

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

Date of Reserve: 15.02.2010
Date of Order: 22nd March, 2010

CM(M) No.889 of 2008

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22.03.2010

SHRI GURDEV SINGH BINDRA

... Petitioner

Through: Mr. Manish Kohli &
Mr. Manjit Pathak, Advocate

Versus

RANBIR SINGH

..... Respondent

Through: Mr. Ram Kishan Saini, Advocate.

JUSTICE SHIV NARAYAN DHINGRA

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 8th May, 2008 of learned Rent Controller Tribunal (RCT). By an order dated 5th March, 2008 learned ARC had allowed an application of the respondent under Order IX Rule 13 of Code of Civil Procedure, 1908 ('CPC' for short) and orders of eviction dated 7th February, 2005 and 11th May, 2005 were set aside. Learned RCT dismissed the appeal of petitioner against order dated 5th March, 2008.

Brief facts relevant for the purpose of disposing of this petition are that the petitioner was landlord in respect of shop No. 32, Shiv Market,

Masjid Road, Bhogal, Jungpura, New Delhi. This shop was let out to respondent at a monthly rent of Rs. 135/-. The petitioner sent a notice to the respondent making assertions *inter-alia* that the shop was initially sub-let by respondent and thereafter it was lying locked. These assertions are in paragraph No. 8 of the notice and read as under:

“That for the last few years you are not in the possession and also not using the said premises and have subletted the same to one Mr. Satinder Singh C/o S.P. Electric Co., 14, N.D.S.E. Kotla Gurudwara Road, New Delhi-49. The said premises is also lying locked and closed for last few years and also the electricity connection installed in the said premises is also not being used from 10.11.1995. You have shifted your works and have been operating from Ranbeer Electric Mart, 1758, Bhagirath Place, New Delhi, and as such are not using the said premises.”

2. The above notice was addressed to the petitioner at his residential address T-82, Church Lane, Bhogal, New Delhi. However, apart from sending it at residential address of the petitioner, the notice was also sent at the address of Shop No. 32, Shiv Market, Masjid Road, Bhogal, Jangpura, New Delhi and at Ranbeer Electric Mart, 1758, Bhagirath Place, New Delhi. All the three addresses were given at the top of the notice alternatively.

3. A reply to the notice was received by the petitioner through Advocate of the respondent. In the reply, para 8 of the notice was replied as under:

“That para 8 of your legal notice is wrong and denied. It is wrong and denied that for the last few years my client is not in possession of the

tenanted premises or not using the same or have sub-letted the same. It is submitted that my client is having his partnership business with his brother Mr. Satinder Singh and his late father Shri Jodh Singh being run in the name and style of M/s. Ranbir Electric Co., a partnership firm. After the death of the father of my client, my client and his younger brother Sh. Satinder Singh are running the said firm and using the tenanted premises as godown. It is wrong and denied that the said premises is lying locked or closed for last few years or the electricity connection installed in the said premises is also not used from 10.11.1995. It is submitted that my client is using the tenanted premises regularly and paying the electricity bill also regularly. It is further wrong and specifically denied that due to shifting of some work at Bhagirath Place, my client is not using the tenanted premises.”

4. After this reply, the petitioner filed an eviction petition against the respondent under Section 14(1) (a) (b) and (j) of the DRC Act. In the eviction petition, the petitioner gave residential address of the respondent as given in the notice and the tenanted shop address. Notice of this petition was sent to the respondent at both the addresses. The registered covers sent at both the addresses came back with a report that the premises were lying locked since long. Ordinary process was also received back with the noting of the Process Server that the premises were locked. Thereafter, the Trial Court on an application under Order V Rule 20 of CPC made by the petitioner, allowed substituted service of respondent by way of publication of notice. Notice of eviction petition was thus served through publication on the respondent. None appeared for the respondent and the respondent was proceeded ex-parte. On the basis of ex-parte evidence of the

petitioner and after considering the documents filed by the petitioner, the testimony of the witnesses, reply to notice sent by respondent, the Trial Court dismissed the eviction petition under Section 14 (1) (a) but allowed the eviction petition under Section 14 (1) (b) and (j) and passed an eviction order on 7th February, 2005. In view of the provisions of Section 14 (1) (j), one month time was given to the respondent to restore the suit shop in original shape and condition. The learned ARC also observed that there was an admission on the part of respondent (in the reply to notice) that the shop was being used for godown, which was contrary to the terms of the Rent Deed dated 14th August, 1967 whereunder shop was let out for commercial purpose and not for godown purpose.

5. In execution of this decree, the shop was got vacated by the petitioner. The respondent, thereafter, moved an application under Order IX Rule 13 of the code of Civil Procedure stating therein that the petitioner deliberately did not disclose to the Court that respondent was having its business at 1758, Bhagirath Palace, New Delhi and in the reply to notice, the respondent had given his address as 1758, Bhagirath Place, New Delhi-6. This reply was duly received by the petitioner. Despite this, the petitioner did not provide correct address of the respondent to the Court so that the respondent could be served. It was also submitted that T-82, Church Lane, Bhogal, New Delhi was not the correct residential address of the respondent since the respondent

had left the premises long back and this fact was within the knowledge of the petitioner. He intentionally and deliberately did not give Bhagirath Place address of the respondent lest the respondent may be served. It is also submitted that the summons sent to the respondent came back with the report “shop locked, not met” and the publication was done in newspaper “National Herald” at the instance of petitioner and the petitioner fraudulently obtained an order of eviction.

