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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO No.313/2004

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15th September, 2011

JAYPEE HOTEL LTD.

Through: Appellant
Mr. K.K. Sharma, Senior
Advocate with Mr. Rajiv
Bakshi, Advocate and Ms.
Bhanita, Advocate.

VERSUS

SHRI V.S. YADAV

Through: Respondent
Mr. Sandeep Sethi, Senior
Advocate with Mr. Pushkar
Sood, Advocate and Ms. Vidya
Panwar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this first appeal under Order 43 Rule 1(r) of Code of Civil Procedure, 1908 (CPC) is to the impugned order of the Court below dated 14.10.2004 which allowed the respondent/plaintiff's application under Order 39 Rules 1 and 2 of CPC, and, in view of an earlier order dated 21.10.2002 in which it was stated

that possession would be handed over of the suit premises to the respondent/plaintiff in accordance with and subject to the decision of the application being I.A. No.5196/01, therefore, possession of the suit premises was directed to be handed over to the respondent/plaintiff. It is not disputed before me that it is the I.A. No.5196/01 which was disposed of by the impugned order dated 14.10.2004.

2. The facts of the case are that the appellant/defendant licenced out to the respondent/plaintiff a shop in the ground floor lobby of its hotel then known as Vasant Continental vide licence deed dated 1.11.1987. The licence granted under the document was for a period of 9 years and 11 months commencing from 1.11.1987, and the period therefore came to an end on 1.10.1997. After the expiry of the period of licence, the respondent/plaintiff continued to stay in the suit premises by paying month to month licence fee. The premises in question being a shop in the lobby of the hotel was to be used for selling of jewellery, books and periodicals etc. I may note that as per the statement of the respondent/plaintiff in the Court below it was agreed that licence deed dated 1.11.1987 was only a licence and no rights of a lessee was claimed in the suit premises by the respondent/plaintiff.

3. The respondent/plaintiff filed the subject suit for declaration and permanent injunction, and in which suit a relief of declaration was claimed of respondent/plaintiff having an irrevocable interest in the suit property and a further relief of permanent injunction was sought

restraining the appellant and its servants etc. from dis-possessing the respondent/plaintiff from the suit premises.

4. During the pendency of the suit, it appears that the appellant wanted to make renovations in the hotel and therefore the following order came to be passed on 21.10.2002:-

“21.10.2002

Present Mr. A.S. Chandhiok, Senior Advocate with Mr. Atul Bhuchar, Mr. Pushkar Sood and Mr. Satinder, Advocate for the Plaintiff

Mr. R.K. Anand, Senior Advocate with Mr. L. Sawhney and Mr. K.K. Sharma, Advocates for the Defendant.

I.A.s No. 9078/2002 and 7457/2002 in Suit No.1067/2001

At the outset it was agreed by learned senior counsel for both the parties, on instructions of their clients who are present in the Court that purely by way of an interim arrangement and in order to expedite the early completion of the work of renovation and alteration, the Defendant will take possession of the suit premises on or before 26.10.2002 in the capacity of a receiver of this Court. In view of this agreement plaintiff undertakes through his counsel that subject to his rights and contentions to be adjudicated later on he will hand over the possession on or before 26.10.2002 to the Defendant in the capacity of a receiver of this Court. The Defendant also undertakes that subject to decision on application (I.A. 5196/01) he will restore back the possession of the suit premises unto the plaintiff within a period of four months from the date of handing over of possession.

List the matter for hearing on 11.11.2002.

Dasti.”

5. A reading of the aforesaid order shows that the possession of the suit premises was taken by the appellant as a Receiver of the Court and which possession was to be handed over to the respondent/plaintiff subject to the decision of the injunction application under Order 39 Rules 1 and 2 being I.A. No.5196/01 in favour of the

respondent/plaintiff. Meaning thereby, if the application under Order 39 Rules 1 and 2 was allowed, then, the appellant was to restore possession to the respondent/plaintiff and if the application was dismissed, the appellant was not liable to return possession.

