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BHIM SAIN AGGARWAL

..... Appellant

Through : Mr. Ved Prakash Sharma, Ms. Amrit Kaur Oberio and Mr. V.K. Malhotra, Advocates.

versus

RATTAN LAL AGGARWAL

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J. (ORAL)

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 22.12.2011 dismissing the suit filed by the appellant/plaintiff/landlord for recovery of possession, arrears of rent and

mesne profits against the respondent/defendant/tenant. The suit/tenanted premises is shop No. Y-46, Loha Mandi, Narayana, New Delhi admeasuring 15 ft. by 15 ft.

2. The case of the appellant was that the respondent was inducted as a tenant for a period of 11 months under the rent agreement dated 10.6.2009. The rent which was fixed as per this agreement was Rs.17,000/-, v.i.z. Rs.8,500/- to be paid by cheque and Rs.8,500/- to be paid in cash. It was pleaded that the respondent/defendant/tenant started committing default in payment of rent from an early stage i.e. with effect from 1.8.2009 and, therefore, the appellant/plaintiff served a legal notice dated 2.3.2010 terminating the tenancy and claimed possession of the suit premises along with arrears of rent and mesne profits.

3. The defence of the respondent/defendant/tenant in the trial Court was struck-off inasmuch as in spite of repeated opportunities, written statement was not filed. In spite of the fact that there was no written statement, the respondent/defendant still appeared in the case, and, besides cross-examining the witnesses of the appellant/plaintiff, also contested the interim rent payment application being the application filed by the applicant/plaintiff under Order 39 Rule 10 CPC by filing of reply to the application.

4. The trial Court has dismissed the suit by drawing the following conclusions:-

- i) The rent agreement, Ex.PW1/2 does not inspire confidence, inasmuch as, the same contains interpolations.
- ii) There is doubt with respect to the service of notice terminating the tenancy and claiming arrears of rent and mesne profits.
- iii) There appears to be a doubt with respect to the ownership of the suit premises.

These are the conclusions which are drawn by the trial Court from paras 11 to 31 of the impugned judgment. The trial Court thus concluded that though the defendant is ex parte and did not lead any evidence, yet, the appellant/plaintiff failed to prove his case.

5. In my opinion, the impugned judgment is clearly illegal and is bound to be set aside. First of all, I fail to see the rent agreement Ex.PW1/2 dated 10.6.2009 as a manipulated document and which is the conclusion drawn by the trial Court. The trial Court has given this finding merely because there is a manual typing at the first page of the rent agreement in the space left blank at page No. 1 of the rent agreement. The typed portion shows that the rent

was not Rs.8,500/- only, but was Rs.17,000/-, v.i.z. Rs.8,500/- to be paid by
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cheque and Rs.8,500/- to be paid in cash. The issue of so-called interpolation, in my opinion, is wholly misconceived because the respondent/defendant in his reply filed to the application under Order 39 Rule 10 PCC did not dispute the existence of the rent agreement. Further, whereas the appellant/plaintiff came to the witness box and proved his case, the respondent/defendant, admittedly, could not lead any evidence because his defence was struck off. Under such circumstances, unless there are grave reasons to disbelieve the deposition of the appellant/plaintiff, in a case such as the present where the rent agreement has been proved, there is no reason to disbelieve the deposition of the appellant/plaintiff. Merely, because of two manually typed lines in the first page of the rent agreement which was otherwise properly printed/typed cannot mean that the entire agreement running into three pages and containing as many as 21 clauses, and which document is signed on each page by both the parties, would become a forged and fabricated document. I, therefore, hold that the trial Court was not justified in discarding the rent agreement, Ex.PW1/2.

6. Once the rent agreement is proved on record then the relationship between the parties is proved, as also the rate of rent of the premises at

₹17,000/- per month. Also, a person who does not have a courage to step
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into the witness box and be subject to the test of cross-examination, inasmuch as, a written statement is deliberately not filed, then unnecessary leeway should not be shown to such a person.

7. So far as the issue with respect to the doubt of ownership of the appellant/plaintiff of the suit premises is concerned, Section 116 of the Indian Evidence Act, 1872 is a complete answer, inasmuch as, under this provision a tenant is estopped from disputing the title of his landlord.

8. On the aspect of service of the notice terminating tenancy, the appellant/plaintiff has established sending legal notices to different addresses in as many as three modes, i.e. registered post, UPC and by courier. The presumption of service, in my opinion, thus clearly arises under Section 27 of the General Clauses Act, 1897. I, therefore, hold that the tenancy was terminated by means of legal notice dated 2.3.2010.

I have also had an occasion to consider the issue of the termination of tenancy in the judgment reported as *M/s. Jeevan Diesels & Electricals Ltd. vs. M/s. Jasbir Singh Chaddha (HUF) & Anr., 2011(183) DLT 712* wherein I have held that even a service of summons of the suit can be treated as notice under Section 106 of the Transfer of Property Act, 1882.

9. For the convenience of reference I note that various documents were
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proved and exhibited in the trial Court by the appellant/plaintiff and the same are as under:-

- “I) Site plan Ex.PW-1/1.
- II) Original rent agreement dated 10.06.2009 Ex.PW-1/2.
- III) Copy of legal notice dated 02.03.2010 Ex.PW-1/3.
- IV) Original Postal Receipt Ex.PW-1/4.
- V) Original Postal Receipt Ex.PW-1/5.
- VI) Original UPC Ex.PW-1/6.
- VII) Original UPC Ex.PW-1/7.
- VIII) Original Courier Receipt Ex.PW-1/8.
- IX) Original Courier Receipt Ex.PW-1/9.
- X) Original A.D. Card Ex.PW-1/10.
- XI) Returned Envelope Ex.PW-1/11.
- XII) Original Bill dated 2.3.2010 Ex.PW-1/12.”

10. The lack of sincerity in the case of respondent/defendant also becomes clear from the fact that he has not chosen to represent himself in the appeal also. The notices sent to the respondent were refused, firstly by his wife on 21.3.2012 and, thereafter, by the respondent/tenant himself on 23.3.2012. The Process Server, thereafter, pasted the summons at the address of the respondent. No one appears for the respondent although it is 12:45 p.m.

11. In view of the above, the impugned judgment and decree dated 22.12.2011 is set aside. The suit of the appellant/plaintiff is decreed for possession with respect to the suit premises being shop No. Y-46, Loha

Mandi, Narayana, New Delhi admeasuring 15 ft. by 15 ft., shown in red in
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the site plan Ex.PW1/1. The appellant/plaintiff will also be entitled to payment of charges towards rent and mesne profits @ 17,000/- per month with effect from 1.8.2009 till the time physical and vacant possession is taken over by the appellant/plaintiff of the suit premises.

12. The present appeal and the application for stay are disposed of accordingly, leaving the parties to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA, J.

MARCH 30, 2012

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