore, no other evidence shall be given to prove the transaction, except the document itself. Oral evidence is excluded equally when a document does exist.

13. Once the execution of lease deed dated 1st March, 2006 is admitted by the petitioner herself, then no amount of oral evidence can be led to the contrary. As stated above, on the first page of lease deed dated 1.3.2006, period of tenancy as well as rent of Rs.9,000/- p.m. has been mentioned clearly.

14. Case of the petitioner is that, lease deed dated 1st March, 2006 is a forged document. This plea regarding forged lease deed, has been taken by the petitioner for the first time, when she filed her written statement in the Court in August, 2007. There is no explanation as to why she signed on a forged lease deed on 1st March, 2006. Further, it is nowhere mentioned as to when petitioner has come to know about alleged forged lease deed and why she did not take any action immediately, thereafter.

15. During the course of arguments before this Court, learned counsel for petitioner fairly admitted the execution of the lease deed and signatures of the

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petitioner, but contended that signatures of the petitioner were taken on number of blank papers.

16. This plea has been taken up in this Court for the first time and it is nobody's case that signatures of the petitioner were taken on blank papers.

17. Since, execution of the lease deed has been admitted by the petitioner, there is clear cut admission on behalf of petitioner, that there is relationship of landlord-tenant between the parties and as per lease deed rent is Rs.9,000/- p.m., which she is bound to pay.

18. Under these circumstances, judgments cited by learned counsel for petitioner are not applicable to the facts of the present case, since in the case in hand, petitioner admitted the execution of lease deed.

19. Under these circumstances, present petition is wholly misconceived and is not maintainable. The same is hereby dismissed.

CM No.11613/2010

20. Dismissed.

21. Copy of this order be sent to the trial court.

9th July, 2010
RB


V.B.GUPTA, J.