

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

% *Date of Judgment: 18.04.2011*

+ **RSA No.233/2005**

M.B.KHAN Appellant
Through: Ms.Tameem Hashmi, Advocate.

Versus

A & U TIBIA COLLEGE Respondent.
Through: Ms.Sonia Sharma, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 09.5.2005 which has endorsed the finding of the trial judge dated 21.02.2004 whereby the suit filed by the plaintiff M.B.Khan seeking permanent injunction against the defendant i.e. Ayurvedic and Unani Tibia College Board (hereinafter referred to as 'the Board') restraining them from dispossessing the plaintiff from the suit property i.e. property bearing No.A-5/19, Tibia College Compound, Ajmal Khan Road, Karol Bagh, New Delhi had been dismissed.

2. Plaintiff was an employee of the defendant Board. Premises had been let out to the plaintiff; he was residing therein. In December 1984, the plaintiff jointed as a Reader in the Ajmal Khan Tibia College, Aligarh Muslim University with the permission of the Board; plaintiff was permitted lien on the present post. Plaintiff

continued to be a tenant of the defendant on the same terms and conditions. In 1985 the defendant started eviction proceedings against the plaintiff under the Public Premises (Eviction) of Unauthorised Occupants) Act, 1971. An eviction order was passed. It was stayed in appeal. Plaintiff had been directed to deposit ₹200/- per month as user charges. Plaintiff apprehends that the defendant would dispossess him without due process of law. Present suit was accordingly filed.

3. In the written statement, it was stated that this property had been declared to be dangerous; defendant has no right to continue in this property. Plaintiff had been allotted this premises only as an employee of the defendant and not as a tenant. Plaintiff is liable to vacate the suit property.

4. On the pleadings of the parties, the following two issues have been framed:

“(1) Whether the plaintiff is entitled to the relief of Permanent Injunction as prayed? OPP

(2) Whether the plaintiff has no cause of action to file the suit? OPD”

5. Oral and documentary evidence was led. The court noted that PW-1 had although appeared in the witness box to depose in his examination-in-chief yet in spite of opportunities he did not turn up for cross-examination; his evidence could not be read. Plaintiff had failed to prove his case. Plaintiff was accordingly not entitled to any relief. His suit was dismissed.

6. This finding of endorsed in first appeal. The first appellate court has also recorded that the appeal has been accompanied by an application under Section 5 of the Limitation Act. The Court had noted the lackadaisical and negligent attitude of the plaintiff

before the first court. Relevant finding of the first appellate court is as under:

“3. I have heard ld. counsel for the respondent Shri V.K. Kalra and given due consideration to the entire record, impugned judgment and facts and circumstances of the case.

4. It is evident from the trial court record that repeated opportunities were afforded to the plaintiff/appellant to lead evidence. On 14th January, 2004, the proxy counsel Shri Vishal Yadav appeared on behalf of the plaintiff and sought adjournment. The adjournment was strongly opposed and by noting the observation that plaintiff is highly to the cost of ₹1,000/- in addition to previous cost payable by the plaintiff. Matter was adjourned for 10th of February, 2004 by noting the last opportunity. On 10th of February, 2004 on first two calls, none appeared for the plaintiff and thereafter, Shri Rajesh Gupta, counsel appearing for the plaintiff and again sought adjournment. The adjournment was declined and evidence of the plaintiff was closed. The evidence of the defendant was also closed at the instance of defendant's counsel and matter was fixed for final arguments. After hearing the arguments, impugned judgment and decree was passed. The suit of the plaintiff/appellant was dismissed on the grounds that plaintiff has failed to lead evidence in order to prove his case and therefore, not entitled to the relief of injunction.

5 In view of aforesaid circumstances, it is clear that plaintiff has been negligent in pursuing his case before the trial court. It is totally contrary to the record that plaintiff appeared on 14th of January, 2004 and thereafter, was informed by his counsel that next date fixed by the court is 25th of March, 2004. In fact, the plaintiff did not appear before the trial court on 14th January, 2004 despite the case was taken up thrice on the said date. Had the plaintiff appeared before the trial court on 14th January, 2004, this should have been reflected in the order sheets. Also, it is difficult to believe that plaintiff attended the court and came back by noting the date from the counsel only and did not bother to inquire from the court about the next date of hearing. Even the counsel for the plaintiff appeared on 10.02.2004 and also on 21.02.2004 and also argued the matter. In view of presence of counsel for plaintiff on the dates fixed before the court, the question of wrong noting of date by plaintiff through counsel does not arise at all. In my opinion, the plaintiff is setting up false excuses to cover up the negligent act on his part. It is also not explained on the record as to why costs were not paid by the plaintiff despite specific orders in this respect. The ld. Civil Judge was justified in closing the evidence of the plaintiff and therefore, I find no justification to interfere with the order of closer of evidence so as to grant opportunity to the appellant to lead evidence. Further, considering the impugned judgment, I find no illegality or impunity in the same. The plaintiff failed to prove his case by leading evidence despite repeated opportunities and the dismissal of the case of the plaintiff was obvious conclusion. There was no occasion to pass judgment u/O 12 R. 6 CPC as no application was there in this regard nor the admission about the possession of the plaintiff automatically entitles him to the

relief of injunction without proving the cause of action. The Id. Civil Judge has rightly passed the judgment. I find no merit or substance in the appeal and the same is hereby dismissed. For the aforesaid reasons, I also do not find any merit in the application for condonation of delay and therefore the same is also dismissed. The appeal is barred by the law of limitation also.”

7. On behalf of the appellant, it has urged that the judgments of the two courts below are liable to be set aside and one opportunity should be granted to the plaintiff to adduce his evidence and to prove his case. Appellant/plaintiff is present in person in the court today. He has admitted before this Court that he has been allotted this accommodation only in his capacity of a Reader of the defendant Board. He has also admitted that his services were terminated in 1985. The appellant has no answer as to in what capacity he continues to occupy the premises. It has been urged that the attitude of the defendant Board is discriminatory qua the defendant as other employees of the defendant Board are residing in the quarters. There is no whisper of this in the entire body of the appeal. This appears to be a one more but ditch effort on the part of the appellant to extend his stay in the present accommodation of which he is an illegal and unauthorized occupant.

8. No substantial question of law has arisen. No interference is called for in the impugned judgment. Appeal as also pending application is dismissed in limine.

INDERMEET KAUR, J.

APRIL 18, 2011
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