

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ RFA No. 277/2000, 279/2000, 519/2000 and
520/2000

% 21st January, 2011

1. RFA No.277/2000

M/S SHRUTI ENTERPRISES & OTHERS Appellants
Through: Mr. S.K. Dubey,
Advocate with Mr.
Tungesh, Advocate.

VERSUS

M/S. DEVGOWAL PROPERTIES & LEASING PRIVATE LTD. &
ANOTHER
.... Respondents
Through: Mr. Deepak Khosla,
Advocate with Mr.
Rahul Bakshi,
Advocate.

2. RFA No.279/2000

M/S SHRUTI ENTERPRISES & OTHERS Appellant
Through: Mr. S.K. Dubey,
Advocate with Mr.
Tungesh, Advocate.

VERSUS

M/S. DEVGUCHWAL PROPERTIES & LEASING PRIVATE LTD. &
ANOTHER Respondent
Through: Mr. Deepak Khosla,
Advocate with Mr.
Rahul Bakshi,
Advocate.

3. RFA No.519/2000

M/S SHRUTI ENTERPRISES & OTHERS Appellants
Through: Mr. S.K. Dubey,
Advocate with Mr.
Tungesh, Advocate.

VERSUS

M/S. DEVGOWAL PROPERTIES & LEASING PRIVATE LIMITED &
ANOTHER Respondents

Through: Mr. Deepak Khosla,
Advocate with Mr.
Rahul Bakshi,
Advocate.

4. **RFA No.520/2000**

M/S SHRUTI ENTERPRISES & OTHERS Appellants

Through: Mr. S.K. Dubey,
Advocate with Mr.
Tungesh, Advocate.

VERSUS

M/S. DEVGOWAL PROPERTIES & LEASING PRIVATE LTD. &
ANOTHER Respondents

Through: Mr. Deepak Khosla,
Advocate with Mr.
Rahul Bakshi,
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. I may note that though there are four separate appeals, the issues involved in all the appeals is common viz. the plea of

suspension of rent by the appellants/tenants. Though the appeals are four in number, the impugned judgments are two in number because by each impugned judgment two suits of the plaintiffs/respondents have been heard and decided. The first impugned judgment is dated 1.3.2000 and which judgment decided suit Nos.15/1997 and 17/1997 by which the rent was claimed from 1.5.1995 to 30.11.1996. The second impugned judgment is the judgment dated 11.7.2000 which decided two suit Nos.411/1998 and 412/1998 in which suits, the claim of charges was for the period from 1.12.1996 to 31.11.1998. I may note that the judgment dated 11.7.2000 disposing of suit Nos.411/1998 and 412/1998, and which are the subject matters of RFA Nos.519/2000 and 520/2000 is the judgment which simply relies upon the earlier judgment inter se the parties dated 1.3.2000 which is the subject matter of RFA Nos.277/2000 and 279/2000.

2. In sum and substance therefore the issue was of claim of the respondents/landlords for rent of the two premises for the period from 1.5.1995 to 31.11.1998. The premises in question are premises No.9A village Hauz Khas New Delhi and T12 B village Hauz Khas New Delhi. These premises belonged to the husband and wife i.e. property No.9A belongs to husband Sh. Daya Nand and the property T12 B belongs to the wife Smt. Saroj Bala. The properties are being treated as property of husband and wife though the properties stand in the

name of one company M/s. Devgochwal Properties and Leasing Private Limited. The facts of the case are that the four premises were let out to the appellants/defendants by the respondents/landlords in the year 1991. The four premises are in fact different floors of the two premises i.e. 9A village Hauz Khas, New Delhi and T12 B village Hauz Khas, New Delhi. All these premises were taken for use by the appellants/defendants as a restaurant. Firstly, what was taken was only the ground floor of the premises 9A and first floor of the property T12 B which are almost at the same level and subsequently two terrace floors of the two properties were taken.

3. The genesis of the disputes between the parties stands from the stoppage of payment of rent for the period from 1.5.1995 to 31.8.1995 by the appellants to the respondents on the ground that that when the appellants/tenants were carrying on renovation work in property for the purpose of their restaurant business the respondents/landlords filed a suit for injunction and obtained injunction orders preventing the appellants/tenants from carrying out such renovations and repairs in the property, which as per the appellants were necessary for beautification of the premises for carrying on the business of the restaurant. It is argued that the principle of suspension of rent has been and was rightly invoked by the appellants inasmuch as for the application of the principle it is not necessary that the

tenants must be actually physically ousted from the premises but if the tenant is prevented from effective use and occupation of the property, the tenant is entitled to invoke the principle of suspension of rent and stop making payment of rent to the landlords. At this stage itself I must note that when we look at the injunction orders there was no blanket injunction or status quo and the injunction was only from carrying out permanent work/structural additions or alterations. I will advert to this a little later.

