

* **HIGH COURT OF DELHI : NEW DELHI**

+ **CS (OS) No.1513/2006**

% Judgment decided on: 08.02.2012

Sh. Rajender Jain Plaintiff
Through: Mr Rajesh Aggarwal, Adv

Versus

Sh. Parveen Kumar and Ors. Defendants
Through: Mr Shekhar Dasi, Adv. for D-1.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (Oral)

1. The present suit has been filed the plaintiff seeking declaration, declaring the order passed by the Additional Rent Controller on 02.07.2005 as null and void and for permanent injunction restraining the defendant from acting upon the eviction order dated 02.07.2005.

2. By order dated 29.10.2007 defendant Nos.2,5,7, & 8 were proceeded *ex-parte*.

3. Even defendant Nos. 4 and 6 have not filed their written statement or any documents and their right to do so has also been closed vide order dated 13.07.2010.

4. As agreed by both parties, issue No.1 was to be treated as preliminary issue and they also agreed that no evidence is required for hearing of the said issue. Issue No.1 reads as under:

“1. Whether the suit of the plaintiff is barred by Section 43 of DRC Act, 1958 ? OPD”

5. The brief facts of the case as per the plaint are that the vide agreement dated 31.12.1980 Shri. T.C. Jain the father of the plaintiff herein acquired tenancy rights in the property bearing No.M-133, Second Floor and M-91, Connaught Circus, New Delhi, (hereinafter referred to as the ‘said property’) on the basis of Sub-Lease dated 25.10.1980 by defendant No.2 who himself was a tenant in the said property by the predecessor in interest of defendant No.1 vide Lease Deed dated 19.05.1977. While assigning business and tenancy rights in respect of the said property in favour of Shri. T.C. Jain, defendant No.2 had also issued receipts and executed a General Power of Attorney in his favour but, later on vide letter dated 02.09.1986, he revoked the General Power Of Attorney.

6. Thereafter, Shri. T.C. Jain, filed a suit of specific performance and permanent injunction before this court being suit No.1956/86, seeking execution and registration of the Deed of assignment in his favour. In the said suit, the defendant No.1 categorically submitted that he has transferred his rights in the said property in favour of Shri. T.C. Jain as a tenant. Vide order dated 13.01.1988, the court passed directions against the sub-tenants (the other defendants) to directly pay all arrears as well as future rent of the said suit property to Shri. T.C. Jain. In the said order dated 13.01.1988,

the consent of defendant No.1 was also recorded that he had no objection if the rent is paid to Shri. T.C. Jain. The said suit was finally dismissed in default vide order dated 29.03.1994.

7. The plaintiff moved an application for restoration of the said suit which was also dismissed in default. Thereafter, litigation kept pending in respect of the said property between the parties. On 07.03.1997, Shri. T.C. Jain passed away while the litigation was pending thus, plaintiff took steps to be substituted as defendant being the L.R of Shri. T.C. Jain.

8. Thereafter, plaintiff filed a civil suit for possession, permanent injunction and mesne profit being CS (OS) No.283/2004 against the defendants, as defendant No.1 had illegally taken over the possession of room No1, 2, 6 and 7 alongwith the open terrace of the property bearing No.M-133, Connaught Circus, New Delhi, from the other defendants. Vide order dated 23.03.2004 this court passed a restraint order. However, the plaintiff was apprehending that defendants would collusively try to exchange different portions of the property with each other to deprive the plaintiff, of his rights. Therefore, the plaintiff filed an application under Section 151 before the Additional Rent Controller, in the eviction petition stating that any compromise between the defendants would be illegal. But, before the Additional Rent Controller could pass any order, the defendants made statements before him and suffered an eviction decree against them and in favour of the defendant No.1.

9. The main contention of the plaintiff is that the statements made by the defendants and the consequent decree are illegal and in

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contravention to the various orders passed by different courts in different suits. Therefore, the plaintiff has filed the present suit.

10. The case of defendants is that the present suit of the plaintiff is barred by Section 43 of Delhi Rent Control Act, 1958. The defendants, on 31.07.2009 had even filed an application being I.A No.10178/2009 under order VII Rule 11 read with Section 151 of CPC for rejection of plaint on this ground however, as in the written statement of defendant No.1, the same issue was formed, therefore, the counsel for the defendant No.1 agreed to not to press the said application if the said preliminary issue was considered as preliminary issue at the time of framing of issues.

