

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

+ **RFA No.575/2006**

% **18th April, 2012**

M/S. JOTINDRA STEEL & TUBES LTD. Appellant
Through: Mr. Anand Nandan, Advocate.
versus

MRS. KIRAN KANDHARI Respondent
Through: Ms. Payal Jain, Advocate.

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

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 2.8.2006 dismissing the suit of the appellant/plaintiff/tenant filed for specific performance. The suit has been dismissed by deciding the preliminary issue No.3A which reads as under:-

“3(A) Whether the lease deed dated 09.06.2005 relied upon by the plaintiff required compulsory registration and being unregistered, is inadmissible in evidence in view of Sections 17 and 49 of the Registration Act as claimed for by the defendant in preliminary objection no.4 of his written statement?”

2. Trial Court has dismissed the suit for specific performance by

holding that the lease deed in question of which specific performance was sought was not registered and therefore the suit for specific performance is not maintainable. Trial Court in this regard has made the following observations:-

“9. The question that arises for consideration is whether the present suit for specific performance of the said lease deed dated 09.06.2005 is maintainable in the eyes of law or not.

10. Admittedly lease dated 09.06.2008 executed between the parties was neither properly stamped nor registered. Duration of the lease specified on page 2 thereof is for the remaining period of previous lease deed 01.06.2005 to 31.12.2005 and for the next 3 years w.e.f. 1.01.2006 to 31.12.2008. So on the face of it as per plaintiff's own case it is a lease for a term exceeding one year.

11. According to Section 107 of the Transfer of Property Act, 1882 lease for a period extending one year, can be made only by a registered document. The section contains three paragraphs and a proviso. The wording of the first paragraph shows that it is mandatory that if a lease is to be created from year to year, or for any term exceeding one year, or reserving a yearly rent, it can be made “only by a registered document”. If the instrument is not registered, the corollary is that no lease exceeding one year etc is created at all. Such an instrument if not registered cannot be admitted as evidence in view of Section 17 read with Section 49 of the Registration Act, 1908, either for proving the terms of the lease or otherwise. (Refer **Satish Chand Makhan Vs. Govardhan Das, AIR 1984 SC 143**), Hon'ble Delhi High Court while dealing with an identical situation in the case of **Singer India Ltd. Vs. Anita Gupta, 86 (2000) DLT 186**, has held that when the lease deed is not registered, a party could not be permitted to invoke the terms of the said unregistered lease deed.

12. It is equally well settled that when legislature has intended a particular act to be done in a particular manner then it has to be done in that manner or not at all.

13. In the case in hand if relief of specific performance of the nature sought for by the plaintiff in the present suit is to be granted, it would amount to relying upon the terms of the unregistered lease deed dated 09.06.2005. In the face of Section 107 of the Transfer of Property Act, 1882 and Sections 17 and 49 of the Registration Act, 1908 it is simply not permissible as per the law laid down by Apex Court and Hon'ble Delhi High Court in the cases referred to hereinbefore.”

(underlining added)

3. Learned counsel for the appellant argues that the trial Court has overlooked the proviso to Section 49 of the Registration Act, 1908 and which provides that an unregistered document can be used as a basis for filing of a suit for specific performance. It is argued that the clause of which specific performance is sought, is an independent agreement and which was not required to be registered even if the main lease deed required registration. I agree with the arguments as raised on behalf of the appellant inasmuch as it is only when the suit for specific performance would be decreed that a lease deed will be drawn up and it is such lease deed which will have to be ultimately registered, however, a suit seeking specific performance for creation of a lease deed need not rely upon a registered lease deed in terms of the proviso to Section 49 of the Registration Act.

4. That however is not the end of the matter. The issue is that whether the appellant/plaintiff is on the admitted clause entitled to specific

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performance by seeking perpetual renewal of the lease deed for every three years. In order to appreciate the arguments on behalf of the appellant, the relevant clause in the lease deed dated 09.06.2005 needs to be referred to and this clause reads as under:-

“2. That the lease is for the period of three years, it is hereby explicitly agreed between both the parties that on every successive renewal of the lease for a period of three years, the rent will be increased by 10% of the last rent paid whenever the lessee is desirous of renewing the lease they will give notice in writing to the lessor one month before the expiry of the term of the lease and the fresh lease deed will be executed on every successive renewal.”

5. A reference to this clause shows that nowhere it is stated that the respondent/landlord is bound to grant lease every three years to the appellant/tenant. Nowhere does this clause creates a perpetual tenancy and all that this clause suggests is that lease may or can be renewed every three years subject to increase of 10%, but, there is no mandate contained in this clause that the landlord shall be compulsorily bound to give consent each time for renewal of lease after three years. Accordingly, even if we take the admitted case of the appellant that such a clause did not require registration to file a suit for specific performance, yet, there is no legal entitlement in terms of clause to automatically create lease deed for every three years.

6. In my opinion, the appeal is also misconceived and in fact has

become infructuous for the reason that in the suit the relief which was claimed was for a lease deed for the period from 1.1.2006 to 31.12.2008. Today, we are in the year 2012. There is presently no suit for creation/grant of registered leases for the periods subsequent to 31.12.2008. In any case, I need not say anything further inasmuch as I have already held that clause in question is not a clause of perpetual tenancy and there is no compulsion upon the landlord to renew the lease every three years.

7. Obviously, the subject suit has been filed to harass the respondent/landlord inasmuch as respondent/landlord had already filed the suit for possession against the appellant/tenant pertaining to the suit premises, namely, Flat No.605, 6th floor, Charanjiv Tower, 43 Nehru Place, New Delhi admeasuring 830 sq. feet. Counsel for the respondent/landlord states that the pendency of this appeal has been used by the appellant to delay the suit for possession which has been filed by the respondent/landlord, and which of course is strenuously denied by the appellant.

8. Though the impugned judgment dismisses the suit under Order 7 Rule 11 CPC, as an appellate Court I have sufficient powers under Order 41 Rule 24 CPC read with Order 41 Rule 33 CPC in order to decide the appeal on the basis of admitted facts which appear on the record.

Accordingly, from the admitted fact appearing on record being the relevant clause of the lease deed I hold that there is no entitlement for automatic renewal of lease every three years to the appellant/tenant and there is no right of perpetual tenancy as urged and argued on behalf of the appellant. I am applying the provision of Order 12 Rule 6 CPC on the basis of admitted facts to dismiss this appeal.

9. Considering the facts of the present case, I consider it fit that the appeal should be dismissed with actual costs. Supreme Court in the recent judgment of *Ramrameshwari Devi and Others v. Nirmala Devi and Others (2011) 8 SCC 249* has held that realistic and actual costs be imposed so that delay in litigation does not benefit a losing party. The Supreme Court has also held that the actual and realistic costs must be imposed in order to prevent and preempt dishonesty in litigation. I am also empowered to impose actual costs by virtue of *Volume V* of the *Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15*.

10. In view of the above, the appeal is accordingly dismissed with costs which I quantify at ₹ 50,000/-. Costs be paid within four weeks from today.

VALMIKI J. MEHTA, J

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