4. This issue has been dealt with by the trial Court in paras 8 to 10 of the impugned judgment dated 1.3.2000 and which reads as under:-

“8. The plea taken by the defendant is that defendants was entitled to suspension of rent because plaintiff had obtained interim injunction against renovation and repair. Plaintiff had filed earlier two suits for recovery of rent for the period from 1st May 95 to 31st August 95 at the rate of Rs.20,000/- and Rs.15,000/- per month respectively in respect of these very two properties. These two suits were decreed by the court of Sh. Suraj Bhan Civil Judge, Delhi. In these suits also defendant had raised the plea that rent was not Rs.20,000/- and Rs.15,000/- respectively but it was Rs.15,000/- and Rs.10,000/- respectively. Specific issue was framed on the question of rate of rent and learned Civil Judge had come to the conclusion that rent of the properties were Rs.20,000/- and Rs.15,000/- respectively and not Rs.15,000/- and Rs.10,000/- as alleged by the defendant. The appeal against the judgment of Sh. Suraj Bha, Civil Judge was preferred before learned Addl. District Judge. These appeals being R.C.A. No.6/97 and 7/97 were dismissed by Shri B.S. Chaudhary, A.D.J. on 22.7.97. The plaintiff in his testimony has stated that defendants then preferred second appeal before the Hon’ble High Court and the second appeal were also dismissed by Hon’ble High Court. Therefore the issue of

rate of rent is not open for the defendant to raise. Only issue to be decided is about suspension of rent.

9. Against the interim injunction granted by the lower court the defendants had preferred a civil Revision No. CR 856/95 which was decided by Hon'ble High Court on 9.5.96. Hon'ble High Court came to the conclusion that renovation which were sought to be carried out by the defendant would not in any way harmful to the premises. Before the Hon'ble High Court counsel for the defendant had also given an undertaking that at the time of handing over of the possession they would restore the premises to the original shape at their own cost and they would not carry out any other alteration except those which were for better utilization of the space as restaurant and they would also fully repair and lay proper flooring of the premises.

10. I consider the plaintiff had a right to protect his interest. The premises in question was being used and utilized by the defendant since 1991. The defendant had started renovation/repair for the purposes of better utilization of the premises in the year 1995. If the plaintiff considered that what was being done by the defendants was not as per agreement between the parties. The plaintiff had a right to approach the court of law for vindication of his rights. Plaintiff is the best judge as to what is in the best interest of the plaintiff. If the plaintiff considered that the renovation and repair which were carried by the defendants were not as per agreement and if he considered that this would damage the premises and went to the court for adjudication of his right, he did no wrong. The act of the plaintiff cannot be termed as illegal act. Moreover the defendant was not deprived of the use of the premises. The defendant was only restrained from carrying out those renovations and repairs which, in the eyes of the plaintiff were going to be damages the premises and were beyond the scope of the agreement between the parties. The Doctrine of suspension of rent is available to lessee where the lessee is evicted by the lessor from the whole of the leased property or from such a part of the leased property which makes enjoyment of the property difficult. As per Mulla's Transfer of Property Act the Doctrine of suspension of rent can be applied only under following circumstances:

“ If the lease is evicted by the lessor from the whole

of the property leased, the lessee is not liable for rent for the period of the eviction. Such eviction, therefore, involves suspension of rent. The word suspension implies that the liability for rent is not finally determined but revives as soon as the lessee is restored to possession. There cannot be any abatement of rent where the lessee is deprived or ousted from the part or whole of the premises. A mere breach of a condition to repair does not give a right to abatement. The principles governing suspension of rent are based on justice, equity and good conscience. It will depend on the facts of each case whether a tenant is entitled to suspension of rent. Where the tenant of an industrial premises had deliberately stopped paying rent to his landlord for almost a year before the landlord had got the electricity disconnected and the tenant took no steps for reconnection for about three years, the court rejected the plea of the tenant that it had a right to suspend the payment of rent."

