

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

% **Date of decision: 10<sup>th</sup> August, 2018**

+ **RSA 110/2018 & CM No.30871/2018 (for stay)**

**RAM PAL SHARMA**

**..... Appellant**

Through: Mr. Jagdish Kumar Solanki, Adv.

versus

**GOPI NATH PVT LTD**

**..... Respondent**

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 28<sup>th</sup> March, 2018 in Civil Appeal No.06/15 (new no.61517/16) (Unique ID No.DLCT01-002183-2014) of the Court of Additional District Judge-8 (Central)] of dismissal of First Appeal under Section 96 of the CPC preferred by the appellant against the judgment and decree [dated 31<sup>st</sup> October, 2014 in Suit No.98/11 (Unique ID No.02401C0192472002) of the Court of Civil Judge-03, Central] allowing the suit filed by the respondent/plaintiff and passing a decree in favour of the respondent/plaintiff and against the appellant/defendant of mandatory injunction directing the appellant/defendant to handover vacant peaceful physical possession of a servant quarter forming part of property no.19/92, Bhaskar Bhavan, West Moti Bagh, Old Rohtak Road, Delhi to the respondent/plaintiff and for permanent injunction restraining the appellant/defendant from parting with possession of the said servant quarter to any other person and for recovery of *mesne* profits.

2. The appeal came up first before this Court on 3<sup>rd</sup> August, 2018 when

the counsel for the appellant/defendant, after some arguments, sought adjournment. The counsel for the appellant/defendant states that the costs imposed on 3<sup>rd</sup> August, 2018 have been deposited and the Court Master confirms.

3. The counsel for the appellant/defendant has been heard further and the copies of the entire Trial Court record annexed, perused.

4. The respondent/plaintiff instituted the suit, from which this appeal arises (as per amended plaint dated 23<sup>rd</sup> March, 2004), pleading (i) that the respondent/plaintiff is the owner of property no.19/92 *ad measuring* 10,000 sq. mtrs., known as Bhaskar Bhavan, situated at West Moti Bagh, Old Rohtak Road, Delhi; (ii) that the appellant/defendant, sometime in the month of June 1995, approached the respondent/plaintiff in a starving condition and wanted some job and accommodation; (iii) since some of the servant quarters were lying vacant in the factory premises aforesaid of the respondent/plaintiff, the respondent/plaintiff, considering the pitiable condition of the appellant/defendant, assigned some carpentry work/ furniture repair work etc. to the appellant/ defendant at the factory and at the office premises of the respondent/plaintiff, on daily wages and also granted possessory right to the appellant/defendant of the servant quarter, comprising of only one room, free of costs and purely on temporary basis and on compassionate grounds; (iv) that the appellant/defendant, at the time of being put into possession of the aforesaid servant quarter, assured the respondent/plaintiff that he will vacate the same as and when called upon by the respondent/plaintiff; (v) that the appellant/defendant, since March, 1998, was found indulging in illegal activities *inter alia* of theft of electricity and

of which complaint was made by the respondent/plaintiff; (vi) that the respondent/plaintiff, vide notice dated 17<sup>th</sup> August, 2000, called upon the appellant/defendant to stop committing theft of electricity in the property of the respondent/plaintiff; (vii) that the appellant/defendant thereafter attempted to encroach on other portions of the property and instituted a suit against the respondent/plaintiff, claiming to be the tenant in the servant quarter under the respondent/plaintiff and seeking to restrain the respondent/plaintiff from forcibly dispossessing the appellant/defendant from the said servant quarter; (viii) the respondent/plaintiff, vide notice dated 2<sup>nd</sup> February, 2001, terminated the licence of the appellant/defendant and called upon the appellant/defendant to vacate the servant quarter and informed him that if he did not, *mesne* profits also shall be claimed from him; and, (ix) that since the appellant/defendant did not comply with the notice, the suit was being filed for the reliefs aforesaid.

5. The appellant/defendant contested the suit by filing a written statement pleading, (i) that Mukesh Gupta, Rajesh Gupta and Mahesh Gupta, sons of Shri Mohan Lal Gupta had been asserting themselves to be the landlords of the property and had inducted the appellant/defendant therein in September, 1985 and at a monthly rent of Rs.82/-, without electricity and water facilities; (ii) though at the time of creation of tenancy, Rent Agreement was executed but no copy thereof was supplied to the appellant/defendant; (iii) no rent receipt was also issued to the appellant/defendant; and (iv) that the suit was a counterblast to the suit for permanent injunction filed by the appellant/defendant against the respondent/plaintiff. Else, the averments in the plaint were denied.

