

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

% *Judgment reserved on : 27.05.2011*
Judgment delivered on: 31.05.2011

+ **R.S.A.No. 144/2008 & CM No. 8861/2008**

MOHAN LAL BAKOLIA. Appellant
Through: Mr. S.C. Arora, Advocate.

Versus

BISHAN PAWAR Respondent
Through: Mr. Sunil Mittal & Mr. Kshitij
Mittal, Advocates.

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.

1 This appeal has impugned the judgment and decree dated 25.03.2008 which has reversed the finding of the trial Judge dated 16.10.2007. Vide judgment and decree dated 16.10.2007 the suit filed by the plaintiff Mohan Lal Bakolia seeking recovery of ₹50,000/- against the defendant had been decreed along with interest @ 6% per annum. The impugned judgment had reversed this finding; suit stood dismissed.

2 The plaintiff is a resident of house No. 16/1291-92, Padam Singh Road, Bapa Nagar, Karol Bagh, New Delhi. This house is in the name of his wife; she had given a shop to the defendant on rent; the plaintiff was collecting rent from the defendant on behalf of his wife upto 30.06.1992; thereafter the defendant stopped paying the rent. It was agreed between the parties that the defendant will handover the suit shop by 10.04.1997 and the plaintiff will pay ₹3,50,000/-; this agreement dated 13.09.1996 was reduced into writing and a sum of ₹50,000/- was paid to the defendant. The defendant did not abide by the agreement; he instead filed a suit for permanent injunction against the plaintiff. The payment of ₹50,000/- was made by the plaintiff on 13.09.1996 for vacating the shop which had to be vacated by 10.04.1997; present suit filed on 17.01.2000 is within limitation.

3 In the written statement the defence of limitation was taken. It was stated that the defendant was inducted as a tenant; it was denied that the defendant had stopped paying rent. The agreement referred to by the plaintiff was also denied; it was denied that the plaintiff had paid any money to the defendant.

4 On the pleadings of the parties, the following four issues were framed:-

- “1. Whether suit does not disclose any cause of action in favour of the plaintiff?
OPD
2. Whether the plaintiff is entitled for decree as prayed for? OPP.
3. Whether the suit is barred by limitation? OPD
4. Relief.”

5 The case of the plaintiff was hinged upon the document dated 13.09.1996 by virtue of which the defendant had agreed to vacate the premises by 10.04.1997; in lieu of this, the plaintiff had paid a sum of ₹50,000/- to the defendant. The plaintiff had also proved on record Ex. DW-1/X1 which was the judgment in the suit filed by the defendant against the plaintiff. It had been held that the wife of the plaintiff and the defendant are landlord-tenants; there is no relationship of landlord-tenant between the plaintiff and the defendant; however in view of the fact that the plaintiff had paid this amount to the defendant (in terms of the aforementioned agreement) the plaintiff was held entitled to the decree of the aforementioned amount.

6 The impugned judgment had reversed this finding. The first appellate court was of the view that the finding of the trial Judge holding that the agreement dated 13.09.1996 is void and at the same time allowing relief under the said document is an illegality. The court was also of the view that the suit is time barred. Suit

stood dismissed.

7 This is a second appeal. Although the formal order of admission had not been passed but on 19.07.2010, the following substantial questions of law were formulated:-

“1. Whether the appellant/plaintiff is entitled to the refund of the amount of Rs.50,000/- even if the agreement dated 13.9.1996 executed between the parties was void/illegal ?

2. Whether mark A i.e. the agreement dated 13.9.1996 can be relied upon by the appellant/plaintiff for the purpose of limitation?”

8 On behalf of the appellant, it has been urged that the finding in the impugned judgment is perverse; the testimony of PW-1 had proved the agreement Ex.PW-1/2 dated 13.09.1996 which had remained unchallenged; no cross-examination had been effected of this witness; it had been established that a sum of ₹50,000/- had been paid by the plaintiff to the defendant and in terms of Section 65 of the Indian Contract Act, 1872 such a payment; even presuming that the agreement between the parties was a void agreement; is liable to be refunded back to the plaintiff. Learned counsel for the appellant has placed reliance upon the judgment reported in 80 (1999) DLT 179 Sita Holiday Resorts Limited Vs. M/s Mahanlal Harbans Lal Bhayana to support his submission that a party who had received an advantage under a void agreement is

liable to pay back the amount. For the same proposition reliance has also been placed upon D.L.F. United Private Ltd. Vs. Pt. Prem Raj & others.

9 It is pointed out that the amount paid by the plaintiff to the defendant was in the nature of a deposit; under Article 22, the cause of action to claim a deposit arises only when the demand for return of the deposit is made; suit was clearly within limitation. For this proposition, reliance has been placed upon AIR 1971 MP 243 Brij Mohandas Gokulchand Vs. Narsinghdas Manoharlal & others and 1971 (1) SCC 477 Ram Janki Devi and Another Vs. M/s Juggilal Kamalapati.

10 Arguments have been countered. It is pointed out that the agreement which is illegal per se which in this case is Ex.PW-1/2; having been entered into for an unlawful purpose, is void under Section 23 of the Indian Contract Act and this has rightly been noted in the impugned judgment. Such a void agreement cannot be looked into for any purpose. Payment of ₹50,000/- has not been proved by the plaintiff; he has not led any independent evidence apart from Ex.PW-1/2; moreover the date of 10.04.1997 mentioned in Ex.PW-1/2 also cannot be adverted to as the agreement Ex.PW-1/2 is void per se.

