

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

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Date of decision: 19th August, 2013

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RFA 357/2013 & CM No.11685/2013 (for stay)

M/S ASV INDUSTRY & ANR

..... Appellants

Through: Mr. Praveen Agrawal, Adv. with
Mr. Hardev Singh, Appellant No.2.

Versus

SURINDER MOHAN & ANR

..... Respondents

Through: Mr. Abhas Mishra, Adv

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This first appeal under Section 96 of the Civil Procedure Code (CPC), 1908 impugns the judgment and decree (dated 4th May, 2013 of the Court of Additional District Judge Central-07 in Suit No.246/2012) on admissions of ejectment of the appellant No.1 (of which the appellant No.2 Mr. Hardev Singh is the proprietor) from possession of the ground floor of property No.4A, MCD No.1-A, Street No.2, Railway Line Side, Anand Parbat Industrial Area, New Delhi.

2. The appeal had come up first before this Court on 31st July, 2013 when even though *prima facie* there did not appear any merit in the appeal but considering the fact that it is first appeal, it was deemed appropriate to requisition the Trial Court record and issue notice. The Trial Court record has been received and the counsels have been heard.

3. The two respondents/plaintiffs had instituted the suit from which this appeal arises for recovery of possession of the said premises and for mesne profits/damages for use and occupation and for permanent injunction pleading that they had let out the premises to the appellants/defendants at a rent of Rs.31,000/- per month under a Rent Agreement dated 16th March, 2007 for a period of three years with effect from 1st April, 2007 and expiring on 31st March, 2010; that after 31st March, 2010, the appellants/defendants became tenants from month to month in the premises; that the said tenancy of the appellants/defendants was determined by the legal notice dated 29th February, 2012 sent on 1st March, 2012; that the appellants/defendants inspite of determination of their tenancy had failed to vacate the premises; that the appellants/defendants had also not paid rent of the premises since June, 2011 inasmuch as the cheques issued by the appellants/defendants towards rent for the said period had been returned dishonoured.

4. Summons of the suit were issued to the appellants/defendants who filed a written statement pleading:

- (i) that the respondents/plaintiffs have not paid the appropriate court fees on the plaint;
- (ii) that the suit was based on falsehood;
- (iii) that the respondents/plaintiffs had approached the appellants/defendants in the month of February, 2008 and requested to advance a sum of Rs.10 lakhs; accordingly, in the

month of April/May, 2008, the appellant/defendant No.2 had given a sum of Rs.10 lakhs including the sum of Rs.1,25,000/- given as security deposit at the time of inception of the tenancy and it was further decided that Rs.31,000/- after deducting TDS would be paid to the respondents/plaintiffs till March, 2012 and thereafter the said amount of Rs.10 lakhs shall be treated as interest free security deposit. It was further assured that the respondents/plaintiffs would not disturb the possession of the appellants/defendants for a period of ten years and after a lapse of ten years, the said amount would be treated as interest free security/earnest money towards the sale of suit property in favour of the appellants/defendants; it was further agreed that in case after a lapse of ten years, the appellants/defendants were not interested to purchase the property, the respondents/plaintiffs would refund the said interest free security and the appellants/defendants would vacate the property;

(iv) that the Rent Agreement on which the respondents/plaintiffs were relying upon could be only for eleven months, though had been executed mistakenly for three years and it was for this reason only that a fresh Memorandum of Understanding (MoU) dated 25th May, 2008 mentioning certain terms and conditions for a period of ten years of tenancy in favour of the appellants/defendants was executed;

(v) that the Rent Agreement dated 16th March, 2007 upon which the respondents/plaintiffs are relying upon is a forged and

fabricated document and the true and correct rent agreement in custody of the respondents/plaintiffs had not been filed;

(vi) that the respondents/plaintiffs had not filed any document of their title to the property;

(vii) that the appellants/defendants have paid TDS upto March, 2012 and thus payments till March, 2012 stood made;

(viii) that under the MoU aforesaid the appellants/defendants' possession of the property could not be disturbed for a period of ten years from March, 2012 and the suit for recovery of possession filed in May, 2012 was misconceived;

(ix) that the respondents/plaintiffs were not the owners of the property and were not competent to let out the same;

(x) that the Rent Agreement dated 16th March, 2007 being for a period of three years was compulsorily required to be registered and was not registered;

(xi) that no notice dated 29th February, 2012 of determination of tenancy had been served on the appellants/defendants.

5. The respondents/plaintiffs instead of filing replication filed an application under Order 12 Rule 6 of CPC. The counsel for the appellants/defendants chose to address arguments on the said application without filing a reply.

