

UNREPORTED

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

% DATE OF RESERVE: February 02, 2010

DATE OF DECISION: February 05, 2010

+ RFA No.381/2009 and CM No.14967/2009

M/S LUSH HAIR AND BEAUTY CLINIC & ORS Appellants

Through: Mr. Sunil Agarwal with Ms. Nitika
Mangla, Advocates

versus

SMT SUNITA HOODA Respondent

Through: Mr. Sandeep Sethi, Sr. Advocate with
Mr. Shailender Dahiya, Advocate

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

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?

: REVA KHETRAPAL, J.

1. This appeal assails the judgment and decree for possession passed by the learned Additional District Judge on 19.09.2009 for the possession of property situated at first floor bearing No.32, North West Avenue, in the layout plan of the Adarsh Bhawan Cooperative House Building Society, popularly known as Punjabi Bagh Extension, New Delhi.

2. With the consent of the parties, the appeal was taken up for final hearing after admission on 02.02.2010.

3. The facts relevant for the disposal of the present appeal are that a suit

for possession and recovery of mesne profits/damages and permanent injunction was filed by the respondent claiming himself to be the owner of the aforementioned property by virtue of a registered Sale Deed dated 09.12.2002. It is averred in the plaint that at the time when the respondent had purchased the suit property one Shri Vikas Shokeen was occupying the same as a tenant and was running a beauty parlour as a franchisee of 'Habib' and the appellants No.2 and 3 were working with the said Shri Vikas Shokeen. Shri Vikas Shokeen left the suit property on 31.05.2006 and was at that time paying rent at the rate of Rs.38,201/- per month excluding electricity, water and other charges. The appellants No.2 and 3 thereupon took the premises on rent from the respondent with effect from 01.06.2006 at a monthly rent of Rs.38,201/- excluding electricity and other charges, with the condition that the monthly rent would be enhanced by 20% with effect from 1st January of every year. It was further agreed between the respondent and the appellants No.2 and 3 that the monthly rent would be payable by the 7th day of each calendar month and that the tenancy would be a month to month tenancy commencing from the 1st day of each calendar month. As per the said oral agreement between the parties, the appellants No.2 and 3 started their business in the tenanted premises with effect from 01.06.2006 and kept paying the rent, though with some delay, at the rate of Rs.38,201/- excluding electricity and other charges.

On 29.08.2008, a civil suit bearing No.385/2008 titled ***Ritu Juneja and Another vs. Sunita Hooda*** was filed by the appellants No.2 and 3 for permanent injunction against the respondent, and it was only after receipt of a copy of the plaint of the said civil suit that the respondent claims that he came to know that the appellants No.2 and 3 were working as partners of M/s. Lush Hair & Beauty Clinic, the appellant No.1 herein.

4. It is further averred by the respondent that the monthly rent of the premises was enhanced to Rs.47,500/- with effect from 01.01.2007 as per the agreement between the respondent and the appellants No.2 and 3. The appellants No.2 and 3 were making the payments by cash or post dated cheques, but on account of default in payment of rent, an amount of Rs.3,32,500/- had accrued by way of rent, out of which an amount of Rs.2,16,500/- was paid in cash and the remaining amount of Rs.1,16,000/- was paid by way of four post dated cheques. Due to the cash payment, some of the cheques were not presented. It is the respondent's case that till 31st December, 2007, the appellants had paid a sum of Rs.2,62,500/- in cash on various dates and a sum of Rs.70,000/- by way of post dated cheques against the arrears of rent with effect from 01.06.2007 till 31.12.2007. The respondent, therefore, terminated the tenancy of the appellants No.2 and 3 by legal notice dated 24.05.2008 which was duly received by the appellants No.2 and 3. The said

legal notice called upon the appellants to hand over the vacant and peaceful possession of the suit premises after the midnight of 30.06.2008. The appellants neither vacated the suit premises nor paid the arrears of rent, but sent a reply to the legal notice dated 05.06.2008. The respondent thereupon filed the instant suit in July, 2008 alleging that the tenancy of the appellants having been duly terminated, they were in illegal use and occupation of the tenanted premises with effect from 01.07.2008 and as such were liable to pay damages/mesne profits with effect from 01.07.2008 till they handed over the vacant peaceful possession of the tenanted premises to the respondent. Apart from this, the appellants were also liable to pay the arrears of rent amounting to Rs.3,42,000/- along with interest at the rate of 24% per annum and legal costs.