11 Record shows that the plaintiff has filed the present suit for recovery of a sum of ₹50,000/- which as per his averment had been paid in terms of an agreement dated 13.09.1996 whereby it had been agreed that the defendant will hand over the possession of the suit shop by 10.04.1997; he not having vacated the property, the present suit was filed for recovery of the said amount. Defence of the defendant that he had not taken this shop on rent from the wife of the plaintiff; his defence was that he had been inducted into the suit property by the plaintiff himself; he denied the agreement dated 13.09.1996 or that he had agreed to vacate the suit property therein.

12 Trial Judge had framed the abovementioned four issues. Agreement dated 13.09.1996 has been proved through the version of PW-1. Said document has been proved as Ex.PW-1/2. This agreement recites that a sum of ₹50,000/- has been paid by the plaintiff to the defendant as an advance out of a total amount of ₹3,50,000/- and the defendant has promised to vacate the suit shop by 10.04.1997; there was no relationship of landlord-tenant between the plaintiff and the defendant; it was between the wife of the plaintiff and the defendant and this is clear from Ex. DW-1/X1 [judgment of the Civil Judge wherein it was held that

Dayawanti (wife of the plaintiff) is the landlord of Bishan Pawar (defendant herein)].

13 Section 24 of the Indian Contract Act reads as under:-

“24. Agreements void, if consideration and object unlawful in part.- If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.”

14 Section 24 states that an agreement is void if the consideration and its object is unlawful in part.

15 Section 5 (3) of the Delhi Rent Control Act (DRCA) reads as under:-

“5. Unlawful charges not to be claimed or received.- (1) Subject to the provisions of this Act, no person shall claim or receive any rent in excess of the standard rent, notwithstanding any agreement to the contrary

(2)xxxxxxxxxxxxxxxxxxxx

(3) It shall not be lawful for the tenant or any other person acting or purporting to act on behalf of the tenant or a sub-tenant to claim or receive any payment in consideration of the relinquishment, transfer or assignment of his tenancy or sub-tenancy, as the case may be, of any premises.”

16 Under this provision a tenant or any other person claiming under him is not legally entitled to receive any payment in consideration of an assignment, transfer or relinquishment of the premises; such a payment is unlawful.

17 In the facts of the present case, the agreement Ex.PW-1/2 admittedly being for an unlawful and illegal purpose i.e. for an

unlawful object and an unlawful consideration is void under Section 24.

18 The question that now has to be answered is as to what is the effect of such a void agreement.

19 Section 65 of the said Act is relevant. It reads as under:-

“65. Obligation of person who has received advantage under void agreement, or contract that becomes void.- When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.”

20 This provision postulates a position that when a contract has been discovered to be void or becomes void, person who has received advantage under the said void contract is bound to restore the benefit or advantage received under this agreement or make compensation for it to the person from whom he has received it.

21 Section 65 is based on the principle of an unjust enrichment and ensures refund or return of such an amount; Section 65 in fact proceeds on the basis of there being an agreement or a contract between competent parties; it has no application to a case where there never was and never could have been any contract. Section 65 per se applies to a situation wherein

agreement is discovered to be void or the contract become void subsequently; the unjust and enrichment received in terms thereof is liable to be refunded back.

22 In this case the contract on the day when it was contracted i.e. on 13.09.1996 itself was void, application of Section 65 of the Indian Contract Act would not be attracted. The latin maxim “*ex turpi causa non oritur actio*” is based on the principle that a claimant will be unable to pursue a cause of action if it arises in connection with his own illegal act. Thus, if money has been paid or goods have been delivered in pursuance of such an illegal contract which is void for illegality as opposed to being merely nugatory, this maxim is applicable; in such a situation the money received under such an illegal transaction is not within the domain of Section 65 of the Contract Act. It is also not the case of the plaintiff the he was either induced, duped or coerced to enter into this contract; he had entered into this contract which was illegal from its very inception; it was against the law; Section 5(3) of the DRCA prohibits such a transaction. Money paid under such an illegal contract which is void ab initio could not be recovered; court cannot become a party for recovery of such an illegal amount.

23 Question of limitation is also answered against the appellant.
RSA No.144/2008

The covenant contained in the contract that the premises would be vacated by the defendant on 10.04.1997 on the plaintiff's paying ₹3,50,000/- out of which ₹50,000/- has been paid as an advance was the substratum of the contract; contention of the appellant that 10.04.1997 would be the date for the purposes of limitation is misconstrued; agreement itself being void, this term of the vacation of the suit property by 10.04.1997, which was its substratum could not be looked into. Even presuming that the testimony of PW-1 on the factum of payment of ₹50,000/- on 13.09.1996 remained unchallenged; yet the suit filed more than three years after 13.09.1996 i.e. in January, 2000 is time barred. The judgment relied upon by learned counsel for the appellant reported in Sita Holiday Resorts Limited (Supra) and D.L.F. United Private Ltd. (Supra) are thus inapplicable. The judgment of Ram Janki Devi (Supra) and Brij Mohandas Gokulchand (Supra) are also not applicable; the payment of ₹50,000/- by no stretch of imagination can be termed as a 'deposit'.

24 Substantial questions of law are answered in favour of the respondent and against the appellant. There is no merit in this appeal. Appeal as also pending application are dismissed.

INDERMEET KAUR, J.

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