11. It is stated by defendant No.1 that the plaintiff is claiming his right in the suit premises through Late Shri. T.C. Jain, who was merely a rent collector of defendant No.2 and otherwise he was having no right or interest in the suit premises. After the death of Shri. T.C. Jain, the court did not recognize the rights of the plaintiff and other legal heirs and they were not substituted in place of Shri. T.C. Jain, holding that no right survives to them in an eviction petition No.232/2004 titled as “Praveen Kumar vs R.S. Sethi & Ors.” as Shri. T.C. Jain had died during the pendency of the said petition and thereafter, his LRs including the plaintiff had filed an application under Order XXII Rule 4 CPC claiming that the right survives to them, but, their application was dismissed.

12. According to defendant No.1, the status of the plaintiff has been adjudged as final and is now binding upon him, thus, he has no legal right qua the premises in question. It is also stated that the

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defendant No.1 cannot be vexed again for deciding the issue that has already been decided earlier by different norms.

13. However, the plaintiff states that it cannot be said that the court did not recognize the rights the rights of the plaintiff and other LR's in fact, the order of the Rent Controller was challenged and was subjudice before this court in CM (Main) 5/2004 and was disposed of vide order dated 17.11.2006 wherein, the issue of entitlement of the rights of the plaintiff was kept open. It is also stated by the plaintiff that the entitlement of the plaintiff was never decided on merits in any of the proceedings below and the said issue is still pending adjudication.

14. Learned counsel, appearing on behalf of the plaintiff argues that the plaintiff would not be debarred from raising the said issue as a plea of fraud can be raised at any stage and even in a collateral proceeding. If a judgment or decree vitiated by fraud, the same would be a nullity. In such an event, Section 44 of the Indian Evidence Act would be attracted.

15. I have heard the counsel for the parties.

16. Section 43 of the Delhi Rent Control Act, 1958, reads as under:

“43. Finality of order.—Save as otherwise expressly provided in this Act, every order made by the Controller or an order passed on appeal under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding.”

17. In the case of *Kehar Singh v. Raghunandan Saran: (1978) 14 DLT 1*, the Division Bench of this Court has discussed the expression final in the first part of Section 43 DRC Act. It was held:

“the expression “final” in the first part of Section 43 puts an end to a further appeal outside the Act. The Act is a self-contained one and the opening words of the section emphasised the fact that the finality of the orders could not be questioned by resorting to something outside the Act and the second part of the section makes the final order immune from any collateral attack in any original suit, application or execution proceeding. The finality provided in the section has, therefore, relevance to proceedings outside the Act, but not those which are envisaged by the Act itself. It is a well settled principle that a litigant is not bound to challenge every interlocutory order that may be made in the course of proceedings, and where an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay, an appeal was not taken, could be challenged in an appeal from a final decree or order.”

18. In similar case of *Ajmer Singh v. Prabhu Dayal: (1972) 8 DLT 161*, it was held by the learned Single Judge of this Court:

“Section 43 of Act 59 of 1958 makes it abundantly clear that the appellate order passed under Section 38 of the Act by the Rent Control Tribunal would become final. The effect of Section 43 would be that in case an appeal is taken to the High Court under Section 39 of the said Act, then the order passed by the High Court would similarly be an order passed under the Act and final as far as the adjudication between the parties under the Act would be concerned.”

19. In the case of *South Asia Industries (P) Ltd. v. S.B. Sarup Singh and others: AIR 1965 SC 1442*, the Hon'ble Supreme Court held as under:

“18. To escape from this construction a larger scope is sought to be given to the expression "appeal to the High Court". It is said that the expression "appeal" in Ss. 43 and 39 of the Act means an appeal to the High Court and not to a single Judge and that the said appeal is finally disposed of only by the final judgment of the High Court. It is said that whatever may be the internal arrangement in disposing of that appeal, there is only one appeal till it is finally disposed of. This argument is plausible, but it has not found favour with this Court. This Court in *Union of India v. Mohindra Supply Co.*, 1962-3 SCR 497: (AIR 1962 SC 256), considered the question whether S. 39(2) of the Indian Arbitration Act, 1940, has taken away the right of appeal under the Letters Patent. Section 39(2) of the said Act reads as follows :

