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IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA NO.113/2010

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Date of Pronouncement 6 January, 2011

Manohar Singh Appellant
Through : Mr.Sachin Mishra, Adv.

Versus

\$ Deepansh Malhotra respondent
^ Through : Mr. Arun Khosla, Adv.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S. SISTANI, J.

1. Present appeal is directed against the judgment and decree dated 10.11.2009 passed by learned trial court. Necessary facts for disposal of the present appeal are that respondent had filed a suit for recovery of possession, arrears of rent and damages/ mesne profit. As per the plaint, the predecessor in interest of the respondent (plaintiff before trial court), one Gulshan Channa, has let out the built up half portion of freehold property measuring 140.45 sq. yds. bearing No.43/43, known as property 43/43-A, adjoining property No.45 on Road No.43, Punjabi Bagh, New Delhi to the appellant herein vide rent agreement dated 27.08.2006 at a monthly rent of ₹25,000/- per month for a period of one year, commencing

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

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from 11.08.2006. The rent agreement was duly stamped and registered on 26.09.2006. It was further stated in the plaint that as per the rent agreement the appellant had agreed to hand over vacant possession of the demised premises on 10.08.2007, failing which he was liable to pay damages/ mesne profit @ ₹50,000/- per month towards unauthorized use and occupation. The respondent had purchased the demised premises from the said Sh.Gulshan Channa vide duly stamped and registered sale deed dated 08.06.2007. Upon the said conveyance of the property the appellant was informed and a duly notarized written undertaking dated 11.06.2007 was signed by the appellant promising to pay the rent of the demised premises to the plaintiff and also to hand over possession thereof upon the expiry of the period of tenency with efflux of time on 10.08.2007. The appellant also issued a cheque bearing No.892885 dated 12.06.2007 in the sum of ₹25,000/- in favour of the respondent towards rent for the month of June, 2007, however, the aforesaid cheque was dishonoured on the ground "account closed" on 09.07.2007. This fact was brought to the notice of the appellant, who issued another cheque bearing No.892884 drawn on the same bank. As the arrears of rent for the months of June to August, 2007 were not cleared and the vacant possession of the demised premises was not handed over, the suit was filed by the respondent. The appellant filed his written statement on 10.03.2008. The stand taken by the appellant in the written

statement was that the appellant was born and brought up in the suit premises. He had taken a loan from one Sh.Gulshan Channa and in the garb of the loan transaction, Sh.Gulshan Channa and the present respondent had connived to throw out the appellant from his own property. The appellant has denied that he ever sold the suit property to anybody and was ready to return the sum of ₹3,50,000/- which he had received from the said Sh.Gulshan Channa; and a defence was also taken that the rent agreement dated 27.08.2006 is a sham document. He denied giving any undertaking to the respondent herein with regard to payment of rent and also denied the fact of issuance of cheque to respondent. It was stated that the cheque no.892884 was a blank cheque which had got misplaced and the respondent in connivance with the Sh.Gulshan Channa has misappropriated the same. Statement of the appellant under Order 10 of the Code of Civil Procedure was recorded by the trial court on 21.10.2008 after the pleadings were completed in the matter and application was filed by respondent under Order 12 Rule 6 of the Code of Civil Procedure. Upon hearing arguments on the application, trial court has decreed the suit in favour of the respondent with regard to possession.

2. Counsel for the appellant submits that the respondent along with said Sh.Gulshan Channa has played fraud upon the appellant. It is also stated that the suit property had devolved upon him on the demise of his father and upon documents

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being executed in his favour by other family members. It is stated that the appellant had applied for a loan from Associate India Financial Services Ltd. (AIFSL) in the year 2001 wherein the original relinquishment deed dated 19.05.1996 was deposited and a loan of ₹30,00,000/- was granted by mortgaging the suit property. As the appellant could not pay the instalments on time, he received a legal notice on 28.10.2002. Thereupon the loan account was re-scheduled. Subsequently, another notice dated 05.10.2006 was issued informing the appellant about the invocation of the arbitration proceedings on account of default of instalments. In order to raise money, the appellant had contacted one Sh.Madhur Bain Singh in the year 2005, who promised the appellant to arrange for loan for making repayment to AIFSL. It is through Sh.Madhur Bain Singh he was introduced to one Sh.Gulshan Channa and Mr.Madhur Bain Singh had informed him that since the appellant's ITR was not impressive, he would help him to procure a loan from the bank with the help of Sh.Gulshan Channa. He was further informed that as Sh.Gulshan Channa could not procure the loan on his own, as he had no collateral property to mortgage to the bank and it was suggested that the property should be transferred in the name of Sh.Gulshan Channa. In this background he had transferred the property in the name of Sh.Gulshan Channa.