6. On the pleadings aforesaid of the parties, the following issues were framed in the suit on 10<sup>th</sup> September, 2002:-

- “1. Whether the plaintiff company is the owner of the property detailed in para no.2 of the plaint? OPP*
- 2. Whether the defendant has taken the suit premises for use and occupation as servant quarter as licensee? OPP*
- 3. Whether the plaintiff is entitled for a decree for recovery of damage/mesne profit of Rs.2,100/- for the period of March 2001 with interest? OPP*
- 4. Relief.”*

and the following additional issues were framed on 13<sup>th</sup> October, 2012, 5<sup>th</sup> February, 2013 and 17<sup>th</sup> February, 2014 respectively:-

*“3A Whether the suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction? OPD”*

- “1. Whether the plaintiff is entitled for relief of permanent injunction, as prayed for? OPP*
- 2. Whether the plaintiff is entitled for relief of mandatory injunction, as prayed for? OPP”*

*“Whether the suit is bad for non-joined of necessary party? OPD”*

7. The Suit Court allowed the suit as aforesaid, recording/reasoning/observing (i) that the respondent/plaintiff in its evidence had examined its Managing Director Mukesh Gupta and a witness from the office of the Sub Registrar, to prove the Sale Deed of the property in favour of the respondent/plaintiff; (ii) that the appellant/defendant, besides examining himself, had examined four other witnesses; (iii) that the

appellant/defendant had admitted having been inducted into possession of the premises by Mukesh Gupta, Rajesh Gupta and Mahesh Gupta who were the directors of the respondent/plaintiff; (iv) it was not the case of the appellant/defendant that Mukesh Gupta, Rajesh Gupta and Mahesh Gupta were the owners in their individual capacity and thus induction by the respondent/plaintiff of the appellant/defendant into the premises stood admitted; (v) that the appellant/defendant having admitted to have come into possession of the servant quarter from the respondent/plaintiff, was not entitled to challenge the title of the respondent/plaintiff; (vi) that though the appellant/defendant had denied working for the respondent/plaintiff but the appellant/defendant failed to cross-examine the director of the respondent/plaintiff on the said aspect and allowed the testimony of the director of the respondent/plaintiff in this respect to go unrebutted; (vii) that though the appellant/defendant had claimed execution of a tenancy agreement, further pleading that no copy thereof was furnished to him, but in his statement in another suit between the parties, had denied execution of any Rent Agreement; (viii) that the evidence of the witnesses examined by the appellant/defendant was hearsay; (ix) that the appellant/defendant had failed to prove any tenancy or payment of rent at Rs.82/- per month; and, (x) the respondent/plaintiff had proved the prevalent letting value of the servant quarter to be at Rs.2,100/- per month.

8. The First Appellate Court dismissed the appeal preferred by appellant/defendant reasoning/ holding/observing (i) that the appellant/defendant had applied under Order XLI Rule 27 of the CPC to lead additional evidence to prove that there were other tenants in the property and against whom proceedings were being undertaken by the respondent/plaintiff as tenants; (ii)

however, merely because with other occupiers of the property, respondent/plaintiff has a relationship of landlord and tenant, had no bearing on the relationship of the respondent/plaintiff with the appellant/defendant; (iii) there was thus no merit in the application under Order XLI Rule 27 of the CPC; (iv) that the deposition of the appellant/defendant was that besides the respondent/plaintiff, there were other owners also of the property; (v) however the documents proved by the appellant/defendant himself and the documents proved by the respondent/plaintiff proved the respondent/plaintiff to be the owner of the property; (vi) it has been held by this Court in ***Prem Pal Singh Vs. Jugal Kishore Gupta*** 1993 (50) DLT 49 and in ***Vikas Jain Vs. Naresh Kumar*** 2012 SCC OnLine Del 778 that there was no presumption, from occupation, of a tenancy; (vii) that the stand of the appellant/defendant, was not consistent; while the appellant/defendant in the suit for injunction filed by him stated that he was in possession of a tin shed, the appellant/defendant, during his evidence stated that he was in possession of two rooms; and, (viii) none of the witnesses examined by the appellant/defendant proved tenancy of the appellant/defendant under the respondent/plaintiff.

9. The argument of the counsel for the appellant/defendant before this Court is, that the appellant/defendant is a tenant in the aforesaid servant quarter at a rent of Rs.82/- per month and is not a licensee.

10. I have enquired from the counsel for the appellant/defendant as to what was the vocation of the appellant/defendant and from where he was meeting the expenses of himself and family members.

11. The counsel for the appellant/defendant states that the

appellant/defendant was working for the respondent/plaintiff but was doing job work with respect to furniture. However, on enquiry whether there is any evidence with respect to the same, the answer is in the negative.

