

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

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Date of decision: 27th August, 2013

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RFA 178/2013

MOHINDER PAL SINGH

..... Appellant

Through: Mr. Ashok Kumar, Adv.

versus

SUNIL KUMAR

..... Respondent

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

CM No.9357/2013 (for restoration of the appeal dismissed in default on 22nd April, 2013.

1. The appeal was dismissed in default of appearance of the appellant, before it could be considered for admission. Nevertheless when the appellant filed this application for restoration notice thereof was issued to the respondent and Mr. Yogesh Sharma proxy counsel for Mr. Akil Rataeeya counsel for the respondent appeared before the Registrar (Appellate) on 19th July, 2013. However none appears for the respondent today.

2. Considering the fact that the appeal was dismissed in default at the stage when it came up for admission, for the reasons stated in the application, the appeal is restored to its original position.

3. The application is disposed of.

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4. The appeal impugns the judgment dated 22nd September, 2012 (in Civil Suit No.253/2011) of the learned Addl. District Judge-I, South-West District, of ejection of the appellant/defendant from the premises in its tenancy and for *mesne* profits.

5. The counsel for the appellant/defendant on enquiry states that in pursuance to the decree, possession of the premises has already been taken by the respondent/landlord.

6. The counsel for the appellant/defendant has been heard on the aspect of admission of the appeal.

7. The respondent/plaintiff filed the suit from which this appeal arises pleading:-

- (a). that the appellant/defendant was a tenant under the respondent/plaintiff with respect to shop No.WZ-143-C/3B, Main Najafgarh Road, New Mahavir Nagar, New Delhi on the terms & conditions contained in a registered Rent Agreement dated 12th May, 2008 for a period of eleven months on rent of Rs.13,000/- per month.
- (b). that after completion of eleven months tenure, the lease was extended and another registered Rent Agreement dated 13th May, 2009 was executed between the parties for a further period of 24 months starting from 13th May, 2009 and till 12th May, 2011 and at a rent of Rs.13,000/- per month;

- (c). that the appellant/defendant paid the monthly rent of Rs.13,000/- till the month of January, 2010 and thereafter stopped paying the rent and asked the respondent/plaintiff to adjust the security amount of Rs.39,000/- in rents for the months of February, March and April, 2010;
- (d). that the appellant/defendant however failed to pay the rent thereafter also inspite of repeated requests and demands from the respondent/plaintiff;
- (e). that as per Clause 17 of the registered Rent Agreement dated 13th May, 2009 the respondent/plaintiff had a right to eject the appellant/defendant for any breach of the terms & conditions and the premises even otherwise, as per Clause 16 could be got vacated by giving one month's notice on either side; and,
- (f). that respondent/plaintiff got issued the legal notice dated 6th December, 2010 to the appellant/defendant in this regard and to which a false and frivolous reply dated 3rd January, 2011 was got sent by the appellant/defendant.

Accordingly, the suit for ejectment and for recovery of arrears of rent and for *mesne* profits was filed in or about January, 2011.

8. The appellant/defendant contested the suit by filing a written statement pleading:-

- (i). that the first Lease Agreement dated 12th May, 2008 was signed by the appellant/defendant as per the format put forward by the

respondent/plaintiff and no copy thereof was supplied to the appellant/defendant;

- (ii). that though the appellant/defendant in pursuance to the first Lease Agreement dated 12th May, 2008 paid rent @ Rs.13,000/- per month but no receipts therefor were issued;
- (iii). that though after the expiry of the term of the first Lease Agreement dated 12th May, 2008 the appellant/defendant had informed the respondent/plaintiff that he was interested in extension of the Lease Agreement at least for ten years and though the respondent/plaintiff had also assured so but got the new Lease Agreement dated 13th May, 2009 executed for a period of two years only;
- (iv). though the appellant/defendant even thereafter was paying the rent but no receipts were issued;
- (v). that in March, 2010 the respondent/plaintiff had enquired from the appellant/defendant whether the appellant/defendant was interested in purchasing the shop and though the appellant/defendant offered to purchase the same for a sum of Rs.20 lacs but the respondent/plaintiff demanded a price of Rs.50 lacs;
- (vi). that the legal notice got served by the respondent/plaintiff in December, 2010 was false and frivolous in as much as rent till the month of December, 2010 had been paid;

- (vii). that the respondent/plaintiff thereafter refused to receive the rent for the month of January, 2011 and in March, 2011 when the rent for the months of January, February & March, 2011 was offered, the same was also refused by the respondent/plaintiff;
- (viii). that the appellant/defendant accordingly in or about March, 2011 sent a cheque for Rs.39,000/- towards rent for the months of January to March, 2011 but which also the respondent/plaintiff refused to accept; and,
- (ix). that the counterfoils of the receipt for payment of rent filed by the respondent/plaintiff showing payment of rent till January, 2010 were forged and fabricated.

