

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

Date of Decision: 17.10.2012

+CM(M) 1113/2012, CM 17555-56/2012

CHEMO PHARMA LABORATOIRES LTD Petitioner

Through: Mr.Chetan Sharma, Sr.Adv.
with Mr.Mahesh Aggarwal,
Mr.Sanjay Abbot, Mr.T.Mehta,
Advs.

versus

THAKUR RANGJI MANDIR TRUST Respondent

Through: Nemo.

AND

+CM(M) 1114/2012, CM 17559-60/2012

CHEMO PHARMA LABORATORIES LTD Petitioner

Through: Mr.Chetan Sharma, Sr.Adv.
with Mr.Mahesh Aggarwal,
Mr.Sanjay Abbot, Mr.T.Mehta,
Advs.

versus

THAKUR RANGJI MANDIR TRUST Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. These petitions under Article 227 of the Constitution seek assailing the order dated 5.10.2012 of learned District Judge-cum-Addl. Rent Control Tribunal (ARCT), South, whereby the two appeals being ARCT Nos. 44/2012 and 45/2012, filed by the petitioner, were dismissed.

2. The respondent herein had filed two eviction petitions against its tenant M/s. Shree Digvijay Cement Pvt. Ltd. in respect of the tenanted premises comprising of first and barsati floor of property bearing No. 97, Sunder Nagar, New Delhi. One petition was under Section 14(1)(b)(j) & (k) of the Delhi Rent Control Act (for short the 'Act'), whereby the other was under Section 22 of the Act. Both these eviction petitions filed by the respondent were allowed, and consequently, eviction orders were passed on 29.7.2011 by separate judgments of the Rent Controller. Those judgments were challenged by the said tenant (M/s. Shree Digvijay Cement) by way of appeals, which came to be dismissed by separate judgments dated 13.1.2012 by the ARCT. The judgment debtor M/s. Shree Digvijay Cement delivered possession of the first floor of the tenanted premises to the respondent/decreed holder. Since the possession of barsati floor was not delivered, the respondent/decreed holder filed execution petitions being Ex.No. 3/2011 and Ex. No. 89/2011 respectively in respect of the eviction orders obtained under Section 14 (1)(b) and Section 22 of the Act. The petitioner filed its objections in the execution filed by the respondent claiming that it had an independent title in respect of the

premises in question and its possession thereof by the petitioner is prior to M/s. Shree Digvijay Cement. Vide almost identical orders of 4.6.2012, the objections filed by the petitioner herein were dismissed by the Rent Controller. The petitioner carried the matters in appeals, both of which came to be dismissed vide the impugned judgments of ARCT dated 5.10.2012. The same are under challenge in the instant petitions.

3. I have heard learned senior counsel for the petitioner finally at the stage of admission. It is submitted by the learned senior counsel that the petitioner herein was in possession of the barsati floor of the tenanted premises in its independent right and, thus, could not be evicted in execution of the eviction orders passed against the tenant M/s. Digvijay Cement under Section 14(1)(b) or Section 22 of the Act. It is submitted that the petitioner had acquired the possession of barsati floor sometime in the year 1974-1975 by virtue of oral gift executed by the respondent, and was in possession thereof even prior to the creation of tenancy by the respondent in favour of the judgment debtor M/s. Shree Digvijay Cement. The learned senior counsel seeks to contend that the right of the petitioner was protected under the proviso to Section 25 of the Act as also under the proviso to Section 49 of the Indian Registration Act, and further, that there was a statutory presumption of the petitioner being in possession of the suit premises under Section 164 of the Companies Act. The learned senior counsel contends that there is ample evidence on record to show that the

petitioner is in possession of barsati floor of the tenanted premises since 1974-75. In this regard, reference has also been made to some documents, which will be discussed hereinafter. The reliance is sought to be made on the judgments of the Supreme Court in **Bhaiya Ramanuj Pratap Deo Vs. Lalu Maheshanuj Pratap Deo & Ors., (1981) 4 SCC 613** and **Virendra Nath Vs. Mohd. Jamil & Ors. (2004) 6 SCC 140**.

4. I have considered the submissions made by the learned senior counsel for the petitioner, and on going through the record and the impugned order, it is seen that all these submissions are the same which were made before the Rent Controller as also the ARCT. However, I have given my considered thought to these submissions and perused the entire record.