"No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

It was argued, as it is argued before us, that the second appeal under the section referred to an appeal to a superior Court and not to appeals "inter-Court" and, therefore, S. 39(2) of the Arbitration Act did not operate to prohibit an appeal under the Letters Patent against the order of a single Judge. This Court held that the expression "second appeal" included an appeal under the Letters Patent. This

decision ruled that a Letters Patent appeal is not a part of the appeal filed in the High Court against the award of the Arbitrator, but is a fresh appeal against the order of the single Judge. This Court in *Ladli Prasad Jaiswal v. Karnal Distillery Co., Ltd.*, 1964-1 SCR 270: (AIR 1963 SC 1279), held that the expression "Court immediately below" in Art. 133 (1) (a) of the Constitution took in a single Judge of the High Court. There, the judgment of the District Judge was reversed by the single Judge of the High Court. Against the order of the single Judge of the High Court in appeal from that of the Subordinate Judge a letters patent appeal was preferred to a Division Bench of the High Court and the said Division Bench affirmed the judgment of the single Judge. The question arose whether the single Judge was a Court immediately below the Division Bench. For the respondent it was contended that the judgment of the High Court against which the appeal was preferred affirmed the decision of the Court immediately below and that the appeal did not involve any substantial question of law and, therefore, the High Court was not competent to grant a certificate under Art. 133(1) (a) of the Constitution. For the appellant it was urged that the appeal against the judgment of the single Judge to a Division Bench under cl. 10 of the Letters Patent was a "domestic appeal" within the High Court and in deciding whether the decree of a Division Bench in an appeal under the Letters Patent from a decision of a single Judge exercising appellate jurisdiction affirmed the decision of the Court immediately below, regard must be had to the decree of the Court subordinate to the High Court, against the decision of which appeal was preferred

to the High Court. This Court came to the conclusion that the expression "Court immediately below" in Art. 133 (1) (a) must mean a Court from the decision of which the appeal has been filed in the High Court, whether such a Judge was a single Judge of the High Court or a Court subject to the Superintendence of the High Court. It will be seen that if a Letters Patent appeal was only a continuation of the appeal filed from the decree of the District Judge by a domestic arrangement, this Court would have held that the judgment in the Letters Patent appeal was not a judgment of affirmation but one of reversal of the judgment of the District Court. This decision, therefore, recognizes that an appeal disposed of by a single Judge of the High Court and the appeal from the judgment of the single Judge to a Division Bench thereof are different appeals. Apart from these decisions, on principle we do not see any justification to hold that an appeal under S. 39(1) of the Act and an appeal under cl. 10 of the Letters Patent form part of a single appeal. They are in law and in fact different appeals-one given by the statute and the other by the Letters Patent. We cannot, therefore, accede to the argument advanced by the learned counsel for the appellant that the expression "appeal" in S. 39 of the Act takes in a Letters Patent appeal under cl.10 of the Letters Patent.

19. Learned counsel for the respondents further contended that s. 39 of the Act conferred a special jurisdiction on the High Court as persona designate and therefore, the decision of the single Judge in appeal is not a "judgment" within the meaning of cl. 10 of the Letters Patent. In support of this view

reliance was placed, inter alia, on Radha Mohan Pathak v. Upendra Patowary, AIR 1962 Assam 71, and Hanskumar Kishanchand v. The Union of India, 1959 SCR 1177: (AIR 1958 SC 947). But, in the view we have expressed on the construction of S. 39, read with S. 43, of the Act, it is not necessary to deal with that question in this appeal. We shall not be understood to have expressed our opinion on this question one way or other.”

20. Now coming to the facts of the present case, it is the admitted position that the suit was filed by the plaintiff for declaring the statement dated 07.08.2003 made before Additional Rent Controller and the consequent decree of eviction order dated 02.07.2005 passed by the Court of Sh. Sanjay Sharma, Additional Rent Controller, as null and void. The said suit for permanent injunction against the defendant is still pending wherein an injunction is sought against the defendant from acting upon the eviction decree dated 02.07.2005 in any manner. The defendant No.1 had filed the written statement in the said suit. The plaintiff in para 15 of the plaint has admitted that the defendant No.1 has filed a collusive suit for eviction against the tenants under Delhi Rent Control Act and has stated that Sh. T.C. Jain, the father of the plaintiff, was not impleaded as one of the defendants in the eviction petition. The plaintiff has not denied the fact that when the father of the plaintiff was alive, he filed an application under Order 1 Rule 10 CPC which was allowed by the Additional Rent Controller vide order dated 14.02.1996 and later on, when Sh. T.C. Jain expired on 07.03.1997. The application filed by the plaintiff was dismissed by the Additional Rent Controller by order dated 06.10.1997. The plaintiff

thereafter filed an appeal against the order dated 06.10.1997 passed by the Additional Rent Controller before the Rent Control Tribunal and the said appeal was also dismissed vide order dated 13.12.2003. The said order was challenged by the plaintiff before this Court by filing of the petition under Article 227, being C.M. (Main) No.5/2004, which was also disposed of by this Court vide order dated 17.11.2006. The said order passed by this Court reads as under:

