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

+ **RFA(OS) 101/2014 & CMs No.11089/2014 & 7876/2015**

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Date of decision: 29th May, 2015

M/S SIDVI ENTERPRISES PVT. LTD. Appellant

Through: Mr. Harish Katyal, Ms. Vinny
Shangloo & Ms. Renuka
Katyal, Advs.

versus

SH. RAVINDER SETHI & ORS Respondents

Through: Mr. Abhay Narula, Advs.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE P.S.TEJI

GITA MITTAL, J. (Oral)

C.M. No.7876/2015

1. This application has been filed seeking discharge of the Vakalatnama by the counsel for the appellant. It is submitted that no instructions have been received from Sh. Sapan Dhawan, Managing Director of the appellant company to prosecute the present appeal. Notice was issued by counsel on his last known address as well as to the registered address of the appellant company.

2. It is submitted that on 25th May, 2015, Sh. Sapan Dhawan filed an affidavit with his objections under Order 22 Rule 6

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CPC, in the case entitled Renuka Katyal vs. Sapan Dhawan presently pending in the Court of Sh. Brijesh Sethi, District & Sessions Judge, Saket, New Delhi disclosing address as S-263, Greater Kailash-I, New Delhi. These objections and the affidavit are taken on record.

3. The present application is accompanied by a lawyer's notice which has been sent to this very address. Notices have been sent to the registered address of the company as well. We are informed by the learned counsel for the respondent that even in suit proceedings, the company has been served by way of publication. From the record, it appears that the applicant has complied with the statutory requirement of service of notice. Be that as it may, the prayer made in the application is justified.

4. The Vakalatnama of learned counsel Sh. Harish Katyal shall accordingly stand discharged. This application is allowed.

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5. It is noteworthy that we had passed an order dated 30th July, 2014 in the appeal directing the appellant to deposit rent @ Rs. 50,000 per month w.e.f. 1st May, 2009 which has not been complied with. Vide order dated 11th August, 2014 passed by the Supreme Court of India dismissing the SLP No.20477/2014, the period of deposit was extended. But the same has been of no avail. The appellant has not deposited a penny till date. It is obvious that for this reason he has not cared to give instructions to his lawyer, is not pursuing this appeal and is not present

today. It needs no elaboration that litigation has to be diligently pursued.

6. The record of CS(OS) No.2613/2012 is available and has been scrutinised.

7. The appellant assails the judgment and decree for possession dated 29th May, 2014 passed by the learned Single Judge. It is an admitted position that the respondent/plaintiff Sh. Ravinder Sethi had leased out the Ground Floor of C-3, Greater Kailash Part-I, New Delhi to the appellant (defendant no.1 in the suit) on 30th March, 2009 vide a registered lease deed for the purpose of residence of Sh. R.M. Sapan Dhawan (defendant no.2 in the suit), a director of M/s Sidvi Enterprises Pvt. Ltd. (defendant no.1 in the suit). This lease expired on 01st November, 2010 by the efflux of time. With effect from May 2009, the defendants even stopped paying monthly rent of Rs.50,000/- in terms of lease deed. As a consequence, Ravinder Sethi filed CS(OS) No.2613/2012 seeking the following prayers:

“(a) A decree for possession be passed in favour of the Plaintiff and against the Defendants with regard to ground floor of the premises situated at C-3,(Ground Floor), Greater Kailash-I, New Delhi.

(b) A money decree be passed for a sum of Rs. 40,07,000 (Rs. Forty Lacs Seven Thousand Only) on account of arrears of rent and damages as stated in para 8 of the plaint with interest @ 18% p.a.

(c) A decree for mesne profits be passed at the rate of Rs. 1,40,000 and or at such rate as may be determined by this Court against the Defendants and in favour of the

Plaintiffs with effect from 1.9.2012 till the date of actual eviction of the Defendants.

(d) Costs of the suit may please be awarded as per Section 35 read with Section 35A of the Code of Civil Procedure.

(e) Appropriate orders and directions be issued against the Defendants and in favour of the Plaintiffs to ensure that the Plaintiff is put into possession of the property in question without any hindrance whatsoever by the Defendants.”

