

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

+ **RFA Nos. 775/2016 & 424/2017**

% 20th September, 2018

+ RFA No. 775/2016

SURESH KUMAR MICHANDANI

..... Appellant

Through: Mr. Avinash Sharma, Adv.
(9811351780)

versus

SHYAM SUNDER LAL JAIN

..... Respondent

Through: Mr. Akhil Mittal Advocate.
(9212504099)

+ RFA No. 424/2017

SURESH KR. MIRCHANDANI

..... Appellant

Through: Mr. Avinash Sharma, Adv.
(9811351780)

versus

SHYAM SUNDER LAL JAIN

..... Respondent

Through: Mr. Akhil Mittal, Advocate.
(9212504099)

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RFA No. 775/2016 & 424/2017

1. These Regular First Appeals under Section 96 of the Code of Civil Procedure 1908 (CPC), are filed by the defendant/tenant against the impugned Judgment of the Trial Court dated 19.03.2016 and 01.02.2017 by which the trial court has decreed the suit for possession and *mesne* profits filed by the respondent/plaintiff/landlord against the appellant/defendant/tenant. RFA No. 775/2016 is filed against the impugned Judgment dated 19.03.2016 decreeing the suit for possession under Order XII Rule 6 CPC. RFA No. 424/2017 is filed against the Judgment of the Trial Court dated 01.02.2017 decreeing the suit, as regards the relief of *mesne* profits but at the admitted rate of rent of Rs. 23,000/- per month as also arrears of rent totaling to Rs.3,35,000/- at the admitted rate of rent and a sum of Rs. 1,85,656/- as society maintenance charges.

RFA No. 775/2016

2. The facts of the case are that admittedly the appellant/defendant was inducted as a tenant of the suit property B-3/901, 9th Floor, Sunny Valley Apartment, Sector-12, Dwarka, New Delhi, in terms of the Lease Deed/Rent Agreement dated 23.08.2012 entered into between the appellant/defendant and Smt. Pushplata Jain, the wife of the respondent/plaintiff. The rate of rent admittedly as per the Rent Agreement dated 23.08.2012 was fixed at Rs. 23,000/- per month. The Rent Agreement was for eleven months only commencing from 01.09.2012, and the same is an unregistered Lease Agreement. The subject suit for possession and *mesne* profits was filed by the respondent/plaintiff pleading termination of tenancy of the appellant/defendant on account of non-payment of rent as also the fact that the tenancy being monthly tenancy was terminated in terms of a Legal Notice dated 02.12.2013.

3. In Delhi, once there exists a relationship of landlord and tenant, the tenancy is outside the scope of protection of Delhi Rent Control Act, 1958 if the rent is more than Rs. 3,500/- per month, then

in such a scenario a suit for possession is decreed because even if the Legal Notice under Section 106 of the Transfer of Property Act 1882, is not served, yet filing of the suit is taken as notice of termination of tenancy vide ***Jeevan Diesel and Electricals Limited v. Jasbir Singh Chadha (HUF) and Another (2010) 6 SCC 601.***

4. In the present case, since the appellant/defendant is admittedly the tenant, and the rate of rent is Rs. 23,000/- per month and there is no registered lease deed entitling the appellant/defendant to stay in the tenanted premises for a period which has not expired. Trial Court, in my opinion, therefore, has committed no illegality in decreeing the suit for possession under Order XII Rule 6 CPC.

5. Learned counsel for the appellant/defendant argued that as per the plaint, the suit property is owned by the respondent/plaintiff and one Smt. Renu Jain and since the appellant/defendant became a tenant of the late wife of the respondent/plaintiff, therefore, the respondent/plaintiff had no right to file unilaterally the subject suit for possession and *mesne* profit.

6. I cannot agree with this frivolous argument because the respondent/plaintiff is admittedly the husband of the original landlady

Smt. Pushplata Jain and it is settled law that any one co-owner can always file a suit for possession and *mesne* profits against a tenant/trespasser unless there is an objection or opposition by any other co-owner of the suit property. In the present case, there is no opposition by any other co-owner of the suit property, and therefore, this argument urged on behalf of the appellant/defendant/tenant is rejected and it is held that the respondent/plaintiff was entitled to file the subject suit for possession and *mesne* profits.

7. Appellant/Defendant is quite clearly harassing the respondent/plaintiff/landlord, forcing him to file the subject suit for possession and *mesne* profits on 10.07.2014, and therefore this appeal being completely frivolous and abuse of the process of law, is dismissed with costs of Rs. 2,00,000/-, and these costs would be paid within a period of six weeks from today by the appellant/defendant to the respondent/plaintiff.