“The petitioners are aggrieved by the impugned order passed by the Rent Control Tribunal. The petitioners are seeking to agitate their rights as legal heirs of a person who had the authority to collect the rent. The petitioners also filed a substantive suit claiming rights in the property.

It is stated that an eviction order has already been passed against the tenants/sub-tenants under Section 14(1) (b) of the Delhi Rent Control Act, 1958 and the decree for eviction has not been executed only on account of pendency of the present proceedings and the interim orders passed by this Court.

I am of the considered view that in case the petitioners have a substantive right, that will be established in the civil suit. It is further informed that in the civil suit there are certain interim orders passed to protect the rights of the petitioners in the suit property. If that be the case there is no reason why the respondents should not be able to take possession from the sub-tenant who has not challenged the order and this will be subject to any directions passed in the civil suit filed by the petitioners.”

21. Hence, the eviction order has been upheld by this Court. It is also the admitted position that the plaintiff has been proceeding with the civil suit bearing CS(OS) No.283/2004 filed by him against the

defendant for seeking possession, permanent injunction and damages in respect of the same property.

22. The said fact has been admitted by the plaintiff in para 21 of the plaint and the suit filed by the plaintiff is still pending. In addition to that, an eviction petition under Section 14(1) (a) (b) and (j) of the Delhi Rent Control Act, 1958 was filed by the plaintiff and other legal heirs of late Sh. T.C. Jain, against the Defendant No.4 herein whereby they claimed themselves the landlord of the suit premises. The said petition was also dismissed by order dated 02.07.2001. Similarly, in 2001, an appeal filed by them, being RCA No.600/2001, was also dismissed. The said order was challenged before this Court and no relief was granted to the plaintiff.

23. As far as the contention raised by the plaintiff, that plaintiff's suit is maintainable as the plaintiff is not debarred from raising the issue of fraud at any stage, is concerned, the same has also no force.

24. In *Ladli Prasad Jaiswal Vs. Karnal Distillery Company Ltd.* AIR 1963 SC 1279, the Supreme Court has observed that:

“O.6 r.4 of the Code of Civil Procedure provides that in all cases in which the party pleading relies on any misrepresentation, fraud breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms in the Appendix particulars (with dates and items if necessary) shall be stated in the pleading. The reason of the rule is obvious. A plea that a transaction is vitiated because of undue influence of the other party thereto, gives notice merely that one

or more of a variety of insidious forms of influence were brought to bear upon the party pleading undue influence, and by exercising such influence, an unfair advantage was obtained over him by the other. But the object of a pleading is to bring the parties to trial by concentrating their attention on the matter in dispute, so as to narrow the controversy to precise issues, and to give notice to the parties of the nature of testimony required on either side in support of their respective cases. A vague or general plea can never serve this purpose; the party pleading must therefore be required to plead the precise nature of the influence exercised, the manner of use of the influence, and the unfair advantage obtained by the other. This rule has been evolved with a view to narrow the issue and protect the party charged with improper conduct from being taken by surprise. A plea of undue influence must, to serve that dual purpose, be precise and all necessary particulars in support of the plea must be embodied in the pleading : if the particulars stated in the pleading are not sufficient and specific the Court should, before proceeding with the trial of the suit, insist upon the particulars, which give adequate notice to the other side of the case intended to be set up.”

25. In view of the settled law, there is no material on record to show that there is element of fraud available on record. Therefore, the said contention of the plaintiff is rejected.

26. In view of the above said facts and circumstances of the case, it is clear that the eviction order passed by the Additional Rent Controller and the other orders passed by the Appellate Courts have attained finality and therefore, the present suit filed by the plaintiff is barred by Section 43 of the Delhi Rent Control Act in view of the

settled law as referred to above as the plaintiff has no cause of action to file the present suit.

27. The issue No.1 is accordingly decided against the plaintiff and in favour of the defendant No.1. Consequently, the suit of the plaintiff is dismissed.

MANMOHAN SINGH, J.

FEBRUARY 08, 2012

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