

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

**Date of decision: 22<sup>nd</sup> December, 2011**

**+ LPA No.768/2011**

**% PROF. RAM PRAKASH .....Appellant**

**Through: Appellant-in-person.**

**Versus**

**M/S BENGALI SWEET CENTRE .....Respondents**

**Through: Ms. Neha Jain, Adv. for Mr. Mohit  
Gupta, Adv.**

**CORAM :-**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**JUDGMENT**

**RAJIV SAHAI ENDLAW, J.**

1. In this intra court appeal, the appellant who appears in person impugns the order dated 26<sup>th</sup> August, 2011 of the learned Single Judge dismissing the application filed by the appellant in Contempt Case (Civil) No.789/2009 seeking release of the amounts deposited by the respondent in terms of order dated 6<sup>th</sup> August, 2009 as modified vide order dated 30<sup>th</sup> October, 2009 in CM (M) No.703/2009 preferred by the appellant.

2. Notice of the appeal was issued and we have heard the appellant in person and the counsel for the respondent.

3. The respondent was a tenant under the appellant in a portion of Premises No.B-48, South Extension Part-1, New Delhi-49 on the terms and conditions contained in registered Lease Deed dated 1<sup>st</sup> May, 2007. The said Lease Deed was for a term from 1<sup>st</sup> August, 2007 to 31<sup>st</sup> July, 2010, on rent of ₹30,000/- per month from 1<sup>st</sup> August, 2007 to 31<sup>st</sup> July, 2009 and the rent of ₹34,500/- per month from 1<sup>st</sup> August, 2009 to 31<sup>st</sup> July, 2010.

4. The appellant in or about January, 2009 filed a suit *inter alia* for (i) recovery of rent from October, 2008 to January, 2009 amounting to ₹1,20,000/- (ii) recovery of interest thereon of ₹4,500/- (iii) compensation/damages of ₹20,000/-, besides costs etc. The respondent filed a counter claim in the said suit contending *inter alia* that the respondent had vide its letter dated 25<sup>th</sup> June, 2008 intimated to the appellant of its intention to vacate the premises on 31<sup>st</sup> July, 2008; that the appellant however refused to take possession of the premises; that on 24<sup>th</sup> August, 2008 it was orally mutually agreed that the respondent shall not vacate the premises and

continue to occupy the same till November, 2008 and vacate the premises on 30<sup>th</sup> November, 2008; that it was further orally agreed that the appellant shall adjust the security deposit of ₹90,000/- in monthly rent for the months of September, 2008 to November, 2008; that the appellant however did not take possession on 30<sup>th</sup> November, 2008 also; that the respondent was as such not liable to pay any rent or other charges with respect to the premises from 1<sup>st</sup> December, 2008; however owing to the appellant having not taken possession, the respondent has had to incur expenses of securing the premises and towards electricity and water charges thereof; the respondent thus made a counter claim for recovery of ₹1,72,642/- from the appellant.

5. The appellant, in the aforesaid suit, filed an application for payment of rent from October, 2008 in terms of the Lease Deed. The said application came to be dismissed by the Court of the Civil Judge before whom the suit and the counter claim aforesaid were pending.

6. Aggrieved from the aforesaid order of the Civil Judge, CM (M) No.703/2009 (supra) was preferred by the appellant in this Court.

7. This Court vide order dated 6<sup>th</sup> August, 2009 as modified on 30<sup>th</sup> October, 2009 in CM (M) No.703/2009, observing that the plea of the respondent of oral agreement in contravention of the registered Lease Deed (as per which the security deposit was to be refunded only at the time of vacation of the premises by the respondent) and further observing that it was highly unlikely that in view of other claims of the appellant against the respondent, the appellant would have agreed to adjustment of the security deposit, and in view of the fact that the possession of the premises was got delivered before this Court on 6<sup>th</sup> August, 2009, directed the respondent to deposit in the Court within one month an amount calculated at the rate of ₹30,000/- per month, from October, 2008 till 6<sup>th</sup> August, 2009. The said amount was further directed to be kept in a fixed deposit and to abide by the final decision in the suit.

8. The respondent preferred Special Leave Petition No.30950-30953/2009 to the Apex Court against the orders dated 6<sup>th</sup> August, 2009/30<sup>th</sup> October, 2009 in CM (M) No.703/2009 (supra). The Special Leave Petition was dismissed vide order dated 14<sup>th</sup> December, 2009; the time for

compliance of the order dated 6<sup>th</sup> August, 2009 was however extended by two weeks without prejudice to the rights of either parties.

9. We are informed that in pursuance thereto, a sum of ₹3,06,000/- was deposited by the respondent in the Court of the Civil Judge in December, 2009.

10. At this stage, it may be mentioned that upon the respondent not complying with the order dated 6<sup>th</sup> August, 2009 (supra), the appellant filed Contempt Case (Civil) No.789/2009 (supra). The same was however dismissed *in limine* on 12<sup>th</sup> October, 2009 observing that since the order dated 6<sup>th</sup> August, 2009 was in the nature of direction under Order XVA of the CPC, the remedy of the appellant was by way of execution and not by way of contempt and giving liberty to the appellant to take appropriate proceedings.

11. The appellant thereafter applied for execution of the order dated 6<sup>th</sup> August, 2009/30<sup>th</sup> October, 2009 and it was in fact in pursuance to the said execution that the amount came to be deposited as aforesaid by the

respondent. The Civil Judge however vide order dated 28<sup>th</sup> May, 2011 refused to release the amount so deposited by the respondent to the appellant on the ground that this Court had in CM (M) (supra) directed the amount to be deposited in the Court and subject to decision of the suit and thus the appellant was not entitled to release of the amount till the decision of the suit. Aggrieved therefrom the respondent preferred CM (M) 739/2011 to this Court. The same was however dismissed on 7<sup>th</sup> July, 2011, again owing to the order dated 6<sup>th</sup> August, 2009 (supra) directing the amount to be deposited in the Court and holding that the appellant was not entitled to release thereof till the decision of the suit.

