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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 3116/2012

17th October, 2012

SHRI SHYAM SUNDER KALRA

.... Plaintiff

Through: Mr. K.N.Popli, Adv.

VERSUS

SHRI RAVINDER KUMAR JAIN & ANR.

..... Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The subject suit has been filed by the plaintiff who was a tenant of the suit premises being the first floor of property bearing no. B-3/163, Ground Floor, Janak Puri, New Delhi-110058. The rate of rent admittedly was ₹3700/-, and which is so stated in para 4 of the present plaint i.e the premises were outside the protection of the Delhi Rent Control Act, 1958.

2. In the present suit there are two defendants who are the landlords i.e defendant no.1 Sh. Ravinder Kumar Jain and defendant no.2 Sh. Surinder Kumar Jain, who are the sons and legal heirs of the original landlord Sh. Din Dayal Jain.

3. The defendants in the present suit had filed a civil suit for possession , recovery of rent, mesne profits etc against the present plaintiff being CS(OS) CS(OS) 3116/2012

518/2011 against the present plaintiff qua the suit property. This suit was compromised before the Delhi High Court Mediation and Conciliation Centre as per the settlement agreement dated 5.8.2011, and thereafter, parties filed an application under Order 23 Rule 3 & 3A CPC in the suit being I.A No. 14560/2011 for disposal of the suit in terms of the compromise. The suit was disposed of as compromised vide order dated 14.9.2011, which reads as under:-

“IA no.14560/2011(U/O.22 R.3 & 3A)

1. The parties have arrived at a settlement, a true copy whereof has been placed alongwith the present application (Exh.P-III) on record. Statements of the parties in support of the settlement have been separately recorded. The settlement agreement between the parties dated 5th August, 2011 (Exh.P-V) has been arrived at the Delhi High Court Mediation and Conciliation Centre. The settlement agreement is in writing and appears to be voluntary, bonafide and entered into without any kind of force, pressure or undue influence. There is no legal impediment for taking the same on record.
2. The parties have given undertaking to remain bound by the terms of settlement and pray that this suit be decreed on the terms and conditions of the settlement stated therein.
3. In view of the above, it is directed as follows:-
 - (i) The terms of settlement between the parties as per agreement dated 5th August, 2011, a copy whereof is annexed alongwith IA no.14560/2011 are accepted and taken on record.
 - (ii) The undertakings given by the parties in the settlement agreement as well as the statement made today in court are accepted and they shall remain bound by the same.

(iii) This application is allowed in the above terms.

CS(OS) no.518/2011

4. In view of the settlement between the parties placed on record alongwith IA no.14560/2011, which has been allowed today, it is directed that the suit against the defendants shall stand decreed on terms and conditions set out in para 5 of the settlement application which shall form part of the decree sheet.
5. In view of the settlement having been arrived at before the Delhi High Court Mediation & Conciliation Centre which has been reached at the initial stage, the Registry is directed to issue a certificate in the prescribed form to enable the plaintiff to seek refund of the court fees under Section 16 of the Court Fees Act and Section 89 of the CPC.

The Registry is to draw up a decree sheet in accordance with law.

IA nos. 3412/2011 & 11357/2011

In view of the orders passed in the main suit, these applications do not survive for adjudication and are dismissed as such.”

4. As per the compromise agreement recorded in CS(OS) 518/2011, the plaintiff/tenant had to vacate the suit premises by 30.9.2012.

5. Now the present suit has been filed by the plaintiff/tenant making the following prayers with respect to invalidity of the compromise which has been recorded in CS(OS) 518/2011:-

- “a) Pass a decree for declaration in favour of the plaintiff and against the defendants thereby declaring the collusive judgment/order and decree dated 14.09.2011 passed in CS(OS) No.518/2011 in the matter of Ravinder Kumar Jain and another vs Shyam Sunder Kalra by this Hon’ble Court as null and void and not binding upon the plaintiff and cancelling the same as

the same has been obtained by fraud and in collusion in favour of the plaintiff and against the defendants:

- b) a decree for mandatory injunction in favour of the plaintiff and against the defendants thereby directing the defendants to reduce into writing the terms and conditions of the oral agreement executed between the plaintiff and the defendants with respect to the property bearing No.B-3/163, Janak Puri, New Delhi;
- c) a decree for specific performance in favour of plaintiff and against the defendants thereby directing the defendants specifically to perform the oral agreement duly executed between the plaintiff and defendants in the second week of December 2010 and to do all acts necessary to transfer the property under sale i.e. entire second floor of the property to be reconstructed by the defendants through builder on the plot bearing No.B-3/163, Janak Puri, New Delhi to the plaintiff by executing sufficient instrument/Sale Deed;
- d) a decree for permanent injunction in favour of the plaintiff and against the defendants thereby restraining the defendant to not to give effect to the said collusive judgment/order and decree dated 14.9.2011 passed in CS(OS) No.518/2011 in the matter of Ravinder Kumar Jain and another vs. Shyam Sunder Kalra by this Hon'ble Court and from selling, alienating, transferring, damaging, destroying or parting with whole or part or creating third party interest with respect to the suit premises i.e. the portion situated on the first floor of the property bearing No.B-3/163, Janak Puri, New Delhi, consisting of one bed room with covered wooden Almirah along with key, one drawing room, one dining room, one kitchen, one combined bath and flush latrine, one open verandah in front of one miani in bed room, stair case and ground floor passage in common with fittings and fixtures i.e. one ceiling fan with regulator, one electric motor fitted on the ground floor of the said House No.B-3/163, Janak Puri, New Delhi till the defendants execute collaboration agreement with the builder to demolish and reconstruct the property bearing No. B-3/163, Janak Puri, New Delhi in any manner whatsoever in favour of any person or persons.

