

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

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Date of decision: 2nd December, 2013

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RFA 95/2013

P.S. JAIN CO. LTD.

..... Appellant

Through: Ms. Sangeeta Jain, Adv.

Versus

ATMA RAM PROPERTIES (P) LTD. & ANR. Respondents

Through: Mr. Amit Sethi, Adv. for R-1.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the judgment and decree (dated 27th September, 2012 of the Court of Addl. District Judge Central-09, Tis Hazari Courts, Delhi in CS No.150/2011 filed by respondent no.1) on admissions of ejectment of the appellant and the respondent no.2 Syndicate Bank, after determination of tenancy, from the premises earlier in the tenancy of the appellant.

2. Notice of the appeal and of the application for stay was issued. On the next date it was stated that the respondent no.2 Syndicate Bank is a proforma party; accordingly service of the respondent no.2 Syndicate Bank was dispensed with. The counsel for the respondent no.1 on 6th March, 2013 also

informed that possession of the property had already been taken by the respondent no.1 by collecting the keys of the premises from the Court where they were deposited by the respondent no.2 Syndicate Bank. The said position was confirmed by the counsel for the appellant and as such the application for stay of execution was dismissed as infructuous and the Trial Court record requisitioned and the appeal listed for final hearing. The counsel for the appellant thereafter kept on taking adjournments and has today argued only upon it being made clear on the last date that no further adjournment will be given.

3. The suit from which this appeal arises, was instituted by the respondent no.1/plaintiff as far back as on 11th April, 1989, pleading:-

- (a) that the subject premises in the commercial heart of city of Delhi i.e. at Connaught Place were let out to the appellant/defendant no.1 at a rent of Rs.900/- per month w.e.f. 1st June, 1977 vide registered Lease Deed dated 5th January, 1978 for a period of ten years;
- (b) that though the term of the Lease Deed expired on 31st May, 1987, the appellant/defendant no.1 continued to hold the premises as a monthly tenant;

- (c) that the appellant/defendant no.1 had sub let the premises to the defendants no.2 to 5 with each of them paying rent in excess of Rs.3,500/- per month to the appellant/defendant no.1; that the tenancy was thus outside the ambit of Delhi Rent Control Act, 1958; and,
- (d) that the respondent no.1/plaintiff had vide notice dated 29th December, 1988 determined the tenancy of the appellant/defendant no.1 w.e.f. 31st January, 1989.

4. It appears that the other defendants in the suit were given up and the suit proceeded against the appellant/defendant no.1 and respondent no.2 Syndicate Bank only; the said Bank also vacated the premises and deposited the keys in the Court.

5. The appellant/defendant no.1 claimed that its eviction from the premises was protected by the Rent Act, the rent payable by it to the respondent no.1/plaintiff being less than Rs.3,500/- per month. The said aspect was decided against the appellant/defendant No.1 till the Supreme Court.

6. The learned Addl. District Judge has vide the impugned judgment on admissions, ordered ejectment of the appellant/defendant no.1, holding that

there was no dispute of the relationship of landlord and tenant or qua the registered Lease Deed the term whereof had expired and/or qua the tenancy having been terminated.

7. The counsel for the appellant/defendant No.1 has at the outset referred to *M/s. Jeevan Diesels & Electricals Ltd. Vs. M/s. Jasbir Singh Chadha (HUF)* AIR 2010 SC 1890 whereby the Supreme Court set aside the judgment of this Court affirming the judgment of the Trial Court, also of ejectment on admissions and remanded suit for trial and has contended that the facts of the present case are similar.

8. However the precedents are on questions of law and not of facts. It has thus been enquired from the counsel for the appellant/defendant no.1 as to what is the plea in the written statement of the appellant/defendant no.1 which is required to be put to trial. Attention of the counsel has been invited to Order XIV and Order XV of the Code of Civil Procedure, 1908. It is not as if the CPC requires all suits to be decided only after trial, unless admissions are made. Order XIV of the CPC requires the Civil Court, after the pleadings have been completed, to frame issues. Such issues are to be framed on material propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to

constitute his defence. Order XV of the CPC prescribes the course of action to be followed where the parties are found not at issue on any question of law or of fact and requires the Court to at once pronounce judgment.

9. I have thus put to the counsel for the appellant/defendant no.1, whether not, irrespective of whether admissions had been made by the appellant/defendant no.1 or not, the Court is entitled to see whether any of the pleas of the appellant/defendant no.1 raise any material proposition of law or fact in order to constitute a defence and if not, whether the Court is not entitled to pass a decree even under Order XV of the CPC.

