

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: 23.01.2014

Date of Decision: 07.08.2014

+ **CM(M) 1087/2013 & CM No.16069/2013**

SHRI SUDHIR SABHARWAL Petitioner

Through: Mr. Rajat Aneja with
Ms. Rashmi Verma, Advs.

versus

SHRI RAJESH PRUTHI Respondent

Through: Mr. B.M.Bharti, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI**

1. This petition impugns an order dated 10.9.2013 whereby the petitioner/plaintiff's application under Order 12 Rule 6 read with Section 151 of Code of Civil Procedure was rejected. The petitioner had filed a suit seeking decree of possession in their favour against the respondent in respect of the premises in dispute. The application sought decree on the basis of admissions made by the respondent/defendant in his written statement. The petitioner/plaintiff is a landlord of property No. G-27/4, Rajouri Garden, New Delhi. Its ground floor comprising two bed rooms with attached bathroom, kitchen, drawing room and portion of the first floor comprising the drying room, one small room and one bathroom were let out to the defendant at the rate of Rs.25,000/- per month excluding water and all other charges. The tenancy was for a period of 22 months, and rent

agreement was executed before the sub-Registrar on 2.4.2009. As per the terms of the agreement, the rent was to be enhanced by 10% after expiry of 11 months, therefore the last rent paid was Rs.27,500/- excluding all other charges. After the expiry of tenure of the lease, it was extended for a further period of seven months on the defendant/tenant's assurance that he would, in any case, hand over the possession of the premises to the plaintiff by 31.1.2012. However, in the interim, the plaintiff issued notice to the tenant on 29.6.2011 followed by a reminder on 11.1.2012 asking them to vacate the premises. But there was no compliance of the plaintiff's request therefore the suit was filed to seek possession as well as damages and mesne profits for the use and occupation. The defendant had admitted the enhanced rent of Rs.27,500/- from 1.7.2011 and that the tenancy period had been extended by another seven months by the plaintiff. But he also claimed in the written statement that the plaintiff had agreed to sell the rental premises to the defendant for a total consideration of Rs.2,10,00,000/- for which the defendant had paid bayana/advance payment of Rs.21,20,000/- i.e. 10% of the total sale consideration and that the plaintiff had duly executed receipt in this regard. The balance amount was to be paid by the defendant to the plaintiff on or before 31.8.2012 whereupon the plaintiff would execute the registered sale deed. Therefore, the plaintiff had no right, title or interest in the suit property; hence as a corollary the question of the premises being vacated by the defendant did not arise. In the replication, these arguments were denied. Even the signatures on the purported receipt of bayana were denied. The plaintiff had relied upon

the decision of this Court in *Arvind Gupta vs. Naval Kishore* in CM No.114/08 in which the opposite party had relied upon receipt of the earnest money and on an agreement to sell. But the Court held that unless and until the agreement had expired, the tenant would remain a tenant. In the present case, the Trial Court went on to reason and conclude that insofar as the plaintiff had raised the defence and also a document has come on record which was dated 31.1.2012 and the tenancy too was agreed to be extended upto that date, therefore it could not be said that the defendant was continued to be a tenant on that date. It reasoned that the controversy could be decided only when the parties had an opportunity to lead evidence and that it was not unqualified admission of liability and that the averments in the written statement did not fall in the category of an unqualified admission. The application was therefore dismissed. Interestingly, on the same date, the Trial Court on the petitioner's application under Order 39 Rule 10 CPC had ordered the defendant to pay an amount of Rs.27,500/- per month, the last admitted rent, with effect from 1.2.2012 onwards. The plaintiff had sought damages/mesne profits with effect from 1.12.2012 at the rate of Rs.60,000/- per month. Interestingly, the Court reasoned that "in these circumstances, prima facie the defendant can be considered only as a tenant in occupation and it is not that he shall be allowed to continue to occupy the property without paying the last admitted rent i.e. Rs.27,500/-."