5. The appellants in the written statement filed by them, apart from taking preliminary objections to the maintainability of the suit, denied that they were working with Shri Vikas Shokeen, the erstwhile tenant in the suit premises, that the rate of rent agreed to between the parties was Rs.38,201/- and that they had taken the premises on rent with effect from 01.06.2006. The appellants submitted that they had taken the suit premises from the respondent with effect from 01.06.2007 at a monthly rent of Rs.10,000/- with the condition that the same would be increased at the rate of 20% every year and that the first increase would be from 01.01.2008, from which date the rate of rent would be

increased to Rs.12,000/- per month, excluding electricity and water charges.

The appellants, however, admitted that the tenancy was on a month to month basis as per the verbal agreement arrived at between the respondent and the appellants. It was stated that the appellants No.2 and 3 had invested about Rs.25,00,000/- in the tenanted premises as there was an oral agreement between the parties that the tenancy will be extended upto five years. The receipt of the legal notice of termination was not denied, but it was stated that the tenancy had not been validly terminated and the notice had been given on false and frivolous facts and as a counter-blast to the civil suit filed against the respondent which was pending before the Civil Judge, Delhi. It was specifically denied that there was any rent due to be paid to the respondent.

6. The respondent on receipt of the written statement of the appellants No.1 to 3, moved an application under Order XII Rule 6 CPC praying that the suit be decreed for the relief of possession of the suit premises in view of the admissions of the appellants No.1 to 3 relating to the relationship of landlord and tenant, the service of notice dated 24.05.2008 and the tenancy being a month to month tenancy. It was stated that as the tenancy had been validly terminated under Section 106 of the Transfer of Property Act, the respondent was entitled to the vacant peaceful possession of the suit property. The respondent's application was contested by the appellants. The learned

Additional District Judge, however, by the impugned judgment, decreed the suit in favour of the respondent and against the appellants for the possession of the suit property and directed the appellants to hand over the peaceful and vacant possession of the suit premises to the respondent within fifteen days.

7. Arguments were addressed by Mr. Sunil Agarwal, the learned counsel for the appellants and Mr. Sandeep Sethi, the learned senior counsel for the respondent. The learned counsel for the appellants, Mr. Sunil Agarwal, relying upon a Division Bench judgment of this Court in ***Parivar Seva Sansthan vs. Dr. (Mrs.) Veena Kalra and Others, AIR 2000 Delhi 349*** contended that the admissions relied upon by the respondent were far from clear and unequivocal. A triable issue had been raised in the case as to whether the lease had been validly terminated by the respondent and the learned trial court ought to have proceeded to try the suit and return findings on merits. The impugned judgment and decree were, therefore, liable to be set aside and the suit remanded for trial in accordance with law.

8. Mr. Sandeep Sethi, the learned senior counsel for the respondent, on the other hand, relied upon the following admissions made in the written statement filed by the appellants:

- (i) The admission of the landlord tenant relationship by the appellants made in their written statement.

- (ii) The admission made in paragraph 5 of the written statement that there was a verbal agreement between the parties to the effect that the suit premises were taken on rent by the appellants at a monthly rent and the tenancy was to start from the first of each calendar month.
- (iii) The admission made in paragraphs 9 and 16 of the written statement that the legal notice dated 24.05.2008 got sent by the respondent was duly received by the appellants.

9. It was also contended by the learned senior counsel for the respondent that even if it is assumed that the rate of rent was Rs.10,000/- per month initially, as admitted by the appellants, which was increased to Rs.12,000/- per month in the following year, the suit comes within the jurisdiction of the civil court, the monthly rent being more than Rs.3,500/- per month even according to the appellants. The learned senior counsel for the respondent also contended that it was an admitted case of the parties that there was no registered lease deed and, therefore, the tenancy was from month to month. By virtue of the provisions of Section 106 of the Transfer of Property Act, in the absence of a written contract a lease of immovable property shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee by 15 days notice. This being the position there was no scope for contending that any triable issue arose at least for the relief of possession.

