

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 30.10.2014
Judgment pronounced on: 03.12.2014

FAO (OS) 68/2014

SMT INDU ANAND

..... Appellant

versus

RATTAN FURNITURE STORES & ORS

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Sudhanshu Batra, Sr. Advocate with Mr Varun Rajpal, Advocate

For the Respondents : Ms Supriya Juneja, Advocate for R-1 & R-2

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present is an appeal filed under order 43 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred as “CPC”) assailing the order dated 09.12.2013 passed by a learned Single Judge of this court whereby two

applications, one (IA No.8605/2013) under Order 12 Rule 6, CPC, for possession/ejectment and the other (IA No.8604/2013) under Order 39 Rule 10, CPC, to deposit Rs.1,50,000 per month in court respectively were dismissed in CS(OS) 3569/2012 being a suit for recovery, possession/ejectment, damages/ mesne profits and injunction.

2. The Appellant (Plaintiff in CS(OS) 3569/2012) is the Landlord of Respondent Nos.1 and 2 (Defendant Nos.1 and 2 in CS(OS) 3569/2012) in respect of the suit property being 11, Punchkuian Road, Ground Floor, New Delhi at Rs. 110 per month.

3. It is the case of the appellant that from May 2011, the Respondent No.1 and 2 have sublet the suit property to Respondent No.3 (Defendant No.3 in CS (OS) 3569/2012) without the consent of the Appellant at Rs.1,50,000 per month. Therefore, on 08.11.2012 the appellant served the respondents with a notice under section 106 of the Transfer of Property Act, 1882 to handover the vacant and peaceful possession of the suit property to the appellant on or before midnight of 30.11.2012.

4. The defence taken by the Respondent Nos.1 and 2 is that, they have only given part of the suit property on license to Respondent No.3. As a result, the

civil court has no jurisdiction to entertain the present suit since the rent of the suit property is below Rs. 3500 per month. They contend that, the suit property is exempted under section 3 (c) of Delhi Rent Control Act, 1958 (hereinafter referred to as the 'DRC Act'). However, Respondent No.3 claims to be a tenant of Respondent No.1 and 2 at a monthly rent of Rs 1,50,000 per month.

5. In June, 2011, a suit bearing CS (OS) 1520/2011 for permanent injunction was filed by Respondent No. 3 against Respondent Nos.1 and 2. The aforesaid suit was to restrain Respondent Nos. 1 and 2 from dispossessing Respondent No. 3 except in accordance with law. This suit was decreed in favour of Respondent No.3 in terms of judgment and order dated 04.08.2011. Thereafter, in November, 2012, Respondent Nos.1 and 2 filed a suit bearing No. CS (OS) 3339/2012 against Respondent No.3 for mandatory injunction, perpetual injunction and recovery of arrears of charges for use and occupation and for mesne profits/damages.

6. Respondent No.3 in his written statement filed in CS(OS) 3569/2012, stated that according to him, the owners of the suit property are Respondent Nos.1 and 2. The Relevant paragraph of the written statement is reproduced below:

“6. That paragraph 9 is rejected and denied as false, incorrect and wrong as the answering defendant recognises only defendant No.2 and his brother Sardar Mohan Singh as the owners and landlords of the suit property to whom the monthly rent of Rs 1,50,000/- (rupees one lac fifty thousand only) has been regularly paid in cash since 01.01.2010, part of which payments have even been implicitly admitted by defendant no. 2 and his brother in Suit CS(OS) 3339/2012. The plaintiff is a complete stranger to the answering defendant. The answering defendant has infact paid defendant no.2 and Sardar Mohan Singh over Rs8000000/- (Rupees eighty lacs only) as alleges. Further, it is vehemently denied that the answering defendants is liable to pay any amounts to the present plaintiff.”