The defendant has relied upon Vol.XV-Indian Cases-711 of Madras High Court in Meenakshi Sundara Nachiar Vs. SA. RM. CH. Chindambaram Chetty wherein Hon'ble High Court held as under:

"The method of obstructing the tenant's enjoyment without evicting or turning him out is known as constructive eviction. i.e. where the landlord commits wrongful and unlawful acts which deprive the tenant of the beneficial use and enjoyment of the property. In such cases of constructive eviction, the tenant enjoys immunity from the payment of rent until the landlord again permits him to have quiet enjoyment."

The other case relied upon by the defendant is ILR-24-Cal-296 Dhanpat Singh Vs. Mahomed Kazim Ispahain and others wherein Hon'ble High Court held as under:-

"Where the act of a landlord is not a mere trespass, but something of a graver character interfering substantially with the enjoyment by the tenant of the demised property tenant is entitled to a suspension of rent during such interference, even though there

not be actual eviction.”

Both the cases do not lay down the proposition that where an interim injunction against the repair and renovation has been obtained, the lessee become entitled for suspension of rent. I consider that defendant is not entitled for the suspension of rent. There was no injunction against the defendant from using the premises. After all, the defendant has been running a restaurant from 1991 to 1995 in the same premises. Even during the period when the injunction was operative, the defendant could have run the restaurant in the same premises and could have carried out renovation only after final verdict had come. The defendant had examined Mr. Atma Singh as sole witness. He stated that he did not remember for what period the business remained suspended. I therefore, decide both the these issues against the defendant and in favour of the plaintiff. I hold that plaintiff was entitled to recover the rent for the impugned period. ”

5. A reading of the aforesaid paras of the impugned judgment dated 1.3.2000 shows that the trial Court has denied the defence of suspension of rent to the appellants/tenants/defendants inter-alia on the ground that firstly the respondents/landlords/plaintiffs committed no wrong in approaching the Court for seeking vindication of their legal remedy. The second issue considered in favour of the respondents/landlords by the trial Court was that the appellants/tenants/defendants were not totally deprived of use of the premises. The third aspect noted by the trial Court is that no proof came on record that the business of the appellants remained suspended during the relevant period.

6. Let me first presume that there was a blanket injunction

order against the appellants from carrying out repairs and renovation in the premises. In this case, it is not as if right at the commencement of the tenancy, repairs and renovations were sought to be carried out and which were got stopped by an injunction order and therefore the appellants could not even commence or carry on any business in the premises. I have already noted above that the premises were being used as a restaurant for five years earlier i.e. from the year 1991 to year 1995. It was, therefore, incumbent, in my opinion, for the appellants/tenants/defendants to establish beyond doubt that their business remained suspended during this period and effectively deprived them of the effective use of the tenanted property, though may not be so physically. During the course of arguments, I put a specific and direct question to the counsel for the appellants as to whether the appellants have filed in the trial Court any document with respect to the value of the business carried on during the undisturbed period from the years 1991 to 1995 and then for the alleged disturbed period from the years 1995 to 1998. This query was put because if the case of the appellants was correct that they had to suspend their business, the best evidence was the income tax records and the profit and loss account of the appellants/tenants for the two periods from the years 1991 to 1995 on the one hand when business was carried on and then 1995 to 1998 when allegedly there was disturbance. Admittedly,

there is absolutely no document on record before the trial Court in the form of any income tax records with respect to income of the appellants/tenants that no business was carried out in the tenanted premises from 1.5.1995 to 31.11.1998. Therefore, even assuming that there was an injunction, and which in fact there was not as I will state later, the appellants in fact were fully entitled to and had in fact continued to use and take benefit of the tenanted premises by carrying on business and therefore the principle of suspension of rent cannot apply.

7. The second reason why I feel the principle of suspension of rent cannot apply in favour of appellants is because I have gone through the relevant injunction orders which have been pointed out by the counsel for the appellants, and which injunction orders are dated 7.10.1995 of the Civil Judge and the order dated 17.10.1998 in appeal by the Senior Civil Judge and by which there is no blanket injunction stopping every work. The sum and substance of both the orders is only that the appellants were prevented from carrying on structural addition and alteration in the premises and the appellants were not prevented from carrying any renovation and repairs in the property which do not amount to permanent addition or structural alteration. In fact this was almost so conceded by the counsel for the appellant when the language of the injunction orders was put to him. For the sake of

convenience, I would refer to the following passages from the injunction orders dated 7.10.1995 and 17.10.1998:-

