

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

% **Reserved on: 23rd September, 2011**
Date of decision : 27th February, 2012

+ **LPA NO. 1206/2007**

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Mr. Ajay Verma with Mr. Mukesh Kumar,
Advocates.

-versus-

MOHD. MURSALEEN Respondent

Through: Mr. Rakesh Munjal, Sr. Advocate with
Mr. Rana Parveen siddiqui and Mohd.
Quamar, Advocates.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J.

1. The present Appeal is directed against the Judgment and Order dated 9th May, 2005 and 24th May, 2007 passed by the learned Single Judge in WP(C) No.7724/2002 and Review Petition No.294/2005, whereby the learned Single Judge allowed the Writ Petition filed by the Respondent and thereafter dismissed the Review Petition filed by the Appellant, respectively.

2. The factual matrix in brief is as follows:

(a) The Respondent purchased a plot measuring 375 Square Meters by virtue of a perpetual lease deed dated 30th January, 1979.

- (b) Thereafter the Respondent raised a construction on the said plot comprising ground floor and basement. Subsequently, the Respondent let out the basement to a tenant on 9th March, 1990 for the purpose of storage of finished furniture. According to the Respondent the tenant started misusing the premises after expiry of the lease period by using it for selling furniture.
- (c) In order to get the premises vacated from the tenant, the Respondent caused a legal notice to be issued to the tenant and calling upon the tenant to vacate the premises under the latter's occupation. As the tenant failed to vacate premises, the Respondent filed a suit for possession against the tenant in the year 1992.
- (d) In order to evict the tenant, the Respondent also took action and disconnected the electricity connection to the tenanted portion. Simultaneously, the Respondent intimated the Delhi Development Authority, the Appellant herein, about the misuse of the property by the tenant and further requested the Appellant to take action against the tenant. In this behalf the Respondent and residents of the locality also sought interference of various authorities to curb the unauthorized use of suit premises by the tenant.
- (e) Eventually, the Appellant initiated proceedings under Section 29(2) of the Delhi Development Act alleging that the date of

committal of misuse of the suit premises was 9th November, 1992.

- (f) On 20th April, 2000 the Respondent secured vacant possession of the suit premises under a compromise arrived at between the Respondent and his tenant.
- (g) In the meantime, the Respondent requested the Appellant through a letter dated 22nd December, 1999 for conversion of the suit premises from lease hold to free hold. In reply thereto, the Appellant intimated the Respondent through letter dated 17th February, 2000 that the lease has been cancelled, but stood restored, subject to payment of restoration charges at the rate of `3,000/- per year for a period of nine years. In addition the letter intimated that misuse charges were payable.
- (h) Subsequently, on 1st May, 2001 the Appellant demanded misuse charges for a sum of 15,87,480/- from the Respondent.
- (i) The representation on behalf of the Respondent claiming waiver of misuse charges was declined by the Appellant and the Respondent was directed to deposit the amount.
- (j) The Respondent thereafter invoked jurisdiction of this Court seeking a direction to the Appellant to process Respondent's application for conversion and quash the demand for payment of misuse charges.

- (k) By the impugned Order dated 9th May, 2005 the Single Judge held that the Respondent was not liable to pay any misuse charges and quashed the demand dated 20th November, 2002. The Single Judge further directed that the Appellant would process the Respondent's claim for conversion of property into freehold without insisting on payment of misuse charges.
- (l) The Appellant thereafter sought a review of the impugned Judgment and Order dated 9th May, 2005. Vide its decision dated 24th May, 2007 the learned Single Judge dismissed the Review filed by the Appellant.
- (m) Aggrieved by the aforesaid impugned Orders dated 9th May, 2005 and 24th May, 2007 in the Writ Petition and Review Petition respectively, the Appellant have preferred the present Appeal.

3. On behalf the Appellant, Mr. Ajay Verma, Counsel, argued that the learned Single Judge failed to appreciate that the terms and conditions of the sub-lease deed specifically required the premises in question to be used only for residential purposes and that the sub-lessee/Respondent was solely responsible for ensuring the same. Consequently, the Respondent, being solely liable for abiding by the terms of sub-lease, could not escape liability for payment of misuse charges based on the alleged acts of his tenant. It was further argued on behalf of the Appellant that the Respondent would have to

pay the misuse charges, but could, if so advised, recover the same from the latter's tenant.

4. On the other hand, on behalf of the Respondent it was urged that since review had been rejected the ensuing order could not be challenged by way of an Appeal since such an Appeal was expressly barred.

5. In support of his submissions Counsel for the Appellant relied on the following judgments:-

- (i) ***Daljit Singh Madan v. Surinder Kumar & Others***, 26(1984) DLT 305.
- (ii) ***Pragati Construction Company v. Delhi Development Authority***, 128 (2006) DLT 199 (DB).

