

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

Date of Decision: December 24, 2014

+ RSA 318/2014 & C.M. Nos.17957/2014 & 17959/2014

BHAWANI SHANKAR Appellant

Through: Mr. Rishikesh, Advocate

versus

SURINDER KUMAR & ORS. Respondents

Through: Mr. Ravinder Tyagi, Advocate
with respondent No.2-Joginder
Singh & respondent No.4-Sunil
Kumar in person

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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The concurrent finding returned against appellant-tenant is that he is liable to vacate the suit property. The factual background of this case already stands noticed in the impugned judgment and needs no reproduction. Appellant had filed a suit for specific performance of Sale Agreement of 11th November, 1989. The appellant's aforesaid suit for specific performance was dismissed by trial court by invoking Order VII Rule 11 of CPC holding that the said suit is time barred. Appellant had filed CM (M) No.1043/2013, which was pending before a co-ordinate Bench of this Court.

Vide last order, the file of the aforesaid CM (M) was summoned and on its perusal, it becomes evident from order of 28th November, 2014

therein that appellant had not pressed the aforesaid petition against dismissal of the suit for specific performance as time barred.

Learned counsel for appellant, on instructions from appellant, had submitted that appellant is having a shop in the suit property from which he is earning his livelihood and at least six months' time is needed to vacate the suit shop.

On the aforesaid limited aspect, notice of this appeal was issued to respondents and Mr. Ravinder Tyagi, Advocate, has appeared on behalf of respondents and submits that respondents No. 2 & 4 are present in the Court and they are appearing on behalf of remaining respondents as well and on their instructions, it is submitted that appellant may be granted six months time to vacate the suit premises provided appellant clears the arrears of rent etc. which are due from 1st January, 2012.

Learned counsel for appellant submits that a sum of ₹29,000/- already stands deposited with the trial court under the orders of the First Appellate Court and a sum of ₹30,000/- was given to the father and grandfather of respondents and to submit so, photocopy of receipt dated 11th December, 1989 has been placed on record.

Learned counsel for respondents submits that this aspect has been already considered in paragraph No. 11 of the impugned judgment and cannot be reagitated now, especially when in the order of 12th December, 2014, it is clearly recorded that there is no perversity in the concurrent findings returned by the courts below. It is also submitted that let appellant be called upon to furnish an undertaking that he shall not create any third party interest in the suit property during the aforesaid period of six months.

Upon hearing and on perusal of the impugned judgment and the trial court's judgment, I reiterate that there is no perversity in the findings returned by the courts below and no substantial question of law arises in this second appeal.

However, in the peculiar facts of this case, appellant is permitted to place on record an undertaking by way of affidavit within four weeks that he will vacate the subject premises on or before 30th June, 2015 and will pay arrears of rent etc. up-to-date within a period of two weeks. The undertaking so furnished by appellant shall also incorporate that the water and electricity charges would be paid by the appellant. It is made clear that if appellant fails to clear the arrears of rent within two weeks and fails to furnish the aforesaid undertaking within four weeks or fails to abide by it, then respondent-plaintiff would be at liberty to get the decree executed.

With aforesaid directions, this appeal and applications are disposed of.

(SUNIL GAUR)
JUDGE

DECEMBER 24, 2014

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