3. Counsel for the appellant has strongly urged before this court that respondent along with Sh.Gulshan Channa has defrauded him and FIR is pending against Sh.Gulshan Channa for offences of cheating and forgery and there are many other complaints filed by various persons cheated by Sh.Gulshan Channa, of their hard earned money, are pending against Sh.Gulshan Channa in the Police Station Rajouri Garden, and other police stations as well. It is submitted that neither the loan was arranged nor the title deeds were returned by Sh.Gulshan Channa. It is also submitted that on 08.06.2007 Sh.Gulshan Channa and Sh.Madhur Bain Singh, took him to the office of one Sh.Deepansh Malhotra, at 24, North Avenue, West Punjabi Bagh, Delhi where he was made to sign some blank documents and blank papers on the pretext of completing certain loan formalities. He was also asked to accompany them to the office of Sub-Registrar and was made to sign as a witness and two blank cheques were also taken from him, which cheques were later on misused by Sh.Gulshan Channa. Learned counsel also contends that it is only subsequently that these facts came to the knowledge of the appellant when the suit was filed by Sh. Deepansh Malhotra, the respondent herein for recovery of possession of the appellant's property as also for arrears of rent. It is further stated that Sh.Madhur Bain Singh introduced the appellant to one Sh.Kamlesh Kumar, advocate, to defend the appellant before the trial court, however, the appellant has

learnt that the said Sh.Kamlesh Kumar, advocate is closely associated with Sh.Gulshan Channa, Sh.Madhur Bain Singh and Sh.Dipesh Malhotra and that the said Sh.Kamlesh Kumar, advocate did not draft and file a proper written statement, despite the appellant bringing all facts to his notice.

4. It is also stated that letter of 03.11.2007 was got written by the appellant under duress and coercion and at the gun point, which was pointed by Sh. Deepansh Malhotra in the presence of Sh.Gulshan Channa.
5. Counsel for the respondent submits that in view of categorical admissions made by the appellant, which have been taken note by the trial court, the appeal is without any merit and the same should be dismissed. It is further submitted that the appellant had made a statement under Order 10 of the Code of Civil Procedure before the trial court as late as on 21.10.2008, hence, it cannot be said that the statement was not voluntary. It is further stated that at no point of time the appellant has taken any steps to withdraw the statements made by him from time to time and that the allegations made against the respondent are baseless and unfounded.
6. I have heard counsel for the parties. The suit filed by the respondent is on the basis of the rent agreement duly registered on 26.09.2006. As per the rent agreement, the appellant was to pay rent @ ₹25,000/- per month. The appellant had also agreed in terms of the rent agreement to hand over vacant peaceful possession of the demised

premises on 10.08.2007. During the pendency of the suit before the trial court, the statement of the appellant was recorded under Order 10 of the Code of Civil Procedure by learned trial court on 21.10.2008. It would be useful to reproduce the statement made by the appellant before trial court:

"On SA

I executed a Sale Deed in favour of Gulshan Chandna with respect to property No.43/43A, constructed on half portion of freehold property. I know the meaning of Sale Deed, it is the document regarding the transfer of the property from one person to another. The sale deed bears my signature at the place of vendor and the same also bears my photograph at the back of the page. I know English language. The rent agreement dt. 27.9.06 was executed between Gulshan Chandna S/o. Shri Ram Prakash Chandna R/o.35, Rajouri Garden, Delhi and myself. The rent agreement bears my photograph. The same was got registered. I appeared before the Sub-Registrar. The rent agreement also bears my photograph at the back as second party. Gulshan Chandna further sold the property in question to Deepansh Malhotra vide registered sale deed on 8.6.07. This sale deed bears my signatures as a witness and also my photograph at the back of the page of the registered sale deed. I am not aware in whose name the property in question stand in Municipal record. An undertaking which is on record with signed by me after reading the same. A cheque bearing no.892885 was handed over by me to Gulshan Chandna however I handed over the same after signing but the name and amount was not filled (sic. filled) by me. The said cheque was dishonoured on presentation. The cheque no.892884 was also handed over after signing without writing the amount along with cheque no.892885 to Gulshan Chandna."

7. A careful reading of the statement would show that the appellant has admitted that he executed a sale deed in favour of Sh.Gulshan Channa with respect to suit property. He has

stated that he knows the meaning of the sale deed, which is a document regarding transfer of the property from one person to another. He admitted his signatures at the place of Vendor and also identified his photograph at the back of the page. He admitted that a rent agreement dated 27.09.2006 was executed between him and Sh.Gulshan Channa. The appellant also identified his photograph on the rent agreement which was registered. He admitted having appeared before the Sub-Registrar. He also admitted that Sh.Gulshan Channa sold the property in question to Sh. Deepansh Malhotra vide registered sale deed dated 08.06.2007. In the statement the appellant has also admitted that the sale deed bears his signatures as a witness and his photograph had been affixed on the last page of the sale deed. He also identified the undertaking, signed by him, which was on record. The appellant has also admitted that the cheque No.892885 was handed over by him to Sh.Gulshan Channa. Although the cheque was signed, the name and amount was not filled. The appellant further goes on to admit that the aforesaid cheque was dishonoured on presentation and another cheque bearing no.892885 was handed over by him to Sh.Gulshan Channa. While considering the application under Order 12 Rule 6 Code of Civil Procedure, learned trial court has relied on the statement made by the appellant under Order 10 of the Code of Civil Procedure. The trial court has noticed as under:

