

Court No. - 4

Case :- S.C.C. REVISION No. - 164 of 2024

Revisionist :- Manish Inder Berry Alias Munish Inder Berry

Opposite Party :- Ravi Prakash Agarwal Deceased And 3 Others

Counsel for Revisionist :- Anish Kumar Sinha, Devansh Misra

Counsel for Opposite Party :- Ravi Anand Agarwal, Shreya Gupta

Hon'ble Ajit Kumar, J.

1. Heard Sri Devansh Misra, learned Advocate appearing for the tenant-petitioner and Ms. Shreya Gupta, learned Advocate appearing for the landlord-respondents.

2. This revision application is directed against the judgment and decree passed by the trial Judge dated 23.10.2024 decreeing the suit being SCC Case No.24 of 2016 for eviction of the tenant-revision-applicant for rent and measne profit.

3. The sole point that has been raised for assailing the judgment and decree in this revision application, Sri Devansh Misra, learned Advocate submitted that the tenancy in question was for manufacturing purposes of shoes in demised premises under an unregistered lease agreement entered with the mother of the respondent dated 20.08.1989 and, therefore, 30 days notice in advance issued under Section 106 of the Transfer of Property Act, 1872 to determine the tenancy stood hit by the said provision itself, as in case of premises let out for manufacturing purposes or

agricultural purposes, section contemplates 6 months' notice.

4. It is argued that this specific plea was taken in the written statement besides the fact that the reply of the notice contained same recitals and even the photocopy of the document was led in evidence as the landlord-respondent was supposed to be in possession of the original one, however, the trial court measurably failed to consider the same and brushed it aside on the point of admissibility as it was merely a photocopy. It is submitted by Sri Misra, learned Advocate that in view of the provisions contained in Section 49 of the Registration Act, 1908 even an unregistered document could have been relied upon as an evidence to prove collateral transactions. Sri Misra, learned Advocate has also argued that dealing the point in issue while holding that the document was inadmissible, the court failed to consider the cross-examination of the stark witness, PW-1.

5. Meeting the submissions so advanced as above to question the judgment and decree Ms. Gupta, learned Advocate appearing for the landlord-respondent submitted that there was no error much less a legal one in the judgment of the trial court in returning a finding that the photocopy of the alleged lease agreement was inadmissible in view of the fact that it was the own case of the tenant-petitioner that the original was in possession of the landlord

and yet no application was moved by the petitioner to ask the landlord to produce the original one. It is also submitted by Ms. Gupta, learned Advocate that in the entire testimony in terms of cross-examination of the witness, Anil Mahajan, he could not prove the alleged agreement as he failed to acknowledge the same not even the PW-1 accepted the agreement to have resulted in the tenancy rights qua demised premises.

6. Meeting the legal argument on the question of validity of the notice issued under Section 106 and the argument advanced by Sri Misra, learned Advocate that even the unregistered agreement could be read into, she submits that where the nature and character of the possession becomes the core issue in a lis for the purposes of adjudication then the provision would not come to rescue of the person pleading and placing reliance upon such unregistered document. She has placed a recent authority of the Supreme Court in the case of **M/S Paul Rubber Industries Private Limited v. Amit Chand Mitra & Anr. being Special Leave to Appeal (Civil) No.15774 of 2022 decided on 25.09.2023**, in which his Lordship Aniruddha Bose, J. speaking for the Bench while referring to the various authorities has held vide paragraph 13 thus:

*“13. In the case of **Rai Chand Jain -vs- Miss Chandra Kanta Khosla [(1991) 1 SCC 422]**, dispute arose as to whether certain premises were let out for residential purpose or as to whether there was an oral agreement of letting*

out the premises to the tenant, for running a press. It was in that perspective, it was held in the said case that a lease deed though unregistered, could be considered for collateral purposes to show the purpose for which the premises was leased out. Thus, the lease deed was referred to for the sole purpose to defeat the claim of subsistence of an oral agreement. The ratio of this authority has been considered in the case of **K.B. Saha and Sons Private Limited** (supra) and we follow that ratio. In the case of **Satish Chand Makhan** (supra). another coordinate Bench of this Court declined to accept admissibility of an unregistered lease agreement for determining duration of the lease (9 years in that case) on the reasoning that terms of lease would not constitute collateral purpose. It was observed in this judgment that "nature and character of possession" could constitute collateral purpose but that was not the point which was directly in lis before this Court. In our opinion, nature and character of possession contained in a flawed document (being unregistered) in terms Section 107 of the 1882 Act and Sections 17 and 49 of the Registration Act can form collateral purpose when the "nature and character of possession" is not the main term of the lease and does not constitute the main dispute for adjudication by the Court In this case, the nature and character of possession constitutes the primary dispute and hence the Court is excluded by law from examining the unregistered deed for that purpose. In respect of the suit out of which this appeal arises, purpose of lease is the main lis, not a collateral incident.”

7. These above observations have come in the background of the case as to the purposes of possession that was germane to the controversy which is the same controversy involved in the present case.

8. Having heard learned counsel for the respective parties and having perused the records.

9. On the point of findings that have come to be returned as to the admissibility of the document, I do not find there to be any perversity as admittedly the petitioner has produced only the photocopy which he could not prove even by leading oral evidence of the witness of the document namely Anil Mahajan. From the perusal of the entire record, I do not find there to be any application moved on behalf of the landlord-tenant-petitioner requesting the court to ask respondent to produce the original document of the lease agreement upon which petitioner was relying upon, nor do I find any ground to be taken in the memo revision petition so as to hold these findings to be perverse on this count. In such circumstances, therefore, the document has rightly been held to be inadmissible. Even otherwise if for argument's sake, this document is to be read for the collateral purposes, in view of the authority of the Supreme Court which has been referred to and quoted above, I do not find the argument so advanced by learned counsel for the petitioner, Sri Misra to be appealing one so as to read this document for the purposes of nature of possession which Sri Misra would admit to be germane to the controversy so as to hold the notice under Section 106 to be invalid one.

10. Thus, the revision is devoid of merits and is, accordingly, dismissed.

11. At this stage, Sri Devansh Misra, learned Advocate submits that some breathing time may be granted to petitioner to find alternative accommodation to shift the articles, shoes and belongings as he is doing manufacturing work in the premises in question.

12. Ms. Shreya Gupta, learned Advocate submits that at this stage he may be granted maximum 3 months' time to which Sri Misra, learned Advocate agrees.

13. In view of the above, it is hereby provided that landlord-respondent will not be pressing the decree for a period of 3 months from today i.e. until 20.04.2025 provided of course petitioner continues to pay rent and damages per month on every 7th day of the month as is he has been paying as per direction of this Court under its interim order passed while admitting the revision on 27.11.2024.

14. Petitioner shall also file an affidavit of undertaking to the above effect within a period of three weeks from today.

Order Date :- 21.1.2025/S.A.