8. This appeal being RFA No. 775/2016 is therefore dismissed.

RFA No. 424/2017

9. So far as this RFA No. 424/2017 is concerned, the facts which are stated while disposing RFA No. 775/2016 are reiterated. The issue in the present case is only the claim of the respondent/plaintiff for arrears of rent and *mesne* profits. The respondent/plaintiff has claimed arrears of rent amounting to Rs. 2,45,000/- till the tenancy was terminated and after termination of tenancy *mesne* profits are claimed on the admitted rate of rent.

10. At this stage, it may be noted that the appellant/defendant has tried his utmost to delay the disposal of the suit qua the relief of arrears of rent and *mesne* profits, and which becomes clear from para 7 of the impugned judgment and which states that no one appeared for the appellant/defendant on six consecutive dates after 22.11.2016, and therefore, the trial court heard the counsel for the respondent/plaintiff and thereafter passed the impugned judgment dated 01.02.2017 decreeing the suit for arrears of rent and *mesne* profits at the admitted rate of rent with interest at 8% per annum.

11. The only defence of the appellant/defendant was that he paid the amount in cash, however, the appellant/defendant failed to

prove that no amount in cash of Rs. 5,00,000/- or any other amount in cash, was paid by the appellant/defendant to the respondent/plaintiff or plaintiff's partner Sh. Subhash Jain. The appellant/defendant has also failed to prove that he incurred expenditure of Rs.5,00,000/- on furniture and fixtures in the tenanted premises. Trial court has therefore disbelieved the defence of the appellant/defendant of having paid any amount in cash to the respondent/plaintiff, and this is stated in paras 8 to 18 of the impugned judgment and these paras read as under:-

“8. The plaintiff in his affidavit in the nature of examination in chief Ex.PW1/A has reiterated that the defendant had not paid to him any rent except the sum of Rs.1 lac which he had adjusted as the price of certain electronic items provided to him by the defendant. In the cross-examination he has admitted that a sum of Rs.46000/- was paid to him by the defendant as security amount at the time of execution of the Rent Agreement. He denied that any further payments were made to him by the defendant. He also denied that he had told the defendant that a sum of Rs.5 lacs is to be incurred for furnishing of the tenancy premises which would be adjusted in the rent.

9. PW2 is the Manager of the Sunny Valley Co operative Group Housing Society. He proved the certificate of dues in respect of the suit flat as Ex.PW2/B which shows that a sum of Rs.3,54,162/- is due with regards to the said flat as arrears of society maintenance charges.

10. The defendant (DW1) has maintained his affidavit in the nature of examination in chief Ex.DW1/A that besides paying Rs.46,000/- as advance rent to the plaintiff, he paid to him a further sum of Rs.3,35,000/- later on in cash. He has also

reiterated that he had spent Rs.5 lacs upon the furniture, fixtures, electrical fittings etc in the tenancy premises which have to be adjusted by the plaintiff towards the arrears of rent. He has also reiterated that he has paid a sum of Rs.5 lacs to the plaintiff's partner Shri Subhash Jain. In his cross-examination he has admitted that the rate of rent for the tenancy premises was Rs.25000/- per month. He further deposed that the sum of Rs.3,35,000/- was paid by him to Mr Subhash Jain who did not issue any receipt to him. He did not remember when and where had he paid a sum of Rs.2 lacs to Subhash Jain. He deposed that he had paid a sum of Rs.35,000/- to plaintiff's son Brijesh Jain in the suit flat. He also did not remember when and where had he paid the sum of Rs.1 lac to Subhash Jain. He deposed that he had not taken any permission in writing from the plaintiff for incurring the expenses of Rs.5 lacs on furniture, fixtures, electrical fittings etc. At the same time, he stated voluntarily that Subhash Jain had denied such permission to him but the plaintiff permitted him verbally for spending Rs.2,50,000/- in this regard. He admitted that he does not have any document to show that he had actually spent the sum of Rs.5 lacs on furniture, fixtures, electrical fittings etc.

11. He further deposed that he did not inform the plaintiff about payment of Rs.5 lacs to Mr Subhash Jain. He further stated that he used to pay rent to the plaintiff in cash and he never asked for any receipt in writing. He did not remember when he had paid the rent for the last time to the plaintiff. He also did not remember the last payment made by him for the maintenance of the flat in question. He deposed that he can produce the receipt issued by the society for payment of maintenance charges made by him but has not produced any such receipt. He did not remember as to for how many months has he paid the maintenance charges. He further denied all the suggestions put to him.

