

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

Date of decision: 19th August, 2013.

+ **RFA 379/2013**

RAJIV OHRI

..... Appellant

Through: Mr. Mithilesh Kumar Singh and Mr.
Tarun Kumar, Advocates.

Versus

ANIL AGGARWAL

..... Respondent

Through: Mr. Jasbir Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

Caveat No.711/2013

1. The counsel for the caveator/respondent appears; the caveat stands discharged.

CM No.12603/2013 (for exemption)

2. Allowed, subject to all just exceptions.

3. The application is disposed of.

RFA 379/2013 & CM No.12602/2013 (for stay)

4. The appeal impugns the judgment and decree (dated 22nd July, 2013 of the Court of Additional District Judge (ADJ)-01, New Delhi District in Suit No.141/2013) on admissions of ejectment of the appellant from flat

No.1116, Sector A, Pocket B, First Floor Vasant Kunj, New Delhi-110070.

5. Though this is a first appeal under Section 96 of the Civil Procedure Code (CPC), 1908 and the Trial Court file is also not before this Court but in the peculiar facts of the case, need is not felt to admit the appeal for hearing or to issue notice thereof or to call for the Trial Court record.

6. It is not in dispute that the appellant was a tenant in the said flat under the respondent at a rent of Rs.22,000/- per month and the period for which the flat was let out by registered lease deed has expired and the tenancy of the appellant stood determined by efflux of time; the rent being Rs.22,000/- per month, the premises are outside the Delhi Rent Control Act, 1958.

7. The only defence of the appellant to the suit was/is, that the brother-in-law of the appellant namely Mr. Neeraj Abrol is the owner of flat No.165, Sector-A, Pocket-B, Second Floor, Vasant Kunj, New Delhi; that since the suit flat is more convenient to the appellant, the respondent on the request of the appellant had orally agreed to the exchange of the suit flat with the said flat of Mr. Neeraj Abrol upon the appellant paying differential in costs of Rs.25 lakhs to the respondent and out of which Rs.10 lakhs was agreed to be paid in cash and which Rs.10 lakhs was agreed to be paid in quarterly instalments of Rs.15,000/- later on increased to Rs.24,000/- and of

which Rs.4,44,000/- has stood paid.

8. It may be mentioned that the aforesaid Mr. Neeraj Abrol was not a party to the suit and the appellant neither along with his written statement nor with this appeal has filed any affidavit of Mr. Neeraj Abrol to show that Mr. Neeraj Abrol had agreed to exchange his flat with the suit flat as aforesaid. It was in these circumstances that the learned ADJ, while holding in para 2 of the impugned order the said defence to be extraneous, to in para 3 also observe the said defence of the appellant to be frivolous with no legs to stand upon.

9. The counsel for the appellant relies on para 17 of ***Express Towers P. Ltd. Vs. Mohan Singh*** (2007) 97 DRJ 687 where in the face of the written statement in that case the Division Bench of this Court observed that a decree under Order 12 Rule 6 of CPC could not have been passed as the written statement raised various issues and contentions. Upon it being enquired from the counsel for the appellant as to what is the defence of the appellant to the suit, he states that if the appellant is successful in proving the oral agreement of exchange of the flats, the suit of the respondent would stand dismissed.

10. I am unable to agree. Even if the appellant were to succeed in proving that the respondent had agreed to such exchange and which agreement is but an agreement of sale of the flat, the same would still not constitute a defense in law to the claim of the respondent for ejectment of defendant/appellant in his capacity as tenant in the flat whose tenancy stands determined. This Court in *Jiwan Das Vs. Narain Das* AIR 1981 Del. 291 and reiterated in *Sunil Kapoor Vs. Himmat Singh* 167 (2010) DLT 806 had held that a purchaser of immovable property has no rights in the property, not only till a decree for specific performance is passed in his/her favour but even till conveyance in pursuance thereto is executed. Thus, a tenant in an immovable property cannot resist an action for his/her ejectment therefrom on the ground of the landlord having agreed to sell the property to him, unless he is able to establish that in pursuance to the said Agreement to Sell his possession of the said property was changed from that of a tenant to that of a purchaser in possession in part performance of the Agreement to Sell under Section 53A of the Transfer of Property Act. However for Section 53A of the Transfer of Property Act to be attracted, not only has there to be an agreement in writing but the said agreement has also to be registered. Section 17(1A) of the Registration Act, 1908 provides that if the agreement

is not so registered, the benefit of Section 53A of the Transfer of Property Act would

not be available. In the present case, there is no written agreement what to talk of any registered Agreement to Sell. The fact thus remains that the status of the appellant in the flat remains that of a tenant and consequences arising therefrom have to follow. If at all the appellant or Mr. Neeral Abrol have a claim for specific performance of the alleged agreement, the appellant/Mr. Neeral Abrol have to enforce the said claim by taking appropriate steps. The counsel for the appellant on enquiry states that no such suit has been filed.

11. The reason given by the learned ADJ of the sole defence taken to the ejectment suit being extraneous has to be seen in the said light. Merely because the learned AJD while holding so has also observed the said defence to be frivolous and having no legs to stand upon would not make the order of the learned ADJ liable to be set aside inasmuch as the defence being extraneous, would have no relevance to the outcome of the present suit.

12. Merely because a defendant/appellant takes pleas in the written statement, cannot entitle the defendant/appellant to demand trial and to urge

that decree under Order 12 Rule 6 cannot be passed. If the defence urged has no relevance to the outcome of the litigation, merely by pleading the same, the right of the plaintiff/respondent to a decree under Order 12 Rule 6 of CPC cannot be defeated.

13. No other argument has been raised.

14. There is no error in the impugned order. Resultantly, the appeal has no merit and is dismissed. However, the same having been disposed of expeditiously, no order as to costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

AUGUST 19, 2013

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