2. Learned counsel for the petitioner relied upon three judgments; (i) *K . Mani vs. M.D. Jayavel & Ors.*, 2012 (1) RCR(Rent) 111 which held that "mere agreement of sale will not terminate landlord – tenant

relationship unless there is specification to that effect in agreement itself’. The Court had referred to Section 53-A of the Transfer of Property Act in view of Section 17(1-A) of the Registration Act, 1908 which required that unless said document was registered it shall have no effect to the purposes of the said Section 53-A. Admittedly, in the present case, the said agreement to sell i.e. the bayana not been registered one, the question of invocation of Section 53-A of the Transfer of Property Act for obtaining the possession of the property in part performance of the contract, the agreement to sell would not arise. The said judgment referred to a number of judgments which held that notwithstanding the agreement of sale, the relationship of landlord and tenant continues to operate till there is a specific agreement to end the relationship of landlord and tenant and that merely by entering into an agreement of sale the tenant did not acquire any right in the property. It was further held that if possession is traceable to the agreement of sale, then such possession can be sustained on the basis of the principle of part performance under Section 53-A of the Transfer of Property Act. Even assuming that the petitioner is entitled to the benefit of Section 53-A, his liability to pay rent does not cease unless the agreement of sale puts an end to that liability in specific terms. However, in the present case, there is no registered agreement to sell, there could be no reliance upon the said document in terms of the Section 53-A of the Transfer of Property Act read with Section 17(1-A) of the Registration Act, 1908.

3. Learned counsel for the petitioner also relied upon a judgment of this Court in ***Sunil Kapoor vs. Himmat Singh & Ors.***, 167 (2010) DLT 806 which held:

*“11. A mere agreement to sell of immovable property does not create any right in the property save the right to enforce the said agreement. Thus, even if the respondents/plaintiffs are found to have agreed to sell the property, the petitioner/defendant would not get any right to occupy that property as an agreement purchaser. This Court in **Jiwan Das Vs. Narain Das** AIR 1981 Delhi 291 has held that in fact no rights enure to the agreement purchaser, not even after the passing of a decree for specific performance and till conveyance in accordance with law and in pursuance thereto is executed. Thus in law, the petitioner has no right to remain in occupation of the premises or retain possession of the premises merely because of the agreement to sell in his favour.*

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15. What follows is that even if the petitioner/defendant were to succeed in his suit for specific performance of agreement to sell, till the execution of a conveyance deed in pursuance to the decree, if any, in favour of the petitioner, the petitioner has no ground in law to save his possession of the premises. The status of the petitioner would continue to be as before i.e. of a tenant whose tenancy has been determined.

16. Once that is found to be the position in law, the defence of the agreement to sell is not a legal defence available to the petitioner in the suit for ejectment. If that be so, there is no common question involved in the previously instituted suit for specific performance and the subsequently instituted suit for ejectment.

17. I also find that beside the judgments relied by the counsel for the respondents/plaintiffs, another Single Judge of the Andhra Pradesh High Court in **Gollu Bhavani Sankar Vs. Bhogavalli Rajeswara Rao** and the Madhya Pradesh High Court in **Prakash Chand Soni Vs. Anita Jain** have also refused to stay the eviction proceedings due to pendency of suits for specific performance of agreement to sell.

18. The Division Bench of this Court in **Jai Singh Rana Vs. Mohinder Mohan Goel** 1994 IV AD Delhi 582 was concerned with an interim injunction claimed by the plaintiff in a suit for specific performance against his eviction as a tenant from the premises subject matter of the agreement. The Division Bench observed that it might appear to be just that a tenant should not be allowed to be evicted pending a suit for specific performance and it may be said that this would cause serious hardship to tenant. The Division Bench however held that there can be no generalisation or presumption and laid down the approach to be followed in such cases as under:-

