

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 24.11.2011

+ CS(OS) 567/2005

GANESH DUBEY AND ORS. Plaintiffs

Through: Mr Shivsant Singh, Proxy
Counsel

versus

MRS. PREETI CHANDRA & ANR. Defendants

Through: Mr Shivinder Chopra, Adv.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No. |
| 2. To be referred to the Reporter or not? | No. |
| 3. Whether the judgment should be reported in Digest? | No. |

V.K. JAIN, J. (ORAL)

1. In this case, issues were framed on 15th May, 2009 and the plaintiffs were directed to file their affidavit by way of evidence within four weeks. No affidavit by way of evidence has been filed till date. On 25th November, 2000, the Joint Registrar noted that though the matter was listed for the evidence of the plaintiffs, no witness had been summoned. He granted one last opportunity to the plaintiffs to file affidavit along with list of witnesses within two weeks. That, however, was not done and when the

matter was again taken up by the Joint Registrar on 14th December, 2000, she found no sufficient cause to extend further opportunity for the purpose and accordingly, closed the evidence of the plaintiffs. When the matter came before the Court on 24th January, 2011, the plaintiffs were granted one more opportunity by the Court to file affidavit by way of evidence within two weeks, subject to payment of Rs 5,000/- as costs. It was directed that if the affidavit is not filed within two weeks, the evidence of the plaintiffs shall stand closed, without any further order. Even that opportunity was not availed by the plaintiffs and the Joint Registrar, therefore, vide order dated 13th March, 2011 again placed the matter before the Court. On April, 29, 2011, the learned counsel for the plaintiffs stated that he was not getting instructions from the plaintiffs and he would like to discharge and file an appropriate application in this regard within a week. That was also not done. On 18th August, 2011, the learned counsel for the plaintiffs again took adjournment on the ground that he was not getting instructions from the plaintiffs. On 21st September, 2011, the learned counsel for the plaintiffs stated that he had been contacted only a day earlier and since the

plaintiffs were interested in prosecuting the suit, he would file an appropriate application within two weeks, seeking permission to lead evidence of the plaintiffs. No such application was, however, filed. When the matter was taken up on 1st November, 2011, adjournment was sought on the ground that the mother of Mr Arun Vohar, counsel for the plaintiffs, was not well. When the matter was taken up on 09th November, 2011, again adjournment was sought on the same ground. Since no application for seeking yet another opportunity to lead evidence of the plaintiffs has been filed, the evidence of the plaintiffs stands closed in terms of the order dated 24th January, 2011.

2. This is a suit for recovery of Rs 32,17,363/-. The case of the plaintiffs is that plaintiff No. 1 is the owner of one half of basement of the aforesaid property, plaintiff No. 2 is the owner of one half of the basement of the aforesaid property, whereas plaintiff No. 3 owns the remaining half portion of the basement. The plaintiffs let out the ground floor and basement to defendant No. 2 for a period of two years, commencing from 1st July, 2001 and ending on 30th June, 2003. The rent was fixed at Rs 36,000/- for the ground floor and Rs 9,500/- each for two half portions of

the basement floor, thereby making a total rent of Rs 55,000/- per month in respect of the ground floor as well as the basement. On expiry of the aforesaid lease agreements, the plaintiffs entered into a fresh lease agreements dated 26th December, 2003 with defendant No. 1 Preeti Chandra. The tenure of those fresh agreements was from 1st July, 2003 to 30th June, 2004. It is alleged that the rent agreed between the plaintiffs and defendant No. 1 was Rs 32,500/- per month for the ground floor and Rs 16,250/- per month each for the two portions of the basement floor, thereby making a total rent of Rs 65,000/- per month. The case of the plaintiffs is that defendant No. 1 failed to vacate the tenancy premises on 30th June, 2004 and the defendants continued to stay there till September, 2004 when the possession was handed over to them on 29th September, 2004. The case of the plaintiffs is that the tenancy premises were extensively damaged by the defendants during the period of tenancy and huge expenditure is required to restore the premises to their original condition. This is also the case of the plaintiffs that the market rent, prevailing in the locality was Rs 80,000/- for the ground floor and Rs 30,000/- each of the two portions of the basement floor,