After renovations were made, the issue arose with respect to the entitlement of the respondent/plaintiff to take back possession, and of the appellant to hand back the possession, and which was to be done in terms of the disposal of the injunction application I.A. 5196/01. Therefore, the impugned order came to be passed by the Court below allowing the same by holding that the respondent was in possession of the suit premises and therefore he could not be dis-possessed without due process of law and it was held therefore that the appellant was bound to return possession of the suit premises to the respondent and thereafter the appellant was held entitled to institute appropriate proceedings for taking back possession of the licenced premises.

6. The issue before the Court below which decided the injunction application, and which is also the issue before me, is as to whether there was entitlement of the respondent/plaintiff to retain possession of the suit premises i.e. in other words whether the respondent/plaintiff at all can be said to have possession of the premises for an entitlement to injunction. Related to this issue is the issue urged on behalf of the appellant/defendant that the respondent/plaintiff never had possession but was only a licensee and

therefore a licensee cannot be said to be in such legal possession so as to entitle him to retain possession.

7. Everything in my opinion will necessarily turn to the terms of the licence deed dated 1.11.1987 and I would therefore seek to reproduce the relevant paragraphs of the same. However, before I do that I would seek to dispose of an argument urged on behalf of the respondent/plaintiff that it is not the licence deed dated 1.11.1987 which is operative but it is the earlier licence deed dated 1.4.1985 which was operative. In the plaint, it was urged by the respondent/plaintiff that the licence deed dated 1.11.1987 was signed in good faith without agreeing to its terms and conditions.

8. In my opinion, this argument with regard to applicability of the earlier licence deed dated 1.4.1985 and the non-applicability of the subsequent licence deed dated 1.11.1987 is really an argument of desperation to say the least. This licence deed dated 1.11.1987 was acted upon for its entire period of 9 years and 11 months and even thereafter month to month, and, at no point of time during all these years was ever any dispute raised or any notice issued by the respondent that the licence deed dated 1.11.1987 and its terms do not bind the parties. Thus, this licence deed dated 1.11.1987 which was duly acted upon between the parties binds the parties. I therefore without any further ado reject this argument that the licence deed dated 1.11.1987 does not operate to bind the parties.

9. Let us now turn to some of the relevant clauses of the licence deed so as to appreciate the meaning and purport of the same, and which clauses read as under:-

“AND WHEREAS the Licencee is desirous of obtaining the irrevocable and exclusive right of vending Jewellery, Books and periodicals, medicines, toiletries and daily use items in the lobby of the said hotel for the purpose, to which end the Licensor has allotted the licensee the shop (hereinafter called the ‘Licenced Premises’) for the purpose of carrying on the said business of selling Jewellery, Books and Periodicals, medicines, toiletries all handicrafts and photography and daily use items under the name and style of M/s. Gift Centre.

AND WHEREAS the Licensor is willing to accede to such request of giving space in the hotel and to grant to the Licencee such legitimate right as desired by the Licencee to the extent and subject to the terms and conditions hereinafter contained:-

NOW THIS INDENTURE WITNESSTH AS UNDER:-

1. That the Licensor hereby grants licence and legitimate right to the **Licencee to use the licenced premises** to sell jewellery, books and periodicals, medicines, toiletries and daily use items, all handicrafts in the lobby of the said hotel, with licence and **right of ingress and egress** from the said shop to the Licencee, his customers, guests and staff, from the main entrance of the hotel subject to the terms thereof, the licence and right to be irrevocable in the first instance for a period of 9 years and 11 months from the date of commencement of the licence and thereafter may be renewed/revised if agreed to by the licensee except to the alterations to the terms and conditions and licence fee and other charges as are warranted from time to time or as stipulated in the following paragraphs:-

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4. The benefits under the Licence or any of them shall not be assigned, transferred, shared or otherwise parted with, in whole or part by the Licencee without the previous consent in writing of the Licensor.