10. Reliance was placed by Mr. Sethi on a Division Bench judgment of this Court titled ***Samir Mukherjee vs. Davinder Kumar Bajaj & Ors.*** reported in ***71 (1998) Delhi Law Times 477 (DB)***, wherein the Division Bench categorically held that where there was no question of law arising for determination, the trial court was not obliged to frame an issue and had rightly, on the facts admitted, proceeded to pass decree for possession of the premises.

11. Reference was also made by the learned senior counsel for the respondent to the decisions of this Court rendered in ***MEC India Pvt. Ltd. vs. Lt. Col. Inder Maira and Ors., 80 (1999) DLT 679, S. Rajdev Singh & Ors. vs. M/s. Punchip Associates Pvt. Ltd. & Ors.*** in CS(OS) No.2842/1995 decided on 19.09.2007, ***Surjit Sachdev vs. Kazakhstan Investment Services Pvt. Ltd. & Ors., 66 (1997) Delhi Law Times 54 (DB)*** and ***Uptron Powertronics Ltd. vs. G.L. Rawal, 80 (1999) DLT 706 (DB)***, to contend that since no registered instrument was drawn up by the parties and the provisions of Section 107(1) of the TP Act make it abundantly clear that a lease of immovable property exceeding one year can only be made by a registered instrument, the necessary consequence must follow. This implied that the tenancy must be treated as one on a month to month basis. The respondent could thus terminate the tenancy by a notice under Section 106 of the TP Act.

12. After hearing the parties at length, I am of the view that there is no

infirmity in the judgment of the learned trial court. It is not in dispute that the appellants No.2 and 3 are the tenants of the respondent. It is also not in dispute that there was no registered lease deed between the parties and the tenancy was by virtue of a verbal agreement. The sole dispute between the parties is with regard to the rate of rent and the date of the commencement of the tenancy. Even assuming the version of the appellants No.2 and 3 to be correct that the tenancy had commenced from 1st June, 2007 and the initial rent was Rs.10,000/- per month which was increased to Rs.12,000/- per month on 01.01.2008, there is a clear cut admission on the part of the appellants No.2 and 3 that the tenancy was on a month to month basis, and the rate of rent was at least Rs.10,000/- at the inception of the tenancy and, therefore, the protection of the Delhi Rent Control Act is not available. There is also a clear cut admission on the part of the appellants No.2 and 3 that legal notice dated 24.05.2008 regarding termination of tenancy was duly received by them and it was replied. The position in law that a month to month tenancy in the absence of any registered lease deed between the parties can be terminated in any month by giving 15 days notice has also not been disputed by the learned counsel for appellants No.2 and 3, and as a matter of fact nothing has been specifically stated regarding the validity of the termination of tenancy by way of legal notice dated 24.05.2008.

13. Since the only dispute raised by the appellants No.2 and 3 relates to the date of the commencement of the tenancy, the rate of rent agreed to between the parties, the arrears of rent allegedly payable by them and the allegations of damages to the suit premises, to my mind, it has been rightly held by the learned trial court that insofar as the relief of possession is concerned, these disputed facts have no bearing or relevance, and the parties can go to trial in respect of the other reliefs claimed by the respondent which relate to the disputed facts. The unequivocal admissions on the part of the appellants that they are tenants under the respondent, the tenancy is of month to month basis, there is no registered lease deed between the parties and the tenancy has been terminated by a legal notice served upon the appellants certainly makes the possession of the suit premises by the appellants No.2 and 3 unauthorised and illegal. I have, therefore, no hesitation in holding that there is no triable issue between the parties in respect of the relief of possession of the suit premises and that the suit has been rightly decreed by the trial court.

14. In view of the aforesaid, there is no merit in the appeal. RFA No.381/2009 and CM No.14967/2009 are accordingly dismissed.

REVA KHETRAPAL, J.

February 05, 2010
km