6. Learned Trial Court considered that since the petitioner had not given Bhagirath Place address of the respondent and the respondent was not living at his old residential address, the application under Order IX Rule 13 CPC was liable to be allowed.

7. In appeal, the learned ARCT did not go into the merits of the order of ARC at all and merely observed that it was the duty of the petitioner/appellant, while filing application under Order V Rule 20 CPC to specifically state that he was not having any other address of the respondent but the appellant did not mention about the address of Bhagirath Place in the application. The appellant ought to have served the respondent at the address of Bhagirath Place even before moving an application under Order VI Rule 20 CPC.

8. Order of learned RCT have been challenged by the petitioner on the ground that it was a “non-speaking order” . The Tribunal did not deal with any of the contentions of the petitioner. It is submitted that the

petitioner had mentioned both – residential and the shop address of the respondent as known to him. The residential address was as given in the Rent Deed and the tenanted shop address was the one where the respondent had alleged that he was doing business. There was no concealment on the part of the petitioner. He submitted that it was not obligatory on him to serve the respondent at Bhagirath Place address before moving an application under Order V Rule 20 of CPC. The respondent was keeping away from the service of summons due to which the Controller had ordered the service of respondent by substituted service through publication. There was no error in the orders of the Controller. Ld. ARC & ARCT both went wrong in allowing the application under Order IX Rule 13 CPC and dismissing the appeal.

9. Where landlord lets out a premises to a tenant and the tenant denies that he has sublet the premises or was keeping it locked, the tenanted premises is the premises where tenant is supposed to be present, whether it is residential premises or commercial premises. In the present case, the landlord served a notice to the respondent/tenant at all the three addresses known to him alleging that the tenanted premises had earlier been sublet & currently was not being used and was lying locked. The tenant in his reply specifically denied that the tenanted premises was not being used by him or had been sub-let by him. It was denied that the premises was lying locked or closed for the last few years. It was also denied that the premises was not being used

from 10th November, 1995, rather it was asserted that the premises was being regularly used and it was specifically denied that due to shifting of work at Bhagirath Place, the respondent was not using the tenanted premises.

10. The question arises whether in view of this reply, given by the tenant, was it necessary for the landlord to furnish in the Court for his service all other business addresses of the respondent, while filing the eviction petition apart from giving his known residential address and the address of the tenanted premises. Where a tenant in reply to the notice specifically denies the allegation that the premises was lying locked and asserts that it was very much in use, he will be estopped from taking a plea in the court later on, that the premises was lying locked and the summons sent at this premises should not be considered duly served. The principle of estoppels implies that where one party, by his words or conduct tends the other party to believe existence of a fact and that fact is acted upon accordingly, the other party who represented the existence of the fact, cannot be later on heard to say that the fact did not exist. In the present case, the respondent by his reply to notice denied that the shop was lying closed as alleged by the petitioner and wanted the petitioner to believe that the shop was very much in use and it was not lying locked. The petitioner was within his right to give the address of tenanted shop as the address where respondent could be served. It is also to be noted that the shop was given on rent for

commercial purpose and once respondent took the plea that only a part of business was shifted by him to Bhagirath Place and the shop was still being used, fault cannot be found with the petitioner as to why he, in the eviction petition, gave address of the tenanted premises for service of respondent and not the address of other business place of respondent known to him. When a landlord intends to file an eviction petition against tenant in respect of tenanted premises let out for commercial purpose, the landlord is supposed to serve the tenant at that commercial premises and giving address of that commercial premises by the landlord as the address of service cannot be considered as playing fraud upon the Court, more so, when the tenant in reply to the notice, has asserted that he was very much in use and occupation of the premises and the tenanted premises was not lying locked.

11. Section 115 of Indian Evidence Act 1872, provides that “where one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representatives shall be allowed, in any suit or proceedings between himself and such person or his representatives, to deny the truth of that thing”. In view of this provision I consider that the respondent should not have been heard to say that service of summons at the shop, which he asserted was very much in his use for business, should not have been done and service should have been done only at his other shop where he was actually doing

business. The assertion made by the respondent rather goes to prove the case of the petitioner that the premises was not being used by the respondent and was lying locked and the respondent had shifted his business to Bhagirath Place.

12. I consider that the Trial Court went wrong in presuming that it was responsibility of the petitioner, in a case against tenant for eviction of the premises under his tenancy, to furnish an address of the tenant other than the tenanted address despite the stand of the tenant that he was very much available at the tenanted address. I, therefore, set aside the order of learned ARCT dated 8th May, 2008 and of Ld. ARC dated 5th March, 2008. The petition is allowed. The application under Order IX Rule 13 CPC made by the respondent stands dismissed.

March 22 2010
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SHIV NARAYAN DHINGRA, J.