(Underlining Added)

7. The learned Counsel for the Appellant has pressed only for the relief qua decision in the impugned order in IA No. 8605/2013, being the application under Order 12 Rule 6 seeking judgment on admission for possession/ejectment with respect to the suit property. The learned Single Judge in the impugned order held that there was no unambiguous, unequivocal and unconditional admission on the part of Respondents Nos.1 and 2 to have sublet the suit premises to Respondent No.3 at Rs.1,50,000 per month. The learned Single Judge required this issue to be tested by way of trial since Respondent Nos.1 and 2 took the plea in their written statement to have not sublet the suit property

and to have only given a part of it on license. Consequently, the said application was dismissed.

8. We have heard the counsel for the parties. It is the settled legal position that to succeed for a judgment on admission under order 12 rule 6 of CPC in a suit for possession/ejectment where tenancy has been duly terminated, the plaintiff has to prove the following ingredients:-

- a) That there exists a relationship of landlord and tenant between the parties.
- b) That the tenancy in respect of the premises has come to an end either by efflux of time or by a valid notice sent by the plaintiff to the defendants under section 106 of the Transfer of Property Act and duly served on the defendants.
- c) The rent of the premises in question is more than Rs 3500 per month and there is no protection of the DRC Act available to the tenant.

9. It is an admitted position that the relationship between the Appellant and Respondent Nos.1 and 2 is of landlord and tenant and the notice under section 106 of the transfer of property act was duly served upon the respondents. The relevant paragraphs of the written statement of Respondent Nos. 1 and 2 are reproduced below:-

“2. That this Hon’ble court does not have jurisdiction to entertain, try and/or decide the present suit. Defendant No.1, a partnership firm is a tenant under the plaintiff on the monthly rent of Rs 110/- in respect of the demised premises being shop No. 11, Panchkuian Road, New Delhi. The tenancy of the answering defendant is protected by the provisions of Delhi Rent Control Act, 1958. The jurisdiction of the civil court is barred. In the circumstances suit as laid is not maintainable.

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XXXX XXXX XXXX

2. In response to para 2, it is submitted that the defendant firm is a contractual tenant.

12. Para 12 of the plaint as stated is wrong and denied. It is denied that tenancy of the answering defendant has been determined as alleged or at all. Notice dated 8.11.2012 was misconceived and without any authority and was duly replied. Rest of the para as stated is wrong and denied. Upto date rent stands paid and plaintiff has accepted the rent paid and plaintiff has accepted the rent without any demur.”

(Underlining added)

10. Respondent No.3 has also in his written statement admitted the receipt of the notice under section 106 of the transfer of property act. The relevant

paragraph of the written statement filed by the Respondent No.3 is reproduced below:

“9. That paragraph no. 12 is denied and rejected as false, mendacious disingenuous. The said legal notice was suitably responded to by the answering defendant vide reply dated 20.11.2012 as a collusive action between the plaintiff and the defendant nos. 1, 2 and Sardar Mohan given unremitting attempts by defendant No.2 and Sardar Mohan Singh to forcibly evict the answering defendant from the suit property and the plaintiff being a complete stranger to the answering defendant who had been operating from the suit premises for a prolonged period of time.”

(Underlining Added)

11. From the above, it is unambiguously admitted by the Respondent Nos.1 and 2 in their written statements that there exists a relationship of landlord and tenant between the Appellant and Respondent Nos. 1 and 2. The notice under section 106 of the transfer of property Act was duly served upon all the Respondents and the statutory requirement of 15 days was also satisfied.

12. With regard to the plea raised by the Respondent Nos. 1 and 2 in their defence, the learned counsel appearing on behalf of the appellant has drawn our attention to a decision of a division bench of this court in **P.S. Jain and Company Limited vs Atmaram Properties (P) Ltd and ors** 65(1997) DLT 308

(DB) wherein the appeal against the order of the learned Single judge was dismissed. The relevant paragraphs of the aforementioned judgment are reproduced below:-