8. The landlord Sh. Ravinder Sethi (Plaintiff in the suit) unfortunately expired during the pendency of the suit and his legal representatives, namely, Mrs. Savita Arora, Ms. Ritu Arora, Ms. Jaya Elisha Arora and Mr. Pankaj Arora were impleaded as respondent no.(i) to (iv).

9. In the suit, vide an order dated 21st February, 2014 passed under Order XV A of the Code of Civil Procedure, the defendants were directed to deposit the rent @ Rs.50,000/- w.e.f. 1st January, 2010. Arrears were directed to be deposited with the Registrar General of this Court within six weeks. The rent with effect from March, 2014 was directed to be deposited on 7th day of each calendar month. The record shows that these amounts were neither deposited with the Court nor paid to the landlord.

10. In view of the non-compliance of the Court orders, the notice dated 7th May, 2014 passed under sub-rule 2 of order XV A of the CPC was given to the appellant/defendant as to why their defence be not struck off. Opportunity was given to

submit response to show cause notice before the next date of hearing i.e. 19th May, 2014. The said order was passed in the presence of learned counsel for the appellant.

11. The Appellant filed review under Section 114 of the CPC for review of the order dated 21st February, 2014 bearing Review Petition No.248/2014 which was also dismissed on 16th May, 2014 with cost of Rs.10,000/-. The defendants' appeal by way of FAO(OS) No.254/2014 assailing orders dated 10th May, 2014 and 21st February, 2014 was rejected by an order dated 28th May 2014 by the Division Bench with additional costs of Rs.15,000/-. It is noteworthy that the costs which were imposed vide order dated 16th May, 2014 and 28th May, 2014 have also not been paid to the other side till date.

12. We may at this stage note that the statutory requirement under Section XV A of the CPC reads thus :

“(A) In any suit by a owner/lessor for eviction of an unauthorized occupant/lessee or for the recovery of rent and future mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears upto the date of the order (within such time as the court may fix) and thereafter continue to deposit in each succeeding month the rent claimed in the suit as the Court may direct. The defendant shall continue to deposit such amount till the decision of the suit unless otherwise directed.

In the event of any default in making the deposit as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.

(2) Before passing an order for striking off the

defendant, the Court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.

(3)The amount deposited under this rule shall be paid to the plaintiff owner/lessor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it would not also be treated as a waiver of notice of termination.”

13. Inasmuch as the statutory compliance of issuance of the show cause notice has been complied with, learned Single Judge had no option at all in the matter but to proceed with the striking off defence of the defendants.

14. In this background, vide order dated 29th May 2014, the learned Single Judge has rightly struck off the defence of the defendants. The registered lease deed stood duly admitted on record. It admittedly stood expired by efflux of time. The learned Single Judge consequently proceeded thereafter to pass the decree of possession in favour of the plaintiff, on the facts which stood established on record, and in any case were undisputed.

15. We may note another aspect of the matter. On 29th May, 2014, the owners/respondents restricted their claim for mesne profits to the admitted last paid rent @ Rs.50,000/- per month. The lease deed had also provided rent of Rs.50,000/- per month. By the impugned judgment, the learned Single Judge accepted

this request of the respondents and has proceeded to grant mesne profits to the respondents at the same rate. It was further directed that the respondents would be entitled to interest @ 9% on all the arrears of rent.

16. No illegality or infirmity in the judgment and decree of possession and mesne profits passed by the learned Single Judge dated 29th May, 2014 is made out from the available record. Given the admitted and established facts as well as the conduct of the appellant, the present appeal is completely devoid of merits.

The appellants have also shown complete disrespect to the orders of the Court and the legitimate claims of the respondents. The appellants are consequently liable to be burdened with heavy costs.

The appeal and pending applications are dismissed with costs of Rs.1,00,000/-. Inasmuch as appellant No.2 is a director of appellant No.1, liability of the appellants to pay the costs shall be co-extensive.

GITA MITTAL, J

P.S.TEJI, J

MAY 29, 2015
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