6. The learned ADJ has allowed the application under Order 12 Rule 6 of CPC and passed a decree for ejectment on admissions observing/finding/holding:

(a) that though the appellants/defendants had in their written statement denied the relationship of landlord and tenant and pleaded that the Rent Agreement dated 16th March, 2007 relied upon by the respondents/plaintiffs was a forged and fabricated document but not denied their signatures thereon;

(b) that though the said Rent Agreement was unregistered but the same establishes the relationship of landlord and tenant between the parties;

(c) that the appellants/defendants had in their written statement referred to an MoU dated 25th May, 2008 whereunder the respondents/plaintiffs had agreed to allow the appellants/defendants to remain in the premises for a further period of ten years but neither the MoU had been filed nor the appellants/defendants had filed any document to show that they had paid Rs.10 lakhs to the respondents/plaintiffs as interest free security deposit;

(d) that though the appellants/defendants were on the one hand denying the ownership/landlordship of the respondents/plaintiffs of the suit property but on the other hand they claimed to have entered into an MoU with the respondents/plaintiffs for remaining in the

property for another ten years; the same implies that the respondents/plaintiffs are the owners/landlords of the property and the appellants/defendants were tenant under the respondents/plaintiffs;

(e) that the appellants/defendants had also admitted payment of rent of Rs.31,000/- per month after deducting the TDS;

(f) that thus the existence of the relationship of landlord and tenant stood established;

(g) that from the copy of the legal notice of determination of tenancy, its postal receipts and A.D. Cards on record and non-traverse of signatures on the A.D. Cards, the determination of tenancy of the appellants/defendants also stood established.

Accordingly, the respondents/plaintiffs were held entitled to the relief of ejectment.

7. Though, the appellants/defendants had not produced the MoU dated 25th May, 2008 before the Trial Court but a photocopy thereof has been filed at page 90 of the appeal paper book.

8. The star defence of the appellants/defendants being of entitlement to continue in possession of the premises in pursuance to the MoU dated 25th May, 2008, it was at the outset enquired from the counsel for the appellants/defendants (when the arguments commenced at about 1210 hours) as to how the same was relevant to the matter in controversy; once, the appellants/defendants are found to be not disputing having come into

possession of the premises as a tenant under the respondents/plaintiffs, they are liable to be ejected upon determination of their tenancy, unless the nature of their possession is found to have been changed from that of tenant to an agreement purchaser in part performance under Section 53A of the Transfer of Property Act, 1882; this Court in **Jiwan Das Vs. Narain Das** AIR 1981 Del. 291 as reiterated in **Sunil Kapoor Vs. Himmat Singh** 167 (2010) DLT 806 has held that an agreement purchaser has no rights in the property not only till the passing of a decree for specific performance of the agreement but even till the execution of the conveyance in pursuance thereto. It was thus put to the counsel for the appellants/defendants whether he had any answer to the same.

9. Though the counsel for the appellants/defendants did not give any answer to the query raised but insisted that the decree could not have been passed on admissions under Order 12 Rule 6 of the CPC. Reliance in this regard was placed on paras 13 to 16 of the judgment of the Division Bench of this Court in **Raj Kumari Garg Vs. S.M. Ezaz** (2012) (132) DRJ 108 and on para 3 of **Jai Mata Builders Vs. National Insurance Co. Ltd.** (2012) 9 AD Delhi 82. The contention is that the appellants/defendants having controverted, the relationship of landlord and tenant, the document, being the Rent Agreement dated 16th March, 2007 under which the respondents/plaintiffs were averring the relationship of landlord and tenant to have come into existence and having set up the Agreement dated 25th May, 2008, the learned ADJ without adjudicating on all these aspects could not have passed a decree on admissions.

10. Counsels with their legal acumen can frame a pleading with a large number of averments, whether they are relevant and germane to the adjudication of the matter in controversy or not. However, that does not place any obligation on the Court to, even if the facts germane and relevant for adjudication of the matter in controversy are not in dispute, put the matter to trial and to decide issues/aspects or pleas decision whereof is not relevant for the purposes of grant or non-grant of the relief claimed in the suit.

11. As far as the star defence point aforesaid of the appellants/defendants is concerned, even though the language used in the written statement is very guarded and the appellants/defendants have shied away from even calling themselves as agreement purchasers and have at best described themselves as agreement holders with right to enter into an Agreement to Sell (and which agreement to enter into another agreement, in law has been held to be non-enforceable) but even if the appellants/defendants were to be treated as purchasers, in the light of the legal position aforesaid as laid down in *Jiwan Das* supra, it is felt that the plea of the appellants/defendants of an MoU dated 25th May, 2008 whereunder the respondents/plaintiffs are alleged to have agreed to after March, 2012 allow the appellants/defendants to continue in occupation of the premises for a period of ten years to enable them to decide whether to purchase the property or not, is not found relevant for adjudication of the present lis filed by the respondents/plaintiffs as landlord for ejectment of the appellants/defendants after determination of tenancy of the appellants/plaintiffs.