“(3) Learned Single Judge held that the test for purposes of the new amendment under Section 3(c) introduced in 1988 is to find out as to what rent the 'premises' has been fetching and not what the tenant is paying to the landlord. Even if the tenant is paying a rent less than Rs.3,500 p.m., in case he has sublet to others and each of the sub-lessees is paying more than Rs.3500 p.m. to the tenant, the 'premises', according to the learned Judge cannot come within the purview of the protection under the Act. He has relied upon certain observations of the Supreme Court in D.C. Bhatia & Others vs. Union of India to the effect that the provision in Section 3(c) is intended to protect tenants who belong to weaker sections of the community. If a tenant is receiving Rs.40,000 p.m. and Rs.4500 p.m. for the self-same premises upon sub-letting - which is permitted by the lease deed, - such a tenant is surely not one intended to be protected. On that basis, issue 2 has been decided in favour of the landlord and it is held that upon notice under Section 106 of Transfer of Property Act, the civil court could be moved for eviction and it is not necessary to go before the Rent Controller.

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(12) In our view, the intention behind Section 3(c) is that a premise which fetches a rent of Rs.3500 p.m. should be exempt and that protection should

be restricted to buildings fetching a rent less than Rs.3500 p.m. In case a tenant paying less than Rs. 3500 p.m. to his landlord has sublet the very same premises - may be lawfully - for a rent above Rs..3500 p.m., then the question naturally arises whether such a tenant can be said to belong to weaker sections of society requiring protection. By sub-letting for a rent above Rs.3500 p.m., the tenant has parted with his physical possession. He is receiving from his tenant (i.e. the sub- tenant) more than Rs. 3500 p.m. though he is paying less than Rs.3500 p.m. to his landlord. The above contrast is well illustrated by the facts of the case before us. The appellant tenant is paying only Rs.900 p.m. to the plaintiff, while he has sublet the premises in two units, one for Rs.40,000 p.m. and another for Rs.4500 p.m. In regard to each of these units, the sub-tenants have no protection of the Rent Act. In our view, the purpose of Section 3(c) is not to give any protection to such a tenant.

(13) Indeed there will be a serious anomaly if such a tenant is to be allowed the benefit of the rent control legislation. If he should get protection, the strange situation will be that when he cannot be evicted except on limited grounds specified in the Act and that too only before the Rent Controller, he could, in his turn, evict his tenants i.e. the sub-tenants, by giving a simple notice under Section 106 of Transfer of Property Act, and then move the civil court. Further, he could after such eviction of his tenants (i.e. sub tenants) induct fresh sub-tenants at still higher rents. In our view, an interpretation which places him in such an advantageous position is to be avoided.”

(Underlining Added)

13. The legal position that emerges from the aforementioned decision in so far as it is relevant for the adjudication of the present appeal is that, the intention behind section 3(c) of the DRC Act is that a premise which fetches a rent of Rs 3500 per month should be exempt and that protection should be restricted to buildings fetching a rent of less than Rs 3500 per month. Further, it emerges that if a tenant who has let out a property to a sub tenant is allowed the benefit of Rent control legislation, a serious anomaly would ensue. The tenant would get protection, leading to a strange situation where he cannot be evicted except on limited grounds specified in the DRC Act and that too only before the Rent Controller, whereas he could evict his tenants, that is, sub tenants by giving a simple notice under Section 106 of the transfer of Property Act, and then move a Civil Court.

14. In CS (OS) 1520/2011, Respondent Nos.1 and 2 have not disputed any of the claims of Respondent No.3 with regard to the letting of the suit property and of receiving a monthly license fee/ rent of Rs. 1,50,000. It was averred in the said suit no CS (OS) 1520/2011 by the Respondent No.3 that rent paid by him to Respondent Nos.1 and 2 is Rs. 1,50,000 per month. The relevant paragraph of the plaint is reproduced below:

“3. That the plaintiff was inducted as tenant in the suit property vide oral agreement dated 01.01.2010 and came into occupation and possession thereof from the same date. The monthly rent was orally fixed at Rs.1,50,000 /- (Rupees one lac fifty thousand only) and the lease period was agreed between the parties to be 9 years commencing from 01.01.2010.”