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26. The Licencee shall not change the lock on the door/entrance to the licenced premises nor shall the licensee put any other lock and/or locking device. The duplicate keys to

all locks and/or locking devices on the door/entrance to the licenced premises shall always be and remain with the Licensor.

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29. It is hereby expressed and agreed that nothing contained in this agreement shall create or be deemed to create any tenancy or other interest in the Licenced area for Licensor's premises or any part thereof in favour of the Licencee the intention being that the relationship between the parties hereto shall be purely that of licensor and licensee and the licence hereby granted is intended for the benefit of the licensee only the licensee shall not be entitled to pass over in any manner and to whomsoever the benefit of this Agreement."

10. In addition to the aforesaid paras, and I need not reproduce them in extenso, I may refer to paras 5 to 13 and 16 to 19, as also other paragraphs of the licence deed which provide for a continuous interference, entitlement to interference, entitlement to supervision, entitlement to direction and other such rights of the appellant/licencor with respect to the suit premises making it more than abundantly clear that effectively the legal possession was with the appellant/defendant. In law, a right of a licensee, as differentiated from the right of a lessee, is only to enter and exit the licenced premises, and this legal aspect is in so many terms categorically provided in para 1 of the licence deed itself where it is mentioned that the basic right of the respondent/plaintiff was only a right of ingress and egress. This clause read with other clauses referred to above and also other clauses reproduced above show that the legal possession was, and the same continued to be, only with the appellant/licencor/defendant. As a conclusion, I must say that the licence deed is in a classical mould of a typical licence deed and nothing therein does in any manner suggest

the same to be a lease or creating an irrevocable interest. I note that the respondent/plaintiff rightly in the trial Court did not set up a case of lessee's interest in the suit premises, and only claimed an irrevocable right of licensee in the premises. Another aspect which is relevant to mention is that after the expiry of the original period of 9 years and 11 months there is no fresh licence deed of the suit premises. After the expiry of the period only monthly charges have been paid and received as the licence continued month to month and not for any fixed period. No licence deed for a fixed term after the expiry of the period of the license deed dated 1.11.87 has at all been entered into. Also, a reference to para 1 of the licence deed dated 1.11.1987 shows that extension or renewal of the licence deed was discretionary inasmuch as with respect to extension of the licence the expression 'may' is used. Counsel for the respondent/plaintiff did seek to raise an argument that there was a renewal of the licence deed, however, when asked to point out the renewed licence deed, the counsel for the respondent/plaintiff only argued that actually monthly payments of the licence fee will amount to renewal. I really fail to understand as to how can after all payment of monthly charges be taken as a renewal of licence deed for a specific period and consequently the so called licence becoming irrevocable. Surely, monthly payment charges are only monthly payment charges and nothing further can be attributed to the payment of monthly charges so as to call them in fact charges under a renewed licence deed.

11. What is the right of a licensee to the possession of a licensed premises is the subject matter of two judgments of this Court and which hold that a licensed possession is not 'settled possession' in the eyes of law and such possession cannot be protected by grant of an injunction. The first judgment is the Full Bench judgment in the case of **Chandulal vs. MCD, AIR 1979 Delhi 174** and which in fact holds that a licensor can use reasonable force to oust a licensee. The second judgment is of a Division Bench of this Court in the case of **Delhi Tourism & Transportation Development Corp. vs. D.R. Mehra, 62 (1996) DLT 234** and in which an application of a licensee seeking interim relief under Order 39 CPC was dismissed by observing that the argument of the licensee of equity is to be balanced with the equity to be done by the licensee by not illegally holding on to the licensed premises. Para 26 of the decision in **Chandulal's case (supra)** reads as under:-