ORDER DATED 7.10.1995

“3. Having heard the Id. Counsel for the parties, perusal of relevant record of the case file, citations relied upon by the parties and the written submission by both the Id. Counsel for the parties, it appears that the laws and facts are inextricably mixed and premises of propositions from both the sides appear as containing negative and positive integers, therefore no definite conclusion can be drawn, at this stage, without examination of prior and prosterior cause and without having through evidences. However, to meet the ends of justice the parties are directed to maintain status quo with regard to property in dispute, subject to terms and conditions entered into between the parties vide lease deed dtd. 1.2.91 and just exception of law, till further orders. Accordingly in the meanwhile the application filed u/o 39 rules 1 & 2 r/w sec. 151 CPC stands disposed of. Now the case be fixed for Doc./A.D./Issues for 29-11-95.”

ORDER DATED 17.10.1998

“4. I have given my considered thought to the arguments addressed on behalf of counsel for the parties. I am of the view that since the constructions being carried out in the premises in suit are in the nature of construction which is necessary for the better enjoyment of the tenanted premises for commercial purposes, the tenant has a right to do so, and this cannot be considered as an unauthorized construction. Hence the appellant is having a prima facie case in his favour. He will suffer greater irreparable loss than the landlord if during the pendency of the suit, his rights are not protected. The balance of convenience is also in favour of the appellant. Hence the appeal is allowed. The order of status quo passed by the Id. trial court is set aside and the respondent is restrained from interfering in the renovations and interior decorations work of the appellant not amounting to structural changes and which are permanent in nature and as the property can be restored to the original condition at the time of surrender of tenancy. With this observation, the order of the Id. trial court is

modified to this extent and the respondent is restrained from interfering in the repair and renovation work being carried out in the premises in suit by the appellant till the disposal of the suit.”

The aforesaid injunction orders therefore make it more than abundantly clear that there was effectively no illegal restraint against the appellants as is sought to be made out. Surely, it is the law that a tenant cannot make such permanent addition and alteration in the premises which would amount to structural change in the tenanted premises. The injunction orders only prevented the respondents from doing something which was in the nature of permanent structural additions and alterations and which were prohibited by the lease deed and also subsequently by the injunction orders. I therefore fail to understand as to how it can be canvassed that even beautification, tiling, renovations etc. of the tenanted premises were prevented by the injunction orders for the appellants to take benefit of the principle of suspension of rent.

8. The learned counsel for the appellants placed reliance on the definition of ‘enjoyment’ in Black’s Law Dictionary and which definition of enjoyment reads as under:-

“Enjoyment. The exercise of a right; the possession and fruition of a right, privilege or incorporeal hereditament. Comfort, consolation, contentment, ease happiness, pleasure and satisfaction. Such includes the beneficial use, interest and purpose to which property may be put, and implies right to profits and income therefrom.”

In my opinion, nothing turns on this definition of enjoyment because I have already stated above that the appellants cannot be said to be in any manner prevented from enjoying the premises (and actually also they did carry on business in the relevant period) and thereby entitling them to the application of the principle of suspension of rent. I have also noted that if really there was suspension of business, nothing prevented the appellants from filing their profit and loss account for the said period to substantiate that in fact no business was carried on and therefore they suffered irreparable loss.

9. Quite clearly, this is the case of the appellants/tenants enjoying benefit of commercial premises for running a restaurant and then causing harassment to the landlords for not paying the rent over a long period of time. I may note that in commercial litigation payment of actual costs should be the norm. It has been held by a Division Bench of three Judges of the Supreme Court in the case of ***Salem Advocate Bar Association Vs. Union of India (2005) 6 SCC 344***, in para 37, that it is high time that actual costs should be imposed. The present is not a matrimonial dispute or a labour dispute or a dispute where parties who do not have financial capacity are forced into litigation. This is a case where tenants are not paying their dues towards the rent and the landlords have been forced into litigation right from the year 1995 till date i.e. roughly a period of over 15 years.

In my opinion, therefore, the appellants should be burdened with the costs of litigation. Ordinarily, I would have imposed exemplary and penal costs on the appellants, however, in the interest of justice, I deem it fit that in the facts of the case, each of the appeal is dismissed with costs quantified at Rs.25,000/- which shall be payable within a period of two weeks from today.

10. The appeals are therefore dismissed with costs quantified above. Trial Court record be sent back.

JANUARY 21, 2011
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VALMIKI J. MEHTA,J