15. The aforesaid suit was decreed vide order and judgment dated 04.08.2011. The relevant part of the order dated 04.08.2011 in CS(OS) 1520/2011 is reproduced below:-

1. Plaintiff has filed the present suit for permanent injunction against the defendants. As per the plaint, plaintiff is engaged in the business of tours and travels and is operating his business from the premises bearing no.11, Ground Floor, Panchkuian Road, New Delhi. Apprehending that he may be dispossessed without following due process of law, plaintiff has filed the present suit.
2. Learned counsel for the defendants on instructions from Sardar Jasbir Singh and Sardar Mohan Singh, defendants no.1 and 2, respectively, who are present in Court, submits that plaintiff shall not be dispossessed from the premises bearing no.11, Ground Floor, Panchkuian Road, New Delhi, without following due process of law and further defendants have no objection if the present suit is decreed in terms of prayer (a) of the

plaint. Counsel for the plaintiff gives up prayer (b) of the plaint.

3. Accordingly, having regard to the stand taken by counsel for the defendants on instructions from the defendants present suit is decreed in terms of prayer A of the plaint.

16. In CS(OS) 3339/2012 being suit filed by the Respondent Nos.1 and 2 against respondent No. 3 for mandatory injunction, perpetual injunction and recovery of arrears of charges for use and occupation and for mesne profits/damages, the Respondent Nos.1 and 2 themselves revealed that the suit property is fetching Rs.1,50,000 per month. The relevant paragraph of the plaint is reproduced below:-

“3. The defendant who had been known to the partners of the plaintiff since 2008, came to their business premises sometime in December, 2009. Seeing that the plaintiff had some spare place in their business premises, asked the partners of the plaintiff if they could permit him to use some space on ground floor for his business during normal business hours and he would compensate them by way of charges allowing him to use the space. The matter was deliberated upon and discussed at length. After deliberation and discussion the partners of plaintiff firms, agreed to permit the defendant to use a portion of the Ground floor of their shop being No. 11, Panchkuian Road, New Delhi during normal working hours purely as a Licensee. The portion of the premises that was permitted to be used

consequent to the deliberation has been shown in the site plan which is being produced with the suit plaintiff. It was specifically agreed that defendant could only use that portion that too during the normal working hours only purely as a Licensee and that possession of the said portion would always remain with the plaintiff and that the plaintiff would be opening the shop in the morning at the commencement of the working hours and be locking it at the closing time fixed for establishment in Delhi. For allowing the defendant to use a portion of shop No. 11 Panchkuian Road, New Delhi, it was agreed that Defendant would pay Licence Fee Rs 1,50,000/- per month. No interest was created in favour of the defendant and he was merely permitted to use a portion on the ground floor and that too during the normal working hours of the business.”

(Underlining Added)

17. From the above, it is clear that the Respondent Nos.1 and 2 have sublet/licensed the suit property to Respondent No.3 on a monthly rent/license fee of Rs 1,50,000 per month. We do not see any reason in the present case to draw a distinction between the monthly rent and license fee in respect of the demised property in the fact situation of the present case and none has been brought to our notice. Therefore, the ratio laid down in P.S Jain (supra) applies on all fours. The suit property does fetch more than Rs.3500 per month. Therefore, Respondent Nos.1 and 2 are not entitled to any protection under the DRC Act.

18. In view of the aforesaid discussion, in the present case, all the ingredients of the provisions under Order 12 Rule 6, CPC are satisfied. The impugned order dated 09.12.2013 passed by the learned Single Judge in IA No 8605/2013 under order 12 Rule 6 of the CPC is liable to be set aside. It is ordered accordingly.

19. The present appeal is allowed. The suit for possession/ejectment is decreed in favour of the Appellant and against the Respondents. Decree sheet shall be drawn accordingly.

20. Pending applications, if any, also stand disposed of. There shall be no order as to costs.

SIDDHARTH MRIDUL, J

BADAR DURREZ AHMED, J

DECEMBER 03, 2014

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