

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

%

Date of decision: 31st July, 2013

+ RFA 251/2011 & CM No.8990/2011 (u/O 41 R-27 CPC)

SUNIL KAPOOR

..... Appellant

Through: Mr. Arvind K. Nigam, Sr. Adv. with
Mr. Akshay Makhija and Ms.
Sanjugeeta Moktan, Advocates.

Versus

HARVEEN KAUR & ORS

..... Respondents

Through: Mr. Sanjiv Kakra, Mr. Irfan Ahmed
and Mr. Bheem Sain Jain, Advocates

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The appeal impugns the judgment and decree (dated 31st January, 2011 of the Court of Additional District Judge, Central-10, Delhi in Suit No.153/2009) on admissions for ejectment of the appellant from the first floor of property No.246, Greater Kailash, Part-I, New Delhi earlier in the tenancy of the appellant.

2. Notice of the appeal was issued and the appeal posted for final hearing and the statement of the respondents, not to execute the impugned judgment and decree, was recorded. Vide subsequent order dated 28th September, 2011 the appellant, without prejudice to his rights and contentions and pending the enquiry before the Trial Court for determination of mesne profits and as a condition for stay of execution of the decree for ejectment,

agreed to pay to the respondents a sum of Rs.40,000/- per month with effect from the month of October, 2011 and is informed to be paying the said amount to the respondents till date.

3. The counsels were heard on 19th July, 2013. It was *inter alia* the contention of the senior counsel for the appellant that the respondents have also agreed to sell the property in the tenancy of the appellant to the appellant and CS(OS) No.1018/2004 for specific performance of the said Agreement to Sell is pending before this Court.

4. It was enquired from the senior counsel for the appellant, whether the Agreement to Sell claimed by the appellant is a registered document.

5. It is informed to be not.

6. It was thus put to the appellant that owing to Section 17(1A) of the Registration Act, 1908, the appellant cannot claim the benefit of Section 53A of the Transfer of Property Act, 1882. Attention was also invited to the judgment of this Court in ***Jiwan Dass Rawal Vs. Narain Dass*** AIR 1981 Delhi 291 holding that an agreement purchaser has no right in the property till a decree for specific performance is passed and till the title to the property is conveyed in pursuance thereto. It was thus put to the senior counsel for the appellant that the appellant, for the reason of claiming to be agreement purchaser, was not entitled to resist his ejectment from the premises as a tenant.

7. Though the senior counsel for the appellant invited attention to ***R. Kanthimathi Vs. Mrs. Beatrice Xavier*** AIR 2003 SC 4149 to contend that

on the date of execution of agreement of sale between the landlord and tenant, their status changes into a new status i.e. that of purchaser and seller but finding, that the recording of evidence in the suit for specific performance was underway before a Court Commissioner and only the witnesses to be summoned of the appellant (who is plaintiff therein) remained to be examined by the appellant, a proposal was mooted for expediting the disposal of the suit and allowing the appellant to continue in possession of the premises till the disposal of the suit for specific performance.

8. Both counsels had then taken time to obtain instructions.

9. The counsel for the respondents today informs that the respondents are agreeable to the aforesaid course of action on the further conditions; (i) that the appellant clears and pays the arrears of electricity and water charges; and , (ii) enhances the amount which he is paying by way of interim arrangement for continuing in use and occupation of the premises.

10. The senior counsel for the appellant also on instructions is agreeable to the said course of action and states that the arrears towards electricity and water charges shall be cleared within three weeks and the appellant in future shall continue to pay the electricity and water charges month by month.

11. Accordingly, with the consent of the parties represented through their counsels, this appeal is disposed of with the following orders/directions:

(i) Mr. S.M. Chopra, retired Additional District Judge who is recording the evidence in the suit for specific performance filed by the

appellant is requested to complete the recording of the evidence on or before 31st December, 2013. Both counsels state that they will fully co-operate in ensuring completion of recording of evidence by the said date and will not take any unnecessary adjournments;

(ii) Both counsels further agree to immediately after recording of the evidence is complete, approach the Suit Court for expeditious hearing of the suit;

(iii) In the event of the suit for specific performance being dismissed, the appellant, subject to his right of appeal thereagainst, undertakes to hand over vacant, peaceful and physical possession of the entire premises in his occupation in compliance of the decree impugned in this appeal to the respondents or their heirs or assignees within two months of the said judgment in the suit for specific performance;

(iv) In the event of the appellant failing in the suit for specific performance and preferring an appeal against the said judgment, the appellant shall be entitled to in the said appeal seek further directions with respect to the delivery of possession of the premises and the respondents shall be entitled to oppose the same;

(v) In the event of the appellant succeeding in the suit for specific performance, subject to the right of the respondents to appeal, the decree for ejectment shall stand satisfied and the possession of the premises shall be deemed to have been delivered by the appellant to

the respondents in compliance of the decree impugned in the appeal and simultaneously by the respondents to the appellant in pursuance to the decree for specific performance;

(vi) The respondents in the aforesaid event, if prefer an appeal, shall be similarly entitled to obtain direction qua the delivery of possession of the premises from the Appellate Court;

(vii) The proceedings underway before the Trial Court for determination of mesne profits to continue and the payments made by the appellant to the respondents under orders in this appeal are subject to the final determination in the said proceedings, with the appellant being liable to pay the excess amount if any found due and the respondents being liable to refund the excess amount if any received under the interim arrangement;

(viii) The appellant agrees to pay to the respondents with effect from 1st August, 2013, an amount of Rs.50,000/- per month (instead of Rs.40,000/- per month) and again subject to adjudication in the enquiry of mesne profits;

(ix) The undertaking of the appellant to clear the arrears of electricity and water charges and to pay future electricity and water charges is accepted and the appellant is ordered to be bound thereby.

(x). The parties are left to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

JULY 31, 2013
bs