9. On the pleadings of the parties, the following issues were framed on 7th October, 2011:-

- “1. *Whether the plaintiff is entitled to recovery of the possession of the suit property i.e. Shop bearing No.WZ-143-C/3B situated at ground floor main Najafgarh Road, New Mahavir Nagar, New Delhi? OPP*
- 2. *Whether the plaintiff is entitled to recover arrears of rent of Rs.1,17,000/- from the defendant as prayed? OPP*
- 3. *Whether the plaintiff is entitled to mesne profit as prayed? OPP*
- 4. *Whether the plaintiff is entitled to damages as prayed? OPP*

5. *Whether the plaintiff is estopped from seeking the vacation of the suit property after accepting the balance lease amount? OPD*
6. *To what relief.”*

10. The learned Addl. District Judge in the impugned judgment has found/observed/held:-

- (i). that the appellant/defendant had failed to establish/prove payment of rent from February, 2010 to December, 2010;
- (ii). that even though the lease in favour of the appellant/defendant was till 12th May, 2011 but the same was terminable on breach by the appellant/defendant;
- (iii). that the appellant/defendant had committed such a breach by non-payment of rent and had thus become liable to ejectment even prior to the term of its tenancy;
- (iv). that in the light of the registered document the plea of the appellant/defendant of the oral agreement of lease of ten years was of no avail;
- (v). that the lease was even otherwise, irrespective of non-payment of rent, terminable by one month's notice;
- (vi). that the receipt of the notice of termination of tenancy was not controverted;
- (vii). that the agreed lease period of 12th May, 2011 had in any case expired and the appellant/defendant had no right to continue in the premises; and,

(viii). that the appellant/defendant having been found to have not paid rent w.e.f. May, 2010 (after adjustment of security deposit in the rents for the months of February, March & April, 2010), a decree @ Rs.13,000/- per month being the last paid rent was passed w.e.f. 1st May, 2010 till the actual delivery of possession.

11. Even though this is a first appeal and which is ordinarily considered after notice and after summoning the Trial Court record but in the aforesaid state of affairs and especially when the counsel for the appellant/defendant states that the copies of the entire Trial Court record have been produced, need is not felt to keep this appeal pending for the sake of past practice and it has been enquired from the counsel for the appellant/defendant as to what is wrong with the impugned judgment and decree.

12. The only contention of the counsel for the appellant/defendant is that the rent for the months of February to December, 2010 had been paid in cash and for which no receipt had been given. It is further contended that the rent was earlier also paid in cash and though the respondent/plaintiff was asked to produce counterfoils of the rent receipt but no order was made thereon.

13. I have perused the evidence of the appellant and the respondent, who alone examined themselves in support of their respective cases to find out whether there is any error in the conclusion reached by the learned Addl. District Judge of the appellant/defendant having not paid the rent for the months of February to December, 2010.

14. I do not find the appellant/defendant, who claims to have paid the rent in cash to have brought any material whatsoever before this Court to show that he was possessed of the said cash and/or that he had anywhere recorded or disclosed the said payment; rather on enquiry as to why the payments were made in cash he deposed that since the respondent/plaintiff was accepting cash he made the payment in cash. A person, who claims to have made payments in cash, when faced with denial, runs the risk of having onus placed on him to prove such payment. I have also perused the cross examination by the appellant/defendant of the respondent/plaintiff and do not find any dent to have been made on the evidence of the respondent/plaintiff to the effect that the rent had not been paid.

15. Moreover, the reason suggested by the appellant/defendant for the respondent/plaintiff initiating eviction proceedings is of wanting to sell the property for Rs.50 lacs. Ordinarily a landlord who is taking care to let out a premises by a registered document for a short time of two years only would not indulge in litigation unnecessarily with the tenant more so in a case where the lease in any case is terminable by one month's notice in writing on either side.

16. It is also worth mentioning that the plea of the appellant of payment in cash would have no relevance to the relief claimed in the suit for ejectment of the appellant/defendant, for the reasons of the lease as per its terms being terminable in nature irrespective of any default of appellant/defendant and the term of lease in any case having expired.

17. No other argument is raised.

18. No merit is thus found in the appeal which is dismissed; however the appeal having been dismissed without issuing notice to the respondent/plaintiff, not order as to costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

AUGUST 27, 2013

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