12. It was in this context enquired from the counsel for the appellants/defendants that since the appellants/defendants have pleaded payment of rent of Rs.31,000/- after deducting tax, to whom the rent was paid and in whose name was the tax deducted.

13. The counsel for the appellants/defendants, in this manner, is forced to admit that the payment till March, 2012 at the rate of Rs.31,000/- per month after deduction of tax at source was in the name of the respondents/plaintiffs. In the face of the aforesaid, it does not lie in the mouth of the appellants/defendants to deny the relationship of landlord and tenant. Significantly, the appellants/defendants have while vaguely denying the relationship of landlord and tenant and while admitting themselves to be tenant not stated as to under whom they were the tenant if not under the respondents/plaintiffs. Clever drafting by counsels, the Supreme Court in *T. Arivandamdam Vs. T.V. Satyapal* (1977) 4 SCC 467 has held, cannot come in the way of the court seeing through such pleadings and determining as to what is the real case or defence of a litigant before it is.

14. At this stage, the counsel for the appellants/defendants points out that rent has been paid to the respondents/plaintiffs till October/November, 2011 but tax till the month of March, 2012 was deducted at source.

15. Finding the defence of the appellants/defendants to be fantastic, farfetched and a case of adopting legalese to have the matter, somehow or the other, listed for trial and to prevent the court from taking the right

decision, it was enquired from the counsel for the appellants/defendants whether the appellants/defendants was present in Court. Need for the presence of the appellants/defendants was also felt since the appellants/defendants claimed payment of Rs.10 lakhs in cash without any receipt and the counsel was unable to answer whether the said amount of Rs.10 lakhs claimed to have been paid was reflected by the appellants/defendants who were admitted to be income tax assesses in their Income Tax Returns. The counsel for the appellants/defendants was as such asked to call the appellant/defendant No.2 to this Court post-lunch with proof, whether the amounts were reflected in the ITRs. I may notice that the counsel for the appellants/defendants pre-lunch had stated that he had knowledge that the amount of Rs.10 lakhs had been withdrawn in cash from the bank accounts of the appellants/defendants for payment to the respondents/plaintiffs.

16. The appellant/defendant No.2 has appeared before this Court after lunch and since several of the questions put thereafter were also found to be evaded, it is deemed expedient to record the statement of the appellant/defendant No.2 in this Court in exercise of powers under Section 165 of the Indian Evidence Act and the statement has been so recorded and which shows a very sad state of affairs. It shows that the defence taken in the written statement is totally false and not based on what the appellant has today deposed.

17. At this stage, the counsel for the appellants/defendants under instructions from the appellant/defendant No.2 states that the

appellants/defendants do not press this appeal and do not want to challenge the judgment and decree of their ejectment from the premises and only seek one year time to vacate the premises.

18. The counsel for the respondents/plaintiffs states that the respondents/plaintiffs are willing to grant only six months time to the appellants/defendants to vacate the premises, that too subject to the appellants/defendants giving an undertaking to this Court and further subject to the appellants/defendants paying the arrears at the rate of last paid rent with effect from the date since when they are due and till the date of vacation of the premises and subject to determination of *mesne profits*.

19. It is deemed expedient to grant time to the appellants/defendants to vacate the premises on or before 31st May, 2014.

20. The undertaking of the appellant/defendant No.2 for himself and on behalf of the appellant/defendant No.1 is recorded separately. The appellants/defendants are ordered to be bound by the same and cautioned of consequences of breach thereof. The appellant/defendant No.2 has been explained the said consequences in vernacular also.

21. The appeal is accordingly dismissed as withdrawn. The undertaking of the appellant/defendant No.2 is accepted and subject to the appellants/defendants complying therewith, the decree for ejectment is made un-executable till 31st May, 2014. The appellants/defendants are also burdened with costs of Rs.50,000/- of this appeal, of which

Rs.10,000/- be paid to the counsel for the respondents/plaintiffs and the balance Rs.40,000/- be deposited with the Delhi High Court Bar Association Lawyer's Social Security & Welfare Fund, New Delhi, within two weeks of today. Receipts be filed in Registry. The Registry is directed to put up this file if proof of payment of costs is not furnished.

Decree sheet be drawn.

RAJIV SAHAI ENDLAW, J.

AUGUST 19, 2013

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