“ (1) In every suit for specific performance and permanent injunction, if an interlocutory application is filed under Order 39 Rule 1 Civil Procedure Code for temporary injunction or for stay of the Rent Control case it will be necessary for the concerned Court to decide whether the tenant who is the petitioner in such an application has made out a prima facie case and whether the balance of convenience lies in staying the Rent Control Case (2) If indeed there is prima facie proof of the genuineness of the agreement of sale, the Court could consider the question of stay of the Rent Control case on merits. Even assuming that the Court came to the conclusion that a prima facie case was made out in favour of the tenant, the balance of convenience might not lie in granting stay of the Rent Control case. In such cases,

the Court may even allow the rent control case to be decided and judgment and, decree pronounced but grant stay to the execution thereof, allowing the parties to complete the appeal against Rent Controller's decision or even the further appeal/revision as the case may be so that the whole exercise need not be commenced after the disposal of the civil suit for specific performance. (3) If, on the other hand, the tenant does not make out a prima facie case in regard to the genuineness of the agreement set up by him, there will, in our view, be absolutely no justification for interfering with the rent control proceedings. It all depends on how far the tenant has established the prima facie case about the genuineness of the agreement of sale setup by him. (4) If indeed the eviction is not stayed and the tenant is evicted and later the suit for specific performance and possession succeeds, there can be no difficulty in executing the decree in the civil suit and putting back the tenant-purchaser, in possession, after properly adjusting their rights.”

In the facts of that case, the tenant was not found to have made out a prima facie case in his favour.

*19. Similarly in **Oriental Insurance Vs. Lakhanpal Pvt. Ltd.** also the Division Bench refused to injunct eviction proceedings (in that case under the Public Premises Act) during the pendency of the suit for specific performance of an agreement of renewal of lease and the only order which was granted was of restraining forcible dispossession.*

20. Though the aforesaid two judgments of the Division Bench of this Court are on injunction application in suits for specific performance, but the principles laid down therein would apply here. The jurisdiction, if any, to stay eviction pending a suit for specific performance is of the court where the suit for specific performance is pending and the court

where the suit for ejectment / eviction is pending ought not to restrain its hands merely because the suit for specific performance has been filed.”

4. This ratio of this judgment was relied upon in the judgment of this Court in ***Shri Kasturi Lal Mehra vs. M/s. Narshi Pharmaceutical and Surgical Pvt. Ltd.***, CM(M) No.1070/2014 dated 17.2.2014 wherein this Court held that where admittedly after the expiry of the lease period, no fresh lease having been executed between the parties, the tenancy has become month to month tenancy after notice of termination issued by the petitioner. In the present case too, the Court held that the admission of landlord – tenant relationship along with the notice of termination of the tenancy having been served upon the tenant and proof of the rent having been tendered by the tenant were adequate proof in themselves not requiring any further trial for decree to be passed under Order 12 Rule 6 CPC. In the present case, the impugned order fell into error by taking into consideration the averments in the written statement to the effect that the property had been sold although there was nothing available on record to show that the tenancy had ended with alleged agreement to sell. With reference to the alleged bayana/advance payment, no such averment is made in the written statement. In view of the legal position that “mere agreement to sell of immovable property does not create any right in the property save the right to enforce the said agreement” and in view of the preceding discussion that “mere agreement of sale will not terminate landlord – tenant relationship unless there is specification to that effect in agreement itself”, this Court is of the view that the

impugned order cannot be sustained. The Trial Court fell into error in giving a finding contrary to the settled law on this aspect. Accordingly, the impugned order dated 10.9.2013 is set aside and the petitioner's application under Order 12 Rule 6 CPC is allowed. A decree for possession is passed in favour of the petitioner and against the respondent apropos the suit property bearing No. G-27/4, Rajouri Garden, New Delhi. However, the petitioner's claim apropos damages and mesne profits for occupation of the premises would be determined through an enquiry by the Trial Court under Order 20 CPC. However, the operation of the present judgment and decree would become operative with effect from 15th September, 2014.

5. Parties are directed to appear before the Trial Court on 22nd August, 2014.

**NAJMI WAZIRI
(JUDGE)**

August 07, 2014/ak