- e) Costs of these proceedings may also be awarded in favour of the plaintiffs and against the defendants.
- f) Such other or further orders or direction which this Hon'ble Court deems fit and proper as may do complete justice in the facts and in the circumstances of the case may also be passed in favour of the plaintiffs and against the defendants.”

6. Firstly, I put it to the counsel for the plaintiff that if a compromise which is arrived at in a suit, has to be challenged then a fresh suit cannot be filed to challenge the terms inasmuch as Order 23 Rule 3 and 3A CPC specifically provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is passed was not lawful. Order 23 Rule 3 CPC is also relevant and which provides that a Court which records a compromise, has to see that the compromise is lawful and only thereafter compromise is recorded. As per proviso to Order 23 Rule 3 CPC, if the compromise is not lawful, the Court will decide the question before recording of the compromise and passing of decree.

7. In view of the provision of Order 23 Rule 3A, the present suit is clearly not maintainable and when this was put to the counsel for the plaintiff, counsel for the plaintiff argued that a compromise decree passed in the earlier suit was without jurisdiction as the Court did not have pecuniary jurisdiction to try the suit. It was also argued that the pecuniary value of the suit was artificially inflated to exceed ₹ 20 lacs by claiming mesne profits at ₹8,13,100/- and injunction was prayed for with the arbitrary valuation of ₹ 12 lacs. It is therefore, argued that

decree having been obtained from a Court which did not have jurisdiction, the same is void as consent of the parties cannot confer jurisdiction on a Court which does not have any.

8. In order to appreciate the last mentioned contention, the following para 16 of the earlier suit filed by the defendants/landlords is relevant and the same reads as under:-

“16. The value of the suit for the purpose of court fees and jurisdiction or the relief of possession (ejectment) is fixed at Rs.44,400/- and for the relief of recovery of rent, mesne profits and damages is fixed at Rs.8,13,100 /- and for the injunction is fixed at Rs.12,00,000/- on which the requisite Court Fee of Rs.27,200/-(Twenty Seven Thousand And Two Hundred Only) has been paid.”

9. I fail to understand what is so arbitrary/artificial about valuation of the suit for the purpose of relief of injunction at the value of ₹ 12 lacs inasmuch as a party as per the Court Fees Act, 1870 as applicable to Delhi is entitled to value the suit at the amount which he thinks fit for injunction and pay the advalorem court fees accordingly. I am therefore of the opinion that there is no artificial valuation of the earlier suit as regards the pecuniary jurisdiction.

10. Also, it is settled law in terms of Section 21 of CPC that all objections as to territorial jurisdiction or pecuniary jurisdiction, have to be taken in a suit before framing of issues, and if not taken, such objections are waived i.e issues of pecuniary and territorial jurisdiction do not go to the root of the matter unlike the

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issue of lack of inherent jurisdiction or the lack of subject matter jurisdiction, when a decree cannot be passed by the Court lacking the subject matter/inherent jurisdiction.

11. Learned counsel for the plaintiff has placed reliance upon a Division Bench judgment of Andhra Pradesh in ***Bank of India Vs. U.A.N. Raju and Anr. 2004(1) ALD 577*** to argue that parties cannot confer jurisdiction on the Court which does not have any. There is no dispute to the aforesaid proposition of law and which is referred to in the said judgment qua the inherent or the subject matter jurisdiction. In fact, para 6 of the judgment relied upon makes reference to Section 21 of the CPC and observes that issues of pecuniary and territorial jurisdiction are such objections which can be waived by referring to the oftquoted judgment of the Supreme Court in the case of ***Bahrein Petroleum Co. Ltd. Vs. P.J.Pappu and Anr. AIR 1966 SC 634.***

12. It is therefore, quite clear that the present suit is an abuse of the process of law filed by a tenant who actually under the compromise decree had agreed to vacate the suit premises by 30.9.2012, but obviously is now seeking to back out from the compromise entered into.

13. The subject suit in view of the aforesaid discussion is therefore a gross abuse of the process of law and is therefore dismissed with costs of ₹1 lac. I exercise my powers under Rule 14 of the Delhi High Court (Original Side) Rules CS(OS) 3116/2012

to waive the applicability of the Rules so far as cost is concerned. I seek to rely upon the recent judgments of the Supreme Court in the case of *Ramrameshwari Devi and Others v. Nirmala Devi and Others*, (2011) 8 SCC 249 and *A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by its President etc.* (2012) 6 SCC 430, and which judgments state that it is high time that Courts take notice of dishonest litigation and pass appropriate orders with respect to costs.

14. Costs of ₹ 1 lac be deposited in the account of the Registrar General of this Court maintained in the UCO Bank, Delhi High Court Branch, for utilization towards juvenile justice, within a period of four weeks from today.

15. Copy of this judgment be sent to the defendants by Registry of Court not only by post but also through High Court process serving agency.

All pending applications also stand disposed of.

OCTOBER 17, 2012
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VALMIKI J. MEHTA, J.