

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

+ **RFA No. 387/2002**

% **24th February, 2012**

M/S RAM BAKSH DAYAL CHAND Appellant
Through : Mr. Randhir Jain and Mr. Dhananjai
Jain, Advocates.

versus

UOI & ANR Respondents
Through : None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J. (ORAL)

C.M. No. 21490/2011 (restoration)

For the reasons stated in this application, the application is allowed
and the present appeal is restored to its original number.

C.M. stands disposed of.

RFA No. 387/2002

1. This Regular First Appeal (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) impugns the judgment of the trial Court dated 6.2.2002 dismissing the suit for recovery of Rs.2,18,046/- filed by the

appellant/plaintiff on the allegation that when the appellant was illegally evicted by the respondent/Union of India (UOI), Ministry of Defence, his goods were damaged and, therefore, the entitlement to the claim for damages.

2. The facts as pleaded by the appellant in the plaint are that the appellant was given a plot for storage of goods behind the bungalow No.T-2, Officers Enclave, Dhaula Kuan, New Delhi. It was pleaded that the appellant/plaintiff has been occupying the piece of land for the performance of various contracts awarded to it by the respondents since the year 1986. It was then pleaded that on 19.8.1996 the officer-in-charge, Rajputana Rifles, Regimental Centre, along with various persons under his command, suddenly without any notice, whether verbal/oral or in writing, started dismantling and destroying the temporary stores etc. It was pleaded that the acts were wrongful acts and this caused loss to the appellant/plaintiff and, therefore, a legal notice dated 22.8.1996 was served claiming damages on account of excessive use of force and power. The subject suit was filed as the respondent/Union of India, Ministry of Defence did not pay the damages which the appellant/plaintiff claims to have suffered.

3. The respondents/defendants filed the written statement and pleaded

concealment of facts on behalf of the appellant/plaintiff. It was pleaded that the appellant/plaintiff had filed a suit No. 603/1993 in the Court of a Civil Judge, First Class, Tis Hazari Courts, Delhi for permanent injunction and no interim stay was granted and, thereafter, the appellant/plaintiff had filed a writ petition in the High Court. During the pendency of the proceedings in the writ petition at High Court an interim stay was granted which was, however, vacated on 19.8.1996. It was pleaded that, thereafter, the defendants/respondents went to the site and took over the possession without causing any alleged damage, as was pleaded by the appellant/plaintiff.

4. After the pleadings were complete, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to recover Rs.2,18,046/- with interest from the defendants as alleged? OPP
2. Whether the plaintiff has no cause of action to file the suit? OPD
3. Whether the plaintiff served the defendants with notice u/s 80 CPC? OPP
4. Whether the suit is time barred? OPD
5. Whether the plaint is signed, verified and instituted by a duly authorised person? OPP
6. Relief?”

5. The trial Court has given the relevant findings while dealing with

issue Nos. 1 and 2 from paras 10 to 13 of the impugned judgment, which read as under:-

“ISSUES No.1 & 2

10. PW1 Jagannath Arora has testified that a contract was awarded by MES to the plaintiff on 2.1.96. The acceptance letter is Ex.PW1/B/ By this letter, the tender of the plaintiff was accepted and the contract was allotted CA No. GE/C-4/1995-96. The contention of the plaintiff is that the execution of work under contract No. GE/C-4/1995-96 was still in progress when the demolition was carried out by the defendants on 19.8.96. The plaintiff has also produced Ex.PW1/A which is the photocopy of a “Land Rent Recovery Statement”. This document shows that an amount of ₹2/- was received as rent for the land behind T-2 building, Officers Enclave, Part-II, Dhola Kuan for the period 1996-97 for execution of work order No.8. DW1 Smt Ram has stated that work order No.8 was completed by the plaintiff on 31.07.96. He has further stated that after completion of work, the contractor was supposed to clear the land in terms of the contract. This statement of Sant Ram has not been challenged in cross-examination. Rather PW1 Jagannath Arora has himself not denied the suggestion that work order No. 8 had been executed in July, 1996. Therefore, it shall be presumed that work order No.8 had been executed on or before 21.7.96. My attention has been drawn to the statement of Sant Ram that work order No. 16 was completed on 22.08.96. Relying on this statement, learned counsel for plaintiff has contended that the work awarded under contract No. GE/C-4/1995-96 was still in progress on 19.08.96 and there could be no justification to evict the contractor on that date. There is, however, no evidence to indicate the exact location where work order No. 13, 14, 15, 16 were being executed. If the land behind Bunglo No.T-2, had been required for execution of work orders No.13-16, the receipt Ex.PW1/A would have made a mention of those work orders also. In any case, the issue is clinched by the order passed by the Hon’ble High Court on August 19, 1996. The Hon’ble High Court observed that the plaintiffs were not entitled to continue after expiry of the contract and with this observation the interim injunction order was vacated. After vacation of the interim stay order on 19.08.96, the plaintiffs could not have the cheek to say that they had any right to remain in possession of the land behind T-2 building or that the defendants were not within their rights to evict them. Therefore, I have no doubt that the dismantling of the temporary structures on the land in suit and eviction of the

plaintiffs was completely in order.