6. Before considering the decisions relied upon by the Appellant it would also be necessary to extract the relevant clause of the lease deed entered into between the parties. Clause II (13) of the lease deed reads as follows:-

“(13) The lessee shall not without the written consent of the Lessor carry on or permit to be carried on, on the residential plot or in any building thereon any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of private dwelling or do or suffer to be done therein any act or thing whatsoever which in the opinion of the Lessor may be nuisance, annoyance, or disturbance to the Lessor and persons living in the neighbourhood.”

7. Before proceeding further it is necessary to extract the relevant portions of the judgments relied upon.

(i) In *Daljit Singh Madan (supra)* it was held as follows:

“17. If the authority appears before the Tribunal and says that misuse must be stopped in future, though past is over, is it open to Controller to allow the tenant to continue misuse under its order on terms which it imposes? That is the question. The Tribunal has turned the tables. Previously the tenants were at the mercy of the landlord. Now the landlord will be at the mercy of the tenants. The threat of re-entry will hang like a democles sword over the head of the landlord. A tenant may pay charges for misuse of the premises. He may not. He may become insolvent. If he is financially sound the landlord will have to sue him to recover. The tenant may leave the premises after the charges have been levied without paying them. Of course the order of eviction would be executable against him but that will take time. So the liability of the landlord will go on mounting.

18. The primary responsibility is of the lessee for misuse of the property and for misuse charges.”

(ii) In *Pragati Construction Company (supra)* it was held:-

“9. Having heard learned Counsel for the parties, we are of the view that there is no merit in this appeal. It is quite clear that the responsibility of payment of ground rent to the DDA rests entirely on the appellant. Although the appellant may have some sort of an arrangement for payment of ground rent with the sub-lessees/occupants of the multi-storey building, it cannot shirk its responsibility of payment on the specious plea that it was not receiving any amounts from the sub-lessees/occupants. What amount the appellant receives from the sub-lessees/occupants is an internal arrangement between them and it does not concern the DDA at all which is entitled to receive ground rent from the appellant.”

8. Coming to the submissions made on behalf of the parties in the present case it is seen that the plot allotted to the Respondent was a residential plot and as such its use was limited to that connected with

residence. Therefore, the storage in the basement had to be in keeping with the residential purpose for which the plot had been allotted. Thus, the moment a portion of the building constructed on the said plot was leased for storage it amounted to use for a commercial purpose which was not permitted in terms of the lease deed entered into between the parties. In this behalf it is relevant to note that Clause II(13) clearly stipulated that the lessee (Respondent in this case) could not without the written consent of the lessor (Appellant in this case) carry on or permit to be carried on either on the plot or in any building constructed thereon any trade or business whatsoever and the same to be used solely for the purpose of a private dwelling. Thus, it was the duty and responsibility of the Respondent/lessee to abide by the terms of the lease deed since there was no privity of contract between the lessor and the tenant inducted by the lessee.

9. Therefore, we find force in the submission made on behalf of the Appellant that the lease deed entered into between the parties clearly prohibited the Respondent from using the premises for commercial purposes without consent of the Appellant and that if the lessee permitted or allowed such a misuse to take place in the premises, the Respondent rendered himself liable to pay the misuse charges. In this behalf it is noticed that in ***Daljit Singh Madan (supra)***, a Single Judge of this Court had held that “*The primary responsibility is of the lessee for misuse of the property and for misuse charges*”. It is also noticed that in ***Pragati Construction Company (supra)*** a Division Bench of this Court had held that the arrangement between the lessee and his sub tenant is an internal arrangement between

them and cannot prejudice the lessor at all who is entitled to recover from the lessee.

10. In view of the above it is seen that the impugned Order is not only contrary to the express terms and conditions of the lease deed entered into between the parties but is also contrary to the decisions cited hereinabove. As such the impugned Judgment cannot be sustained in law and merits.

11. Coming to the submission made on behalf of the Respondent that the present Appeal was not maintainable against the order in Review, it is observed that there can be no quarrel with the proposition that no appeal lies from an order rejecting a review. In that view of the matter the Appeal against the Order dated 24th May, 2007, dismissing the Review, does not lie and is consequently dismissed. However, having said that, it is equally established that an appeal lies against an order which may have been the subject matter of a review that was rejected. Consequently, the Appeal insofar as it is filed against the Order dated 9th May, 2005, the original Order, is maintainable.

12. In the result the impugned order dated 9th May, 2005 is set aside and the Writ Petition filed by the Respondent herein is dismissed.

No costs.

SIDDHARTH MRIDUL, J.

ACTING CHIEF JUSTICE

FEBRUARY 27, 2012/mk