"..... Perusal of the statement by defendant shows that after execution of sale deed by him in favour of Sh.Gulshan Chanana, Sh.Chanana further sold it by registered sale deed to plaintiff Deepansh Malhotra on 08.06.07 and in that sale deed defendant has not only signed as a witness but his photograph also appears on the sale deed. He has apprised this Court that he has filed a separate suit seeking cancellation of sale deed executed by him in favour of Sh.Gulshan Chanana. Admittedly, in that suit no interim relief has been granted to defendant / tenant. Admittedly, the suit seeking cancellation of sale deed has been filed after filing of this eviction suit in hand and as such it appears to be a retaliatory act and counter blast only aimed at continuing the unauthorized possession of the suit property by defendant tenant.

In his statement given in this Court under oath on 21.10.08 U/O.10 CPC, defendant tenant categorically admits that in his undertaking dated 11.06.07, he accepted plaintiff as his landlord and undertook to pay the balance rent for the balance period to him but the cheque handed over to him by the plaintiff was dishonoured for the reason account closed. This statement given by the defendant U/O 10 CPC is primarily part of pleadings and as such can be read and relied while disposing an application U/O 12 Rule 6 CPC.

Order 10 Rule 1 CPC runs as under:

1. Ascertainment whether allegations in pleadings are admitted or denied – At the first hearing of the suit the Court shall ascertain from each party or his peader whether he admits or denies such allegation of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Order 10 Rule 1 CPC shows that once defendant admits that plaintiff is his landlord in the suit property wherein he is admittedly a tenant and also admittedly he has not paid any rent since Jun'07 and its registered lease executed on 27.09.06 for the period 11.08.06 to 10.08.07 already stands expired. Defendant/ tenant was admittedly served with a notice for vacation of premises and in response thereof he admittedly gave an undertaking to the plaintiff/ landlord on a stamp paper of Rs.50/- which is duly notarized. In this backdrop I see no reason as

to why plaintiff's application U/O.12 Rule 6 CPC should not be allowed. As such order 12 Rule 6 CPC is allowed. Defendant/ tenant is hereby directed to vacate the tenanted suit premises within 6 weeks from today. Let a separate decree be passed on these terms."

8. The appellant has informed this court and also the trial court has also noticed in the judgment that the appellant has filed a suit seeking cancellation of the sale deed, but no interim relief has been granted. This court had also enquired from counsel for the appellant as to whether any steps have been taken for recalling any of the statements made by him either before the trial court or undertakings given from time to time, the answer was in the negative.
9. The present appeal has been pending in this court since February, 2010 when notice in the appeal was issued. The matter has been adjourned from time to time at the request of counsel for the appellant, but till date the appellant has failed to bring to the notice of the court that any interim protection has been granted by any other court or whether any effective step has been taken by the appellant for recalling the statements made by him. Counsel for appellant has also failed to render any satisfactory explanation with regard to the statement made by the appellant before trial court under Order 10 of the CPC.
10. The sequence of events would show that the appellant as alleged to have been in touch with Sh.Madhur Bain Singh, since April -- May, 2006. Thereafter he was introduced to

Sh.Gulshan Channa in the same year. Sale deed was executed in August, 2006 and thereafter the appellant has been signing various documents, including sale deed, rent agreement, signed as a witness to the sale deed executed between Sh.Gulshan Channa and Sh.Deepansh Malhotra, respondent herein, various cheques were signed, however, there is no explanation as to why even after learning that a fraud had been played upon him, appellant still made a statement before trial court, admitting execution of documents.

11. In case the appellant was made to sign documents under coercion or duress or on gun point, as submitted, the appellant could have initiated proper action against the respondent. Although there is more than what meets the eye, as there is no explanation by the respondent as to why after purchasing the property the purchaser would allow the seller to stay in the premises as a tenant and why the seller would be asked to sign as a witness on the sale deed executed between the seller and the subsequent purchaser. There is also no explanation as to why undertakings would be taken from the appellant for payment of rent and vacation of the premises and why no rent for a single month has been paid by the appellant to the respondent. But in the absence of appellant taking any effective step to retract or resile from his statements, undertakings, execution of documents, non-filing of police complaint(s) despite passage of time and despite

various opportunities available including before the trial court when a statement under Order 10 of the Code of Civil Procedure was recorded; and taking into consideration the categorical admissions made in the statement recorded under Order 10 of the Code of Civil Procedure before trial court on 21.10.2008, admitting respondent to be the owner of the suit property, admitting execution of the rent agreement dated 27.09.2006 as per which the rate of rent was ₹25,000/- per month and the rent agreement was for a period of one year, the appeal must fail. Accordingly, I find no merit in the appeal and the same is dismissed. Interim order stands vacated.

CM.Nos.3676, 3677 & 3679/2010

12. In view of the order passed in the appeal, applications stand disposed of.

January 6th, 2011
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G.S. SISTANI
(JUDGE)