11. DW3 S.K. Singh had deposed that on 19.08.96 at about 12 a.m. he received an order to evict the unauthorised occupant. He further states that he informed the plaintiff regarding the steps he was going to take. He states that he reached the spot at 1.30 p.m. and asked the plaintiff to remove whatever he could remove within two hours. No suggestion has been made to DW2 S.K. Sinha that he did not warn the plaintiff before starting proceedings of eviction. No doubt, the army authorities acted very promptly after the vacation of the interim injunction order but the haste on their part can be easily appreciated. The plaintiffs had been litigating with them for nearly three years and the army authorities could reasonably think that any delay on their part might further prolong the litigation.

12. The next question that arises is whether damage was actually caused to the property of the plaintiff and whether the defendants are liable to compensate the plaintiff for such damage. PW1 Jagannath Arora has submitted a list of the damaged property and the same is Ex.PW1/D. He has stated that he had asked the army authorities for joint inspection of the property but they declined his request. The defendants have, on the other hand, examined DW2 Sube Singh, DW3 S.K. Sinha, DW4 Kishan Chand and DW5 Anil Kumar to prove that the property of the plaintiff was damaged in the process of eviction. The defendants have produced a 'No Damage Certificates' which is Ex.DW2/1. This certificate does not bear the signature of the plaintiff and the witnesses have explained that the plaintiff refused to sign. Learned counsel for plaintiffs has contended that Ex.DW2/1 is a fabricated document. He contends that if the document had been genuine, the defendant would have confronted the plaintiff as soon as they received the notice Ex.PW1/E. He also points out that the document was filed as late as 07.03.2001. Even if I accept the argument for a moment, the testimony of DW2 Sube Singh, DW3 S.K. Sinha, DW4 Kishan Chand and DW5 Anil Kumar will not be effaced. In any case, PW1 Srat Ram has testified that the plaintiff returned nine bags of cement on 01.10.96 five bags on 15.10.96 and four bags on 18.10.96 after completion of work order No. 13-16. If the cement bags to be used in the execution of work orders No. 13-16 had been actually damaged as the plaintiff would like me to believe, they could not have been in a position to return the same bags on the aforesaid dates. Moreover, the plaintiffs have not been able to examine any independent witness, PW1 Jagannath Arora is the solitary witness examined by the plaintiffs to prove the damage. He has an obvious stake in the success of the plaintiffs and his

testimony cannot suffice to prove the quantum of damage.

13. In view of the above discussions, I find that the plaintiff had no right to continue in occupation of the land behind T-2 building after the vacation of interim injunction by Hon'ble High Court. The defendants were justified in taking steps to evict the plaintiffs. I also find that the plaintiffs have failed to prove actual damage. Mere filing of the list Ex.PW1/D cannot suffice to prove such damage. It is also apparent from the record that the plaintiffs suppressed material facts in the plaint. They did not say a work in the plaint about previous litigation. Considering all these facts, I hold that the plaintiffs are not entitled to recover any amount from the defendants. Issues are decided accordingly.”
(underlining added).

6. A reading of the aforesaid paras shows that the trial Court has noted that there were earlier litigations between the parties, where there was an interim stay and which was thereafter vacated on 19.8.1996. The trial Court has also noted that the appellant/plaintiff claimed entitlement to the site on account of contract No. GE/C-4/1995-96, however, the work order under the same was completed on 31.7.1996 (i.e. before 19.8.96 when eviction took place) as per the document filed and proved by the respondents as Ex.DW1/A. The trial Court has also noted that the arguments of the appellant/plaintiff, that work order Nos. 13-16 were still being executed under the contract No. GE/C-4/1995-96, is not an argument worthy of acceptance because it is not known where the exact location of the work order Nos. 13-16 was. The trial Court has also noted that the appellant/plaintiff failed to prove any damage, and on the contrary, the defendants filed and proved 'No Damage Certificate', Ex.DW2/1, which

was signed by a person who carried out the eviction and which certificate the appellant/plaintiff refused to sign. The trial Court has also additionally noted that if allegedly cement bags were destroyed, then there would have been no question of the cement bags having been returned by the appellant/plaintiff much later on different dates in October, 1996. The trial Court, therefore, in view of the aforesaid detailed findings and conclusions, as given in paras 10 to 13 of the impugned judgment, held that the appellant/plaintiff had failed to prove his case and, therefore, dismissed the suit.

7. In addition to the findings and conclusions given by the trial Court, and with which I agree, there are following additional points which are required to be noted:-

- (i) In the contract No. GE/C-4/1995-96 which is relied upon by the appellant/plaintiff, there is no term which has been pointed out that the appellant/plaintiff had a right which could not be terminated assuming the same existed, even prior to the completion of the contract. After all, the appellant/plaintiff had no legal right to the plot of UOI and which plot was only given to the appellant/plaintiff for convenience of UOI to complete certain works which were awarded.

