

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

% Judgment delivered on: 16.03.2011

+ **RSA No.67/2006**

SHRI A.K. JAIN Appellant
Through: Mr. R.K.Jain, Advocate.

Versus

M/S SHRI RAM SCIENTIFIC AND INDUSTRIAL RESEARCH
FOUNDANTION Respondent
Through: None.

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 23.07.2005 which had endorsed the findings of the trial Judge dated 14.03.2005 whereby the suit filed by the plaintiff M/s Shri Ram Scientific and Industrial Research Foundation (hereinafter referred to as 'SRSIR') seeking recovery of a sum of Rs.90,000/- as penal license fee/damages from 20.07.2000 to 25.01.2003 @ Rs.3,000/- per month totaling Rs.90,000/- had been decreed in favour of the plaintiff along with interest @ 9% per annum. This judgment is now impugned before me.

2 The defendant Mr. A.K. Jain was employed as a Secretary of the plaintiff society w.e.f. 16.11.1961. The plaintiff society is the owner of flat bearing No. JN-11, Shriram Building, Jawahar Nagar, Delhi. The society had provided a type IV accommodation to the

defendant vide his allotment letter dated 04.11.1970. After having read the rules and conditions of allotment, the defendant had taken possession of the premises on 13.11.1970. The defendant was dismissed from the service w.e.f. 09.07.1986. As per the conditions of the house allotment and the said rules which forms an integral part of his license, an employee who is dismissed or removed; the allotment of accommodation would also stand terminated with immediate effect and the allottee would be bound to hand over the vacant possession of the suit land immediately, failing which penal license fee would be charged as per the prevailing rate of rent of similar premises. Contention of the plaintiff is that after the dismissal of the service of the defendant, he had failed to vacate the suit property. Vide circular dated 07.12.1988, the rate of rent of various types of accommodation of the plaintiff had been circulated. They were revised on 22.02.1994 and thereafter again on 12.05.1999. The defendant was bound by these circulars. The defendant had vacated the suit property only on 25.01.2003 in eviction proceedings which had been filed by the petitioner. Liability to pay penal license fee from 20.07.2000 to 25.01.2003 was claimed.

3 In the written statement, it was stated that the rate of rent was fixed at Rs.91/- per month excluding electricity and water charges which was Rs.50/- per month. Since the defendant had been defined as a tenant, rate exceeding the standard rent could not be charged; standard rent was Rs.91/- per month.

4 On the pleadings of the parties four issues were framed. PW-3 was the secretary of the society. He had proved the documentary

evidence which include the allotment letter dated 04.11.1970 Ex. PW-1/4; the house allotment rules were proved as Ex. PW-1/5; dismissal order dated 09.07.1986 of the defendant was proved as Ex. PW-1/6. Various circulars circulating the rate of rent prevailing and applicable to the plaintiff dated 07.12.1988, 12.05.1999, 22.02.1994 and 01.06.2003 had been proved as Ex. PW-1/7 to Ex. PW-1/10. Trial Judge on the basis of oral and documentary evidence returned a fact finding that the defendant had been allotted the suit premises only in lieu of his employment; he was bound by the terms and conditions of his employment; as per the revised rates i.e. circular Ex. PW-1/10 legally recoverable dues from the defendant would be @ Rs.3,000/- per month and for the period from 20.07.2000 to 25.01.2003 Rs.90,000/- became due and payable. Decree in the aforesaid sum along with interest @ 9% per annum was accordingly awarded.

5 The impugned judgment had reaffirmed this finding. Finding returned is as follows:-

“9 The relationship between the parties by virtue of appointment letter of the appellant/Defendant with the Respondent/plaintiff was described in the document Ex. PW-1/4 which is license for allotment of accommodation. However, the controversy whether the relationship between the parties was of Licensor and Licensee or Landlord and Tenant is not relevant here as the Respondent/plaintiff had chosen to admit the appellant/Defendant as tenant and has filed eviction petition and succeeded in getting eviction order from the court of Additional Rent Control of Delhi and thereafter possession of the suit premises was obtained in execution of eviction proceedings on 25.01.2003. The sections 4, 6 & 9 of the Act having been declared ultravires the constitution in Raghunandan Sharan’ case Case (Supra) the appellant/plaintiff cannot take benefit of these provisions in the present appeal. The terms and conditions of relationship between the parties with regard to suit premises are described in the allotment letter Ex. PW-1/4 dated 04.11.1970 applicable to the suit premises and the parties. The license fee for four room Jawahar Nagar as per House Allotment Rule w.e.f. 01.06.2003 shown in circular dated 01.06.2003 Ex. PW-

1/10 is fixed Rs.7,500/-. Keeping in view the nature of accommodation and the fact that the appellant/Defendant had been dismissed from services but had retained the suit premises since 1976 till he was evicted in execution of eviction order passed by Addl. Rent Control Act, the amount of Rs.3,000/- a use and occupation charges claimed by the respondent/plaintiff awarded by ld. Trial Court seems reasonable and justified.