5. Before advertng to the respective submissions of learned counsel for the parties, it is important to keep in mind that the power of this Court under Article 227 of the Constitution is not in the nature of appellate jurisdiction and so, the extent and scope of power with this Court is limited and restrictive in nature, and in the normal circumstance, it is exercised where there is want of jurisdiction, error of law or perverse findings by the trial Court. Such power is to be exercised to keep the subordinate court within limits of their jurisdiction and authority and it is not to act as an Appellate Court for correcting the decisions of the subordinate courts. This court would

not substitute its opinion or interfere with the findings of the facts of the trial Court, if there was no infirmity or perversity. Thus, in the absence of there being any material illegality or perversity, the order of the court below is not to be faulted with or interfered with by this court in its supervisory power under Article 227. Reference in this regard can be made to the decisions of the Supreme Court in **Waryam Singh and Anr. Vs. Amarnath and Anr., AIR 1954 SC 215** and **Mohammed Yusuf Vs. Faij Mohammad and Ors., I (2009) CLT 153 (SC)**.

6. At the outset, I may deal with the submission based on the afore-cited judgments that the possession of the petitioner being by way of oral gift, was protected from the mandatory registration under Section 49 of the Indian Registration Act, as also being independent, under the proviso to Section 25. The learned ARCT has dealt with this submission, and rightly recorded that the above-cited two decisions are distinguishable from the facts of the present case. In **Bhaiya Ramanuj Pratap Deo (supra)**, it was held that “proviso to Section 49, however, permits the use of the document, even though unregistered, as evidence of any collateral transaction not required to be effected by registered instrument. In this view of the legal position, the maintenance deed can be looked into for collateral purpose of ascertaining the nature of possession”. This proposition of law pre-supposes the existence of a document, which was a maintenance deed in the cited case, and whereas in the instant petition, admittedly, there is no written gift deed.

Further, in **Virendra Nath (supra)**, there was in existence a written mortgage deed, which is also not in the instant petition. Looking an unregistered document for collateral purpose presupposes the existence of such a document, which is unavailable in the instant petition. I fail to understand as to how the reliance was sought to be placed on these judgments by the petitioner. Thus, the reliance on the afore-cited judgments is highly misplaced.

7. The petitioner, in fact, is seen to be not clear about the nature of its possession as also the time of possession. In the objections initially filed on 22.1.2012, the plea was that the petitioner was gifted the barsati floor and got its possession in 1974-75. However, in the objections filed in April, 2012, the plea was that the petitioner got the possession by oral gift and has been enjoying the property as a legal owner thereof, without any objection or interference. This way the petitioner seems to have claimed legal ownership in the barsati floor of the tenanted premises by virtue of oral gift. The learned Rent Controller as also the ARCT rightly rejected the plea that the legal ownership in the property could not be derived on the basis of oral gift, in view of the provisions contained in Section 17(1) and Section 49 of the Indian Registration Act. The learned senior counsel fairly conceded to this.

8. The matter does not end here. In the instant petitions, the plea was further modified by stating that the averment relating to gift was used in a sense of licence without licence fee, and not in the sense of gift deed to convey the ownership of the petitioner. It was still further modified by stating that considering the association of Somani Family with the respondent, the petitioner must be held to have come in possession with the consent and permission of the respondent. From all these, it would be seen that the petitioner does not appear to be sure about its claim of nature of possession of the barsati floor of the premises. Sometimes, it is stated to be a gift, then oral gift, and then, in a sense of licence and then, permissive possession with the consent of the respondent.

9. Interestingly, the petitioner has nowhere disclosed as to how the suit premises came to be gifted to the petitioner by the respondent trust. On being asked, the learned senior counsel for the petitioner submitted that the suit premises was gifted by Sh. B.D.Somani as a trustee of the respondent trust. This would not appeal to any reason that either a gift or a licence or even the permissive possession of the suit premises would be given by the respondent trust through B.D. Somani to the petitioner company, which is undisputedly of Somani family. Neither the trust can act in such a manner, nor there is anything to show that B.D.Somani, at any point of time, was authorized to part with the possession of the suit premises, either as a gift or licence or permissive possession to their own company.