(b) Not only the appellant/plaintiff had no right, the appellant/plaintiff concealed in the plaint the factum with respect to the earlier litigation of having approached the Court of law and the fact that an interim injunction was granted in its favour which was vacated on 19.8.1996. The appellant/plaintiff, therefore, was guilty of concealment of material facts with respect to its eviction on 19.8.1996, and which in fact took place pursuant to the vacation of interim order by learned Single Judge of this Court on 19.8.1996. Obviously, having been faced with litigation for many years, UOI wanted to play safe and, therefore, on 19.8.1996 itself evicted the appellant/plaintiff and to which action of UOI we cannot find any fault with.

(c) No doubt that witness, DW1, admitted that certain work order under No. 13-16 of the contract No. GE/C-4/1995-96 was to be completed in a few days i.e after a week or so, after 19.8.1996, however, whether the balance work was a significant portion of the work or an insignificant work, has not come on record. The appellant/plaintiff was bound to have filed the work done and details of its work order to show that, in fact, substantial work was pending on 19.8.1996 qua the work orders issued under contract No. GE/C-

4/1995-96 for entitling appellant to continue in possession of the site in question, but the appellant-plaintiff failed to do so.

(d) A reference to the loss of damaged materials, Ex.PW1/D, filed on behalf of the appellant/plaintiff in the trial Court shows how fanciful and, therefore, how baseless the claim of the appellant/plaintiff was. This list, Ex. PW1/D, contains a huge number of no less than 200 articles and a reference to these articles shows that the same contains all types of pipes, RCC Collar, water tanks, marble chips, taps, cycle and so on, and, therefore, it was obvious that the claim had no basis whatsoever as these articles are not such which can be damaged.

8. Learned counsel for the appellant vehemently canvassed two arguments before this Court. The first argument was that contract No. GE/C-4/1995-96 was continuing and, therefore, the appellant/plaintiff had a right to continue in possession of the site in question as the rent was paid for the entire year 1996-97. The second argument was that no adequate notice was given to the appellant/plaintiff before commencement of eviction from the site in question.

9. I am unable to agree with the arguments as raised on behalf of the appellant. Firstly, the UOI had already filed and proved the document, Ex.

DW1/A which showed that work order under contract No. GE/C-4/1995-96 was completed on 31.7.1996, i.e. well before 19.8.1996 and the entitlement to the possession of the plot/site, even as per the appellant-plaintiff, was till the completion of the work. If excess rent stands paid the excess rent can be recovered but appellant-plaintiff cannot continue in possession of valuable land to which it had no title. Further, as already discussed above, with respect to the work order Nos. 13-16 under contract No. GE/C-4/1995-96 which is stated to have been completed in about a week or so after 19.8.1996, one does not know what was the meaning of the contract being completed after about a week or so after about 19.8.1996, and it is very much possible that the witness of UOI who deposed, may have been talking in a technical sense of the final completion. However, I would reiterate that onus was upon the appellant/plaintiff to show that to what extent the amount of work remained from 19.8.1996 for about a week after that date under the work order Nos. 13-16, however, there are no work orders placed on the record and there is no proof, whatsoever that how much work under the work orders was complete, i.e. how much work was incomplete, whether significant or insignificant part.

10. I, therefore, sitting in an appeal would not like to disturb the finding that really no work would be pending as on 19.8.1996, more so because the

appellant/plaintiff had no legal title to stay in the site in question which, admittedly, was of UOI and was given to the appellant/plaintiff only and only to execute the contracts of UOI. Since earlier the appellant/plaintiff was held guilty of litigation in obtaining stay order with respect to the site in question, therefore surely the UOI was entitled to take necessary action once the interim order in favour of the appellant/plaintiff was vacated.

11. On the aspect of the fact that appellant/plaintiff did not receive adequate notice, I am of the opinion, that once there was a prior litigation and the appellant/plaintiff was occupying the site in question only because of interim orders there was no requirement of giving any further notice, inasmuch as, the appellant/plaintiff was already at notice that he was staying/occupying the site in question only because of the interim order. Further, what ought to be adequate notice depends on the facts of different cases, and in the present case, it has come through the evidences of witness of UOI that the appellant was given two hours time to remove his goods from the site in question. In view of the facts of the present case and considering the history of litigation between the parties, besides the fact of lack of any title of the appellant to the plot in question, I feel that a notice of two hours was more than sufficient.

12. Finally to conclude, I must add that surely, everything else even if

taken in favour of the plaintiff, the plaintiff ought to have proved beyond doubt the loss caused to him. The list of damaged material, Ex.PW1/D and the oral statement of the appellant/plaintiff is the only evidence of the damages and loss. As already stated above, list of 200 articles allegedly damaged and that too on the basis of an oral deposition can hardly be said to inspire confidence with respect to the amount of damages.

13. A civil case is decided on balance of probabilities. The balance of probabilities in the present case shows that the trial Court was justified in dismissing the suit. Until and unless the findings of the trial Court are wholly illegal and perverse, this Court sitting in an appeal, ought not to interfere with one possible and plausible conclusion which the trial Court takes. I, therefore, do not find any reason to interfere with the impugned judgment in appeal.

14. In view of the above, the present appeal is without any merit and is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA, J.

FEBRUARY 24, 2012

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