10 There is another view also for the period of post eviction order passed by learned Rent Controller, Delhi. It is not disputed that eviction order was passed by ld. Additional Rent Controller against appellant/Defendant on 15.04.2002, therefore by virtue of section 2(1)(a), the appellant/Defendant became in an unlawful occupation of suit premises w.e.f. 16.04.2002 till his eviction in the execution proceedings i.e. on 25.01.2003/ Therefore, for the period w.e.f. 16.04.2002 till 25.01.2003, the claim of Rs.3,000/- per month even otherwise is justified as unlawful occupation charges/damages for this period keeping in view the nature of suit premises, its situation and number of rooms in it, i.e. it is the 4 room flat, therefore for the period 16.4.2002 till 25.1.2003, the Respondent/plaintiff is entitled to the damages claimed on this ground also. Therefore ld. Trial court correctly decided issue No. 1 against appellant/Defendant and in favour of the Respondent/plaintiff. As regards issue No. 2 the appellant/Defendant having retained the suit premises for quite a long period despite his dismissal from his service though he was allotted suit premises by virtue of his employment with Respondent/plaintiff, the award of interest @ 9 per annum by ld. Trial Court is a reasonable exercise of the discretion for the pendente lite and future period. The issue No. 2 is therefore also correctly decided by the ld. Trial Court. The plaint is signed and verified by Sh. M.C. Gupta who is secretary of the Respondent/plaintiff, therefore issue No. 3 is also correctly decided by ld. Trial Court.

11. In view of the above ld. Trial Court correctly appreciated the facts and decided all the issues correctly. There is no merit in the appeal. The appeal is dismissed. The parties are left to bear their own cost. The decree be prepared, the bank guarantee furnished by the appellant/plaintiff be released to Respondent/Defendant for which direction be issued to the Chief Manager/ Branch Manager of the concerned bank for release of amount of the bank guarantee to the Respondent/plaintiff. The trial court record be returned alongwith the copy of the appeal. File the consigned to the record room."

6 This is a second appeal. It has been admitted and on 28.01.2010, the following substantial question of law has been formulated:-

“Whether a tenant who had been in the employment of the respondent is still liable to pay penal charges after the cessation of services and before vacation order is passed?”

7 On behalf of the appellant, it has been urged that there is no liability on the part of the appellant to pay the penal charges @ Rs.3,000/- per month; he was not governed by the allotment rules and the rules were not in operation when he was dismissed from service. Allotment was not a part of his employment; there is a perversity in the findings of the courts below. It is liable to be set aside. Learned counsel for the appellant has relied upon the judgment reported in (1976) 4 SCC 855 Damadilal & Others Vs. Parashram & Others to support his submission that even after the termination of his tenancy, the defendant continued to remain a statutory tenant and he was not bound to pay any penal charges. Reliance has also been placed in AIR 1977 SC 2262 Chander Kali Vs. Jagdish Singh to support this same submission; it pointed out that after the termination of his contractual tenancy, appellant had not become an unauthorized occupant; he comes under the category of a statutory tenant.

8 None has appeared for the respondent.

9 The submissions of learned counsel for the appellant are devoid of any force. Document Ex. PW-1/4 which was the license for allotment of accommodation to the defendant clearly shows that the aforementioned suit premises had been given to the defendant only in lieu of his employment. Admittedly the defendant had been dismissed from his service. Even after his dismissal, he was retaining the suit premises. Suit premises were vacated only on 25.01.2003. Parties were governed by the terms of their allotment

which were contained in Ex. PW-1/4. Terms and conditions governing the allotment were detailed in Ex. PW-1/4. The acceptance of allotment was made by the defendant after having read the allotment rules and conditions of allotment. This document was signed by the defendant. As per circular Ex. PW-1/10 license fee for a four room set in Jawahar Nagar was Rs.7,500/-. The defendant was in occupation of type IV flat at Jawahar Nagar, Delhi. In terms thereof, if after two months, the defendant over-stayed, he would be liable to pay the market rate of rent. The notified house allotment rules is an admitted document. Clause 6 postulates that if the house is not vacated by the allottee within two months, institute will charge penal license fee as may be decided and legal proceedings for eviction of the allottee shall be instituted. The Court had fairly and judicially assessed Rs.3,000/- per month as the license fee payable by him. The plaintiff was clearly entitled to this aforementioned amount. Substantial question of law is answered accordingly. There is no merit in this appeal. Dismissed.

(INDERMEET KAUR)
JUDGE

MARCH 16, 2011
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