"26. There is a catena of authorities in support of the proposition that in the case of a license there is something less than a right to enjoy the property in the licensee; it cannot be exercised by servants and agents and is terminable while on the other hand, in the case of a lease, there is a transfer of a right to enjoy the property or in other words the lessee is entitled to enjoy the property. A bare licensee having no interest in the property cannot maintain an action for its possession. A mere licensee has only a right to use the property. Such a right does not amount to an easement or an interest in the property but is only a personal privilege to the licensee. After the termination of the license, the licensor is entitled to deal with the property as he likes. This right he gets as an owner in possession of his property. He need not secure a decree of the Court to obtain this right. He is entitled to

resist in defence of his property the attempts of a trespasser to come upon his property by exerting the necessary and reasonable force to expel a trespasser. If, however, the licensor uses excessive force, he may make himself liable to be punished under a prosecution, but he will infringe no right of the licensee. No doubt a person in exclusive possession of the property is prima facie to be considered to be a tenant, nevertheless he would not be held to be so if the circumstances negative any intention to create a tenancy.”
(underlining added)

Paras 15 & 16 of the judgment in the case of ***Delhi Tourism (Supra)***
read as under:-

“15. In our view injunction is an equitable relief and the Court must see whether a person who is a trespasser can seek the helping hand of the Court for protecting his unlawful possession as against the owner. A person who seeks equity must do equity. He must also come to Court with clean hands. When he does these things there will be no occasion for him to seek an injunction inasmuch as the trespass would have automatically stood vacated. If he does not do these things, he cannot at the same time ask for the helping hand of the Court to protect his illegal possession.

16. It is argued for the appellant that this may be anomalous. It is said that the trespasser has a “right” to an injunction against the true owner, and this is complementary to the duty of the owner not to evict the trespasser outside the judicial process. In our view, there is no anomaly. Each of these is based on a different legal principle. If the plaintiff wants the defendant to act in accordance with law he must first abide by the law himself and vacate the property as one would expect a law abiding citizen to behave.”

(underlining added)

Therefore it is settled law that a licensee does not have a possession of such a nature which can be protected in law by granting an injunction in his favour.

12. In view of the above, the conclusions which are arrived at can be summarized as under:-

(i) It is the licence deed dated 1.11.1987 which was acted upon which binds the parties and not the earlier licence deed dated 1.4.1985 as was sought to be alleged and argued by the respondent/plaintiff.

(ii) The 1st para of the licence deed makes it very clear that the licence deed only gave a right of ingress and egress. Every other term also shows that the legal possession continued to be with the appellant/defendant and the respondent/plaintiff only had a right of ingress and egress to the premises.

(iii) There are various clauses showing interference and entitlement of supervision by the appellant which quite clearly negate the 'settled possession' concept as is known in law for continuing in such possession to claim that there cannot be dis-possession without due process of law.

(iv) There is no renewal of the licence deed by a licence deed for a specific term after the expiry of period of 9 years and 11 months stated in the licence deed dated 1.11.1987. Therefore the continuation of the respondent/plaintiff was only a continuation of a month to month licensee and therefore there was no irrevocable licence interest in the suit premises as was the case of the respondent/plaintiff.

(v) The order of the Court dated 21.10.2002 obliged the appellant/defendant only to hand over the possession subject to the decision of the injunction application, meaning thereby if it was held

that the respondent/plaintiff was not in such possession which can be legally protected, and he was only a licensee, then, in such circumstances, the appellant/defendant was not bound to hand over the possession of the suit premises to the respondent/plaintiff.

13. In view of the above discussion, the impugned order allowing the injunction application is set aside. It is held that appellant/defendant is not bound to hand over the possession of the suit premises to the respondent/plaintiff. It is held that the respondent/plaintiff was not in 'settled possession' as per the meaning of legal expression and therefore it cannot be said that respondent/plaintiff could take up a plea that he should not be dispossessed without due process of law. The injunction application of the respondent/plaintiff will therefore stand dismissed. Appeal is disposed of accordingly. Parties are left to bear their own costs.

SEPTEMBER 15, 2011
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VALMIKI J. MEHTA, J.