10. Attention of the counsel for the appellant/defendant no.1 is also invited to *Abdul Gafur Vs. State of Uttarakhand* (2008) 10 SCC 97, *T. Arivandandam Vs. T.V. Satyapal* (1977) 4 SCC 467 and the Division Bench judgment of this Court in *P.P.A. Impex Pvt. Ltd. Vs. Mangal Sain Mittal* 166(2010) DLT 84 laying down that if on a meaningful, not formal reading, the pleading is found to be manifestly vexatious and meritless, not disclosing a right to sue or defend and implausible, the court should exercise its powers and should not allow it to create an illusion and such defences should not be needlessly permitted to go to trial. It was enquired, whether mere clever drafting by Advocates can compel the Courts to put the suit to trial and

whether not the court is entitled to not see through and clear the maze sought to be raised and see what the real defence is.

11. No answer has been forthcoming from the counsel for the appellant/defendant no.1 who merely keeps repeating that the suit should be put to trial.

12. The counsel for the appellant/defendant no.1 has argued that the erstwhile landlord/predecessor in interest of the respondent no.1/plaintiff had in the Sale Deed of the property subject matter of suit in favour of the respondent no.1/plaintiff admitted receipt of non-refundable sum of Rs.9.50 lacs from the appellant/defendant no.1 at the time of creation of the lease; it is argued that the said sum of Rs.9.50 lacs had much more value at the time of creation of the lease in the year 1977-78 than it may have now; that it is the plea of the appellant/defendant no.1 in the written statement that the agreement of the appellant/defendant no.1 with the predecessor in interest of the respondent no.1/plaintiff in consideration of the said payment was that the appellant/defendant no.1 could continue in possession of the premises for as long as it wanted and/or till the said amount of Rs.9.50 with interest was refunded to the appellant/defendant no.1.

13. I have enquired from the counsel for the appellant/defendant no.1 whether not the registered Lease Deed in favour of the appellant/defendant no.1 was for a period of ten years certain.

14. The answer is in the affirmative.

15. I have enquired from the counsel for the appellant/defendant no.1 that if the agreement was as is claimed, why was the period of the lease mentioned in the deed as for ten years and why was the lease not made in the perpetuity or with a condition for refund by the landlord to the appellant/defendant no.1/tenant of Rs.9.50 lacs with interest whenever the landlord wanted to evict the appellant/defendant no.1.

16. Though the counsel admits that there is no such term in the Lease Deed but insists that evidence should have been permitted thereon.

17. The issues of fact as aforesaid are to be framed only on pleas which require trial. If a plea, though taken, is untenable in law which even if were to be established does not amount to a defence, to still put such a plea to trial would be a travesty of justice.

18. In the present case not only is the plea, of the lease being in perpetuity, in contradiction to the term in a registered deed and evidence of such plea is barred by Section 92 of the Indian Evidence Act, 1872 but is even otherwise apparently false and improbable. It is not as if such non-refundable deposits were paid/taken only for assuring continuous possession. Such deposits are/were often taken also in deduction of the monthly rent. The payment of rent can be by diverse means and just because the landlord has opted to take and the tenant has opted to pay a lump-sum amount at the time of creation of lease, does not permit evidence to be led contrary to the term of the registered document executed by them.

19. The counsel for the respondent no.1/plaintiff points out that in fact the appellant/defendant no.1 had sought amendment of the written statement to plead that the said amount of Rs.9.50 lacs was given by way of consideration for sale of the premises to appellant/defendant No.1 and which plea was denied and which order has become final.

20. I am therefore of the opinion that the aforesaid plea of the appellant/defendant no.1 is not such which requires the suit to be put to trial

or for allowing any evidence to be led in support thereof and which evidence is indeed barred from being recorded.

21. The only other argument of the counsel for the appellant/defendant no.1 is that after issues had been framed in the suit on 13th May, 1993, the order of ejectment on admissions could not have been passed.

22. This aspect is also no longer *res integra*. As far back in ***ITC Limited Vs. Debt Recovery Appellate Tribunal*** (1998) 2 SCC 70 followed in ***Sanjay Sharma Vs. Madan Mohan Sharma*** MANU/DE/1999/2013 as well as in ***Guru Nanak Vidya Bhandar Trust Vs. UOI*** MANU/DE/8130/2006 relied upon by the counsel for respondent No.1, it has been held that merely because issues have been framed does not disentitle the Court from at a subsequent stage, if finds that a relief can be granted on admissions or if finds that no material issue arises or that the evidence on any issue claimed or framed is otherwise barred by law, from passing a decree.

23. There is thus no merit in the appeal which is dismissed with costs. Counsel's fee assessed at Rs.20,000/-.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.
DECEMBER 02, 2013/pp..