12. It was for the defendant to prove, by leading positive evidence, that he had paid the sums of money to the plaintiff as mentioned by him in the written statement as well as in the affidavit of evidence Ex.DW1/A. It does not appear from his deposition that he had made any such payments to the plaintiff except the sum of Rs.46,000/- as advance rent. He claims to have paid Rs.3,35,000/- in cash to the plaintiff but deposed in his cross-examination that he paid this amount to Shri Subhash Jain and not to the plaintiff. It is not understandable as to why he would make

payment of rent to Shri Subhash Jain instead of plaintiff. Even otherwise also, he has not produced any documentary evidence like receipt etc in this regard. He also did not seek to produce Shri Subhash Jain as a witness in this case to prove these payments. Therefore, it is very difficult to believe that any such payments had been made by him to Subhash Jain on behalf of the plaintiff.

13. Further the defendant has not produced any document to show that he had in fact spent a sum of Rs.5 lacs on the furniture, fixtures, electrical fittings etc in the suit flat. Even otherwise also, there is nothing mentioned in this regard in the Rent Agreement executed between the parties. The plaintiff has vehemently denied in his deposition that he had given any such permission to the defendant to spend a sum of Rs.5 lacs on the furniture, fixtures, electrical fittings etc in the suit flat. Therefore, this assertion also of the defendant can not be believed.

14. With regards to the contentions of the defendant that he had paid Rs.5 lacs to Subhash Jain, he has nowhere explained as to why did he make this payment to him and not directly to the plaintiff. It is also not stated by him specifically either in the written statement or in the affidavit of evidence Ex.DW1/A that he had paid this amount to Subhash Jain as arrears of rent for the suit flat. He has also deposed in his cross-examination that he did not inform the plaintiff about this payment. Hence, it is very difficult to believe that defendant had made any such payment to Subhash Jain on account of arrears of rent.

15. The defendant claims to have made certain payments to the society as maintenance of the flat in question. He deposed in his cross-examination that he can produce the receipts issued by the society in this regard but did not produce any such receipt. Thus, in the absence of any such receipt of the society, it can not be held that the defendant had paid any maintenance charges to the society.

16. The evidence led by the defendant as discussed hereinabove, does not show that he had made any payment to the plaintiff as arrears of rent or had paid any maintenance charges to the society or had been permitted by the plaintiff to incur any expenses on the furniture, fixtures, electrical fittings etc in the suit flat which has to be adjusted in the arrears of rent.

17. On the other hand, it is manifest from the deposition of PW1 that the defendant had not paid any rent to him except the sum of Rs.1 lac in the shape of certain electronic items. The deposition of PW2 shows clearly that the defendant had not paid any maintenance charges to the society for the suit flat.

18. Therefore, the plaintiff is entitled to recover Rs.3,35,000/- as arrears of rent from the defendant. So far as recovery of damages is concerned, learned counsel for the plaintiff submitted during the course of arguments that the damages may be granted to the plaintiff at the rate of agreed rent only i.e. Rs.23,000/- per month. Therefore, plaintiff is entitled to damages/mesne profits also for the suit flat @ Rs.23,000/- per month w.e.f. 01.12.2013 till the possession of the suit flat was received by him. Further, the plaintiff is also entitled to recover a sum of Rs.1,85,656/- as society maintenance charges from the defendant.”

12. No argument was urged on behalf of the appellant/defendant before this Court to disbelieve the aforesaid reasoning and conclusions in the impugned judgment, and this is all the more so because the so called cash payments are not supported by any documentary evidence or any receipt evidencing such alleged payment. I, therefore, hold that the trial court has rightly decreed the suit for arrears of rent at Rs. 3,35,000/- and for maintenance charges payable of Rs. 1,85,656/-. The trial court has also rightly decreed the suit for *mesne* profits at the admitted rent of Rs. 23,000/-.

13. Interest is also liable to be paid on *mesne* profits as per Section 2(12) CPC and therefore the trial court has rightly awarded the

reasonable rate of interest at 8% per annum on the decretal amount in favour of the respondent/plaintiff and against the appellant/defendant.

14. As already stated above, appellant/defendant has left no stone unturned to take all false defences, and also to somehow or the other, delay the disposal of the suit so far as the relief of *mesne* profits are concerned. This appeal therefore being an abuse of the process of law, is also dismissed with costs of Rs. 1,00,000/- which shall be paid by the appellant/defendant to the respondent/plaintiff within six weeks from today. The appeal is accordingly dismissed in terms of the aforesaid observations.

15. Any amount deposited by the appellant/defendant in RFA No. 424/2017, alongwith accrued interest be released to the respondent/plaintiff in appropriate satisfaction of the judgment and decree in RFA No. 424/2017.

SEPTEMBER 20, 2018/ib

VALMIKI J. MEHTA, J