12. The counsel for the appellant/defendant has next handed over in the Court, four pages of certified copies bearing exhibit mark Ex.DW1/1 to Ex.DW1/4 and states that the same are part of the Suit Court record but remained to be filed along with this appeal. The said documents are taken on record. The said documents are photocopies of the Electoral Cards of the appellant/defendant, his wife and his sons. The counsel for the appellant/defendant has argued that it is the case of the respondent/plaintiff that the appellant/defendant was inducted into the premises in June, 1995 and it is the case of the appellant/defendant that he was inducted into the premises in the year 1985. The said documents show possession of the appellant/defendant of the premises prior to June, 1995 also. A perusal of the documents shows the date of issuance thereof as 30<sup>th</sup> January, 1995. I am unable to find the said documents to be proving the possession of the appellant/defendant since the year 1985. The same, at best prove possession since January, 1995, though according to the respondent/plaintiff the appellant/defendant came in possession in June, 1995. On enquiry whether the appellant/defendant cross-examined PW1 and the other witness of the respondent/plaintiff on this aspect, the answer is in the negative. The appellant/defendant, without giving an opportunity to the respondent/plaintiff to comment on the documents on which reliance is placed, cannot in this Second Appeal take any mileage therefrom.

13. The counsel for the appellant/defendant has then taken me to page 176

of the paper book, being the cross-examination of the director of the respondent/plaintiff by the Advocate for the appellant/defendant, where the said director of the respondent/plaintiff has admitted having not filed any accounts of the respondent/plaintiff before the Court and denied that the same were not filed because they would have shown receipt of rental income from the appellant/defendant.

14. I have asked the counsel for the appellant/defendant, whether the appellant/defendant, in accordance with law, gave any notice to the respondent/plaintiff to produce the said documents.

15. The answer is in the negative.

16. Again, if the appellant/defendant wanted to rely on the account books of the respondent/plaintiff reflecting receipt of rent from the appellant/defendant, the appellant/defendant ought to have followed the procedure prescribed therefor and such surprises cannot be sprung up, to take undue advantage, by merely putting a question in cross-examination of the opponent, without any foundation therefor being laid. Procedure prescribed by law requires a litigant, relying on any document in possession of opponent, to issue notice to the opponent to produce the same and if the opponent does not produce the same, to suggest in cross-examination of opponent that the document has not been produced, inspite of possession thereof being proved/admitted/established, because it negates the claim of opponent. Law does not permit such suggestion to be given without first giving opportunity to produce. It is also not as if the appellant/defendant, in his written statement, had pleaded such entries in account books of respondent/plaintiff.

17. The last argument of the counsel for the appellant/defendant is that the director of the respondent/plaintiff in his affidavit by way of examination-in-chief at page 169 of the paper book purported to prove the notice of termination of licence; attention is next drawn by the counsel, to the cross-examination by the counsel for the respondent/plaintiff of the appellant/defendant recorded on 18<sup>th</sup> October, 2011 (from own file of the counsel for the appellant/defendant) where the appellant/defendant denied having received the said legal notice. The contention of the counsel for the appellant/defendant is that service of legal notice has not been proved.

18. I have however enquired from the counsel for the appellant/defendant as to which law mandates a notice of termination of licence and makes a suit for mandatory injunction for delivering of possession or for recovery of possession bad for non-giving of such notice.

19. The counsel for the appellant/defendant obviously cannot give any answer.

20. There is no such mandatory requirement for issuance of a notice. I may mention that though Section 106 of the Transfer of Property Act, 1881 mandates such a notice in the case of relationship of landlord and tenant but Supreme Court in *Nopany Investment (P) Ltd. Vs. Santokh Singh (HUF)* (2008) 2 SCC 728 has held such notice also to be not mandatory and refused to dismiss the suit on ground of non-service of notice, finding that the suit was pending for more than 15 days from the institution thereof.

21. No other argument has been urged.

22. As would be obvious from above, the Second Appeal does not raise any substantial question of law, which is the *sine qua non* for entertaining a

Second Appeal. Supreme Court, in *Veerayee Ammal Vs. Seenii Ammal* (2002) 1 SCC 134 held that merely because on appreciation of evidence another view is also possible, would not clothe the High Court to assume jurisdiction on issue of fact framed by the Suit Court, by terming the question as substantial question of law.

23. There is no merit in the appeal. It does not raise any substantial question of law.

Dismissed.

No costs.

**AUGUST 10, 2018**

‘pp’

**RAJIV SAHAI ENDLAW, J.**