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HIGH COURT OF DELHI AT NEW DELHI

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R.S.A. No.8/2015 & C.M. No.413/2015

Decided on : 3rd February, 2015

AKBAR HUSSAIN

..... Appellant

Through: Mr. Praveen Kumar Jain & Mr. Swetab
Kumar, Advocates.

Versus

JAI DEV VASHISTH

..... Respondent

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant against the judgment dated 3.11.2014 passed by the learned Additional District Judge.

2. The main contention of the learned counsel for the appellant is that the judgment of the first appellant court suffers from perversity inasmuch as the evidence has not been correctly appreciated to arrive at a correct finding that the appellant is a tenant in respect of the suit property and consequently, it has fallen into grave error by passing a decree for

permanent injunction as well as mandatory injunction against the present appellant in the appeal.

3. Before dealing with the submission made by the learned counsel for the appellant, it may be pertinent here to give the brief background of the case.

4. The respondent herein filed a suit for mandatory and permanent injunction against the present appellant. The case which was setup by the respondent against the appellant was that he was a tenant in respect of shop bearing No.WZ-345, C Block, Hari Nagar, New Delhi, and was running an *atta chakki*. It was also stated by him that he had employed the present appellant as a person helping him in running the said business. The respondent had also permitted the family of the present appellant to reside on the terrace over the shop as well as also permitted him to supplement his income by running a juice crusher outside the shop. It is alleged by the respondent that in the year 1998, the present appellant was caught by the Delhi Vidyut Board stealing electricity directly from the mains for the purpose of running his juice crusher machine because of which he was asked to pay a hefty sum of Rs.16,000/- to the DVB for the purpose of restoration of electricity to the shop. Because of these

reasons, the services of the present appellant were dispensed with by the respondent and the amount of Rs.16,000/- was also deposited by the respondent with the DVB. The termination of the services of the appellant also resulted in calling upon him to vacate the shop; however, as he did not oblige the respondent, consequently, this led to filing of a suit for mandatory as well as permanent injunction seeking a direction to the appellant that he must not only remove himself from the shop in question but also clear the terrace above where his family was staying.

5. The suit was contested by the present appellant. He took the plea that he is not the employee under the respondent. It was his case that he was a tenant under the respondent directly and carrying on his business of running a supplier of juice as well as weaving of cotton etc. during winters. On the pleadings of the parties, following issues were framed:-

- “1. Whether this court has no jurisdiction to try this matter? OPD*
- 2. Whether the plaintiff has not approached the court with clean hands and has concealed material facts? OPD*
- 3. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for? OPP*

4. *Whether the plaintiff is entitled for the relief of mandatory injunction as prayed for? OPP*

5. *Relief.”*

6. The parties adduced their evidence. Both the appellant/defendant as well as the respondent/plaintiff examined themselves as the sole witnesses as DW-1 and PW-1 respectively.

7. The learned trial court observed that the respondent had not been able to prove that the appellant was his employee and consequently, dismissed the suit partially although perpetual injunction was passed in favour of the respondent restraining the appellant from dispensing the respondent/plaintiff from the shop in question except in accordance with due process of law.

8. Feeling aggrieved, the respondent/plaintiff preferred an appeal. The said appeal was decided by the impugned order who decreed the suit of the respondent/plaintiff in complete. The reasons given by the first appellate court for decreeing the suit that the analysis of evidence arrived at by the learned trial court with regard to the present appellant being an employee of the respondent has not been established by any credible evidence, was discarded. The first appellate court observed that the trial

court has been oblivious to the fact that the present appellant was employed as a petty employee by a small time trader doing his business of *atta chakki* from the shop in question, who would be hardly expected to keep a record of the employee by maintaining a register, attendance or otherwise, or issuing an appointment letter. This analysis of the learned first appellate court seems to be quite reasonable, credible and correct that a small time trader, who employs any helper in his shop for the purpose of facilitating his business would hardly or would hardly be expected to issue a formal letter of appointment as is done in the course of regular employment. Therefore, there was absolutely correct observation passed by the court that the relationship of master and servant was established between the appellant and the respondent. The onus of proving that the appellant was the tenant under the respondent obviously shifted on to him for which he has failed miserably in showing through any credible evidence that he was the tenant under the respondent.

9. On the contrary, the factum of cross-examination of the appellant as DW-1 clearly supports and belies the case of the appellant himself that he was doing the business from the shop in question of selling the juice. This is evident from the fact that he had admitted that there was an *atta*

chakki and *masala chakki* still lying in the shop in question. He has admitted that DVB had levied a penalty of Rs.16,000/- or so for fraudulent abstraction of electricity. He is also admitting that the aforesaid amount was paid by the respondent though he makes an improvement in his cross-examination stating that out of the said amount of Rs.16,000/-, a sum of Rs.5,000/- was contributed by him also. All these admissions made by the appellant in his cross-examination clearly establish that there is preponderance of evidence and probability that he was an employee of the respondent in respect of the shop in question and, therefore, the trial court had wrongly denied the relief of mandatory as well as permanent injunction to the respondent.

10. I do not find that the judgment and the first appellate court suffers from any perversity and consequently, no substantial question of law is involved. Accordingly, the regular second appeal is dismissed.

V.K. SHALI, J.

FEBRUARY 03, 2015
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