10. Moving further, the petitioner also does not appear to be sure as to when the aforesaid gift or licence was created in respect of the suit premises. At different places, it was stated to be in the year 1974-75, or 1975 or 1973. Even in the instant petition, at some place, it was stated to be 1973, and at another place, 1975. The petitioner seeks to rely upon some documents to substantiate that it has its regional office in the suit premises. Some of those documents are photocopies of electricity bills, Election Identity Card in the name of one Harak Singh and one copy of the I.D. Card in the name of Udai Chand Yadav. The Rent Controller has examined these documents, and rightly observed that all these documents are of the year 1994 onwards and there is nothing on record to connect Harak Singh or Udai Chand Yadav with the petitioner company. It was observed, and rightly so, that these documents cannot substantiate that the petitioner came into the possession of the suit premises in 1974-75. Similarly, the copies of three Annual Reports only show the address of regional sales office of the petitioner as 97, Sunder Nagar, New Delhi for three years. With regard to this document, as also some communication with the Sales Tax Department, the learned Rent Controller has observed, and rightly so, that these documents, prima facie, do not establish the petitioner to be in possession of the suit premises in the year 1974-75, and that, these documents can at the most, be taken to be showing address for the purpose of communication. On being asked, the learned senior counsel conceded that except the first page of the Annual Reports, there is no mention of the suit premises in the statement of accounts

forming part of the Annual Reports. It is highly unbelievable that a company would be in possession of the premises for its regional sales office for almost 40 years and may not have any document to show its activities, if any, being carried by it therefrom. In the backdrop of the plea of the petitioner that Somani family had close relations with the respondent trust from the year 1907 and had given lot of donations to the respondent trust, it can, at the most, be taken that the petitioner had used this address of the suit premises for communication purpose only for some time. If the petitioner had been in possession of the suit premises in its independent right as alleged as donee or licensee and running its regional sales office therefrom, it would have been in possession of cogent and reliable evidence in this regard.

11. It is not the case of the petitioner that M/s. Shree Digvijay Cement was not the tenant in respect of first and the barsati floor of the premises, or that other companies were not its sub-tenants therein. The Rent Controller in the orders of eviction recorded a finding of fact, and which was maintained by the ARCT that M/s. Shree Digvijay Cement had sublet the suit premises to the petitioner and other companies. It is strange that a premises would be let out by the respondent to the tenant, with the possession thereof already being with the petitioner. That cannot appeal to any reason that M/s. Shree Digvijay Cement would have taken the premises with the petitioner already being in possession of the suit premises. Assuming for the sake of argument that the petitioner was in possession of the suit premises at some point

of time, but that came to an end with the creation of tenancy in favour of M/s. Shree Digvijay Cement by the respondent.

12. The plea of the learned senior counsel about the presumption as regard to the correctness of the Annual Returns as per Section 164 of the Companies Act, is misconceived. As is noted above, there being nothing on record to substantiate the functioning of the petitioner from the suit premises and the documents placed on record, not sufficiently substantiating the claim of the petitioner to be in possession of the suit premises, the statutory presumption of Section 164, Companies Act was not available to the petitioner. In any case, the documents referred to above, do not support the plea of the petitioner to be in possession as a donee or licensee.

13. It was not for the court to make a roving enquiry into an oral gift and its validity or validation. The onus lied upon the petitioner to prima facie substantiate its case of lawful possession in independent right. What is protected under proviso to Section 25 is not the mere possession, but, something more than that. The case of mere possession comes within the ambit of the main part of this Section and it is only the claim of independent title, which is certainly more than the possession, that was saved under the proviso. The petitioner has not been able to establish even prima facie that it is in possession of the suit premises in its independent right, and was thus, saved from the execution petition filed by the respondent. It is not the intention of the

legislature under Section 25 to save each and every kind of possession of the premises against which eviction order was passed.

14. In view of my above discussion, I do not find any illegality or impropriety in the impugned orders of learned District Judge-cum-ARCT dismissing the appeals filed against the orders of ARC dated 4.6.2012. The petitions being devoid of any merit are hereby dismissed.

M.L. MEHTA, J.

OCTOBER 17, 2012

akb