12. It was thereafter that the appellant filed an application being CM No.15956/2011 in the disposed of Contempt Case (Civil) No.789/2009 again seeking release of the amount. The said application was also dismissed by the learned Single Judge vide order dated 26<sup>th</sup> August, 2011, again in view of the direction in the order dated 6<sup>th</sup> August, 2009 (supra) being for deposit of the amount in the Court and there being no direction for release thereof to the appellant.

13. It is the aforesaid order which is now under challenge before us.

14. Needless to state that the aforesaid multiple proceedings are attributable partly to the fact that the appellant who is 82 years of age, is pursuing the litigation in person.

15. The only argument of the counsel for the respondent is that this appeal is not maintainable. It is contended that no intra Court appeal lies against the dismissal of a contempt petition and would not lie against the dismissal of an application moved in a dismissed contempt petition.

16. On the contrary the appellant urges that inspite of the clear provision of the registered Lease Deed, he is without rent provided in the Lease Deed till the admitted date of vacation of premises before the Court. He also contends that notwithstanding the direction of this Court in order dated 6<sup>th</sup> August, 2009 (supra), the amount deposited by the respondent in the Court of the Civil Judge was not kept in a fixed deposit causing further loss to him. He thus seeks a direction for the respondent to also compensate him for interest etc.

17. Though there is merit in the contention of the counsel for the respondent as to the maintainability of this appeal but we have wondered whether we, as dispensers of justice to the consumers thereof, find our hands to be so tied so as to convert into reality what was said by Charles Dickens in a work of fiction Oliver Twist that “law is a ass”. We are constrained to observe that if, we, owing to the shackles aforesaid do not grant the relief if found to be due to the appellant, would be doing disservice rather than service. We are also forced to wonder whether we should always be guided by logic when human behavior and transactions on which we are to adjudicate and do justice are not always logical and are irrational and misguided. When the action of a party/litigant before the Court is found to be irrational, illogical and injurious to the others, to not come to the rescue of a litigant in such a situation would not be rendering justice for which the Courts have been set up. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. It is the duty of the Court, as a policy, to set the wrong right and not allow the perpetuation of the wrongdoing.

18. The Supreme Court in *M.S. Grewal v. Deep Chand Sood* (2001) 8 SCC 151 noticed that the judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system – affectation of the people has been taken note of rather seriously and the judicial concern thus stands on a footing to provide relief to an individual when needed. It was held that Law Courts will lose their efficacy if they cannot possibly respond to the needs of the society – technicalities there might be many but the justice oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice. Much earlier, Krishna Iyer, J. in *Busching Schmitz Private Ltd. v. P.T. Menghani* (1977) 2 SCC 835 held that the principle of unconscionability clothes the Court with the power to prevent its process being rendered a parody. Recently also, in *Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group* (2011) 3 SCC 363, the Supreme Court observed that justice is only blind or blindfolded to the extent necessary to hold its scales evenly; it is not, and must never be allowed, to become blind to the reality of the situation, lamentable though

that situation may be.

19. This Court in the order dated 6<sup>th</sup> August, 2009/30<sup>th</sup> October, 2009 was concerned only with an interim direction as to payment and not with the release thereof; the matter was at large before the learned Civil Judge. The said direction was made owing to the unambiguous provision of the registered Lease Deed. The emphasis at that time was to make the respondent cough up the money.

20. We have today enquired from the counsel for the respondent whether the respondent has any order of attachment before judgment in the counter claim preferred against the appellant. The counsel for the respondent has fairly stated that no such order has been sought. It is not in dispute that the possession of the premises was delivered to the appellant before the Court only on 6<sup>th</sup> August, 2009. We fail to see as to why the appellant who had taken care to register the transaction of lease should not be entitled to the benefit thereof and/or to the rent thereunder till the date of actual vacation of the premises. The counter claim of the respondent against the appellant for having not taken possession of the premises earlier etc. is yet to established.

This Court has in order dated 6<sup>th</sup> August, 2009 (supra) already observed that the said plea of the respondent being contrary to the registered document, the onus on the respondent to prove the same is heavy. If the respondent succeeds in discharging the said onus and becomes liable to recovery of any money from the appellant, it can always recover the same. However for the said reason we cannot deprive the appellant of the monies due to him under the registered Lease Deed and which were got deposited in the Court. We may also notice that Order XVA was incorporated in the Civil Procedure Code in Delhi for doing this kind of justice only and it was for this reason only that the contempt petition filed by the appellant was dismissed.

21. We therefore find the opposition by the respondent before the Court of the Civil Judge to the release of the said amount to the appellant to be irrational and injurious to the appellant and unconscionable and consider it our imperative duty to direct release of the said amount to the appellant.

22. As far as the grievance of the appellant of the amount being not kept in fixed deposit as directed is concerned, the appellant is given liberty to agitate the same before the Court which was directed to keep the amount in a

fixed deposit. Further, in these proceedings we cannot adjudicate the claims of the appellant against the respondent for further interest etc. The appellant shall have liberty to agitate the same before the appropriate fora / Court.

23. The appeal is therefore allowed, the Court of the Civil Judge, Delhi before whom the amount aforesaid were deposited, to release the amount together with interest if any accrued thereon to the appellant forthwith.

24. In the facts aforesaid, no order as to costs.

**RAJIV SAHAI ENDLAW, J**

**ACTING CHIEF JUSTICE**

**DECEMBER 22, 2011**

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