

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

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Date of decision: 17th December, 2013

+ RFA 565/2013 & CMs No.19293/2013 (for condonation of 183 days delay in filing the appeal), 19294/2013 (for stay) & 19295/2013 (for condonation of 52 days delay in re-filing the appeal).

SHER SINGH

..... Appellant

Through: Mr. Braj Kishore Roy, Adv.

Versus

YOGESH AGRAWAL

..... Respondent

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The appeal impugns the judgment and decree (dated 20th December, 2012 of the Court of Addl. District Judge (Central)-04, Tis Hazari Court, Delhi in Suit No.98/12 filed by the respondent) of recovery of possession from the appellant of premises No.5/238, Khichripur, Delhi and of recovery from the appellant of Rs.18,000/- towards arrears of rent and *mesne* profits at Rs.6,900/- per month w.e.f. 5th November, 2004 till 4th November, 2005 and at the rate increased by 15% every year till delivery of possession minus the sum of Rs.17,000/- paid by the appellant/defendant to the respondent/plaintiff during the pendency of the suit.

2. The appeal is accompanied with applications for condonation of 183 days delay in filing and 52 days delay in re-filing the appeal. The delay in filing the appeal is blamed on the Advocate for the appellant/defendant who is stated to have not informed the appellant/defendant of the status of the case and delay in re-filing is attributed to the appellant/defendant not having sufficient money to pay Court Fees on the appeal. However no name of the Advocate who misguided the appellant/defendant or the date when the appellant/defendant may have contacted the Advocate have been given. The applications thus do not disclose sufficient cause for condonation of delay.

3. The appeal and the applications came up first before this Court on 3rd December, 2013 when though no *prima facie* merit was found in the appeal but the counsel for the appellant/defendant having along with the appeal not filed the entire Trial Court record, the same was requisitioned for today and while doing so, by way of abundant caution, notice of the appeal was also issued to the respondent. The appellant/defendant has however not taken any steps for service of notice on the respondent/plaintiff, though Trial Court record has been received and has been perused.

4. The respondent/plaintiff instituted the suit, pleading:-

(a) that he was the owner/landlord of the property;

- (b) that the appellant/defendant was inducted as a tenant therein on a monthly rent of Rs.6,000/- per month vide registered Lease Deed dated 17th November, 2003 for a period of one year w.e.f. 5th November, 2003;
- (c) that the appellant/defendant had failed and neglected to pay the rent and the cheque dated 20th June, 2004 for Rs.50,000/- issued by him had been dishonoured for insufficient funds and a complaint of offence under Section 138 of the Negotiable Instruments Act, 1881 had also been filed; and,
- (d) that the term for which the premises were let out had also expired on 4th / 5th November, 2004.

accordingly, suit for ejectment and for recovery of arrears of rent of Rs.72,000/- and for *mesne* profits of Rs.3,06,000/- was filed.

5. The appellant/defendant contested the suit, by filing a written statement, on the grounds:-

- (i) denying the ownership of the respondent/plaintiff of the property;

- (ii) that the respondent/plaintiff had got documents with respect to the property signed from the appellant/defendant under the garb of loan documents;
- (iii) that the appellant/defendant had also filed a criminal complaint before the Court of the Metropolitan Magistrate in this regard;
- (iv) that the appellant/defendant was the owner and in possession of the property since the year 1976;
- (v) that the Lease Deed also was a forged and fabricated document;
- (vi) that the appellant/defendant is semi literate and the respondent/plaintiff had given a friendly loan to the appellant/defendant in the year 2002 and had got prepared some documents pertaining to the loan transaction and which the appellant/defendant signed in good faith;
- (vii) that similarly the respondent/plaintiff had asked the appellant/defendant to accompany him to the office of the Sub Registrar and which also the appellant/defendant did in good faith;
- (viii) that the respondent/plaintiff had also taken some blank cheques from the appellant/defendant; and,

(ix) that the appellant/defendant had re-paid the full amount of the loan to the respondent/plaintiff and the respondent/plaintiff was misusing the documents.

6. The respondent/plaintiff filed a replication admitting having purchased the property from the appellant/defendant vide Agreement to Sell, GPA, Will, Affidavit, Receipt, Possession Letter etc. and having inducted the appellant/defendant as a tenant in the said property vide registered Lease Deed aforesaid.

7. On the pleadings aforesaid of the parties, the following issues were framed in the suit on 4th August, 2008:-

- “1. Whether the plaintiff has no locus standi to file the present suit? OPD
2. Whether the suit is without any cause of action? OPD
3. Whether the suit has not been properly valued for the purposes of court fee?
4. Whether the plaintiff is entitled to possession of the property in question? OPP
5. Whether the plaintiff is entitled to a recovery of the amount of rent and damages as claimed in the suit? OPP
6. Whether the plaintiff is entitled to any interest on the said amount? If so, its quantum and period? OPP
7. Relief.”

8. The learned Addl. District Judge, after trial, has found/observed/held:-
- A. that the appellant/defendant during admission/denial of documents admitted that the documents of sale of property in favour of the respondent/plaintiff bear his signatures;
 - B. the onus was thus heavy on the appellant/defendant to prove that his signatures were obtained by misrepresentation;
 - C. the appellant/defendant had failed to discharge the said onus including by not cross examining the witnesses of the respondent/plaintiff;
 - D. of the documents of sale, general power of attorney and the receipt of sale consideration were duly registered before the Sub Registrar and as per the dicta in *Shanti Budhiya Vesta Patel Vs. Nirmala Jayprakash Tiwari* AIR 2010 SC 2132, some sanctity has to be given thereto;
 - E. that the appellant/defendant had failed to prove that he signed the said documents under any disability;
 - F. that if the respondent/plaintiff had obtained signatures of the appellant/defendant on the documents fraudulently, the

appellant/defendant ought to have taken recourse thereagainst but no suit for cancellation of the documents had been filed;

- G. that the appellant/defendant is not an illiterate person; he was a cashier in a Public Sector Bank;
- H. no criminal proceedings had been resorted to by the appellant/defendant against the respondent/plaintiff for the fraud alleged to have been perpetuated against the appellant/defendant;
- I. that the respondent/plaintiff had also proved the registered Lease Deeds executed by the appellant/defendant by examining the witness of the said Lease Deeds;
- J. that Section 91 and Section 92 of the Indian Evidence Act, 1872 bar evidence in contradiction to the registered document; and,
- K. that though as per the dicta in *Suraj Lamp and Industries Vs. State of Haryana* 2012 (1) SCC 656 the respondent/defendant had not become the owner of the property on the basis of Agreement to Sell, General Power of Attorney etc., but had definitely become the landlord.

accordingly, the suit was decreed as aforesaid.

9. The counsel for the appellant/defendant again, except for stating that the appellant/defendant is a very simple person and has been cheated, has not raised any other arguments.

10. I have perused the Trial Court record to satisfy myself that the findings aforesaid returned by the learned Addl. District Judge are on proper appreciation of the evidence led and do not find any error therein. The respondent/plaintiff and his witness were not cross examined by the appellant/defendant. The documents proved on record show the appellant/defendant to have on 1st November, 2002 sold the property to the respondent/plaintiff for a sale consideration of Rs.1 lac and to have delivered possession to the respondent/plaintiff and to have vide registered Lease Deed dated 2nd November, 2002 taken the same property on rent from the respondent/plaintiff. As held by the learned Addl. District Judge also, inspite of the said documents being now nearly 11 years old, no action has been taken by the appellant/defendant for cancellation thereof.

11. There is thus no merit in the appeal which is dismissed. No order as to costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

DECEMBER 17, 2013/‘pp’..