thereby making a total rent of Rs 1,40,000/- per month for the premises which the defendants kept in unauthorized condition till 29th September, 2004. The plaintiffs have accordingly claimed a sum of Rs 4,20,000/- towards damages for the use and occupation from July, 2004 to September, 2004 after deducting a sum of Rs 3,00,000/- which was already lying with them. Plaintiffs have also claimed a sum of Rs 11, 20,000/- towards damages, alleged to have been caused to the premises, Rs 27,090/- towards unpaid electricity bills and Rs 78,075/- towards income-tax deducted at source for which TDS certificates were not issued by the defendants. Rs 11,20,000/- for the time of about 8 months, which is required for restoring the premises to its original condition. Rs 18,65,000/- towards the estimated cost for repair of the damages, caused to the premises, Rs 1500/- towards professional fee for the architect and Rs 5000/- towards expenses of the photographs taken by the plaintiffs, thereby making a total sum of Rs 32,17,363/-.

3. The suit has been contested by the defendants. They have denied having caused any damage to the tenancy premises and have claimed that they have paid all the dues

while vacating the tenancy premises along with the expenses which the plaintiffs sought for the necessary repair work. According to them, only few minor repairs were required and there was no damage as such to the tenancy premises when it was vacated by them. Regarding electricity bills, it is alleged that though the same were not supplied to them by the plaintiff, they procured duplicate bills and paid the entire amount till February, 2005, which was beyond their stay in the tenancy premises. The defendants have claimed that there was a mutual agreement and understanding between the parties that they could continue as tenant for 2-3 months for 1st July, 2004 and therefore, there was no question of paying any mesne profit to the plaintiff. According to the defendants, in fact, they paid an additional sum of Rs 1,05,000/- to the plaintiffs which they are entitled to recover from them.

4. The following issues were framed on the pleadings of the parties:

1. Whether any damage to the suit property was caused by the defendants during the period they remain tenants in the said property and if so, what is the extent of such damages? OPP

2. Whether the plaintiffs are entitled to recovery of the suit amount from the defendants? OPP

3. Whether the plaintiffs are entitled to any interest and if so, at what rate, on what amount and for which period? OPP

4. Relief.

Issue No. 1

5. The onus of proving this issue was on the plaintiff. Since no evidence has been led by the plaintiffs, the issue is decided against them.

Issue No. 2

6. The plaintiffs have not led any evidence to prove that they are entitled to recover any amount from the defendants. As regards TDS certificates, the learned counsel for the defendants has drawn my attention to the order dated 18th November, 2005, wherein it was recorded that the defendants had handed over three original TDS certificates to the learned counsel for the plaintiffs. The issue is decided against the plaintiffs and in favour of the defendants.

Issues No. 3 and 4

7. Since no evidence has been led by the plaintiffs to

prove that any damages were caused by the defendants to the tenancy premises, they are not entitled to any amount for restoration of the premises to its original condition or towards damages for period of 8 months which the plaintiffs claim are required to restore the premises to its original condition. The plaintiffs have also failed to prove any dues of electricity still payable by the defendants. The plaintiffs have not led any evidence to prove that market rent prevalent in the locality, during the period of alleged overstay by the defendants was more than the agreed rent. They have also failed to substantiate their claim of professional fee of architect and expenses for the photograph alleged to have been taken by them. The issues are decided against the plaintiffs and in favour of the defendants.

ORDER

In view of my findings on the issues, the suit is dismissed, without any order as to costs.

Decree sheet be drawn accordingly.

(V.K. JAIN)
JUDGE

NOVEMBER 24, 2011
BG