

10# \$

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

+ **CM(M) 743/2014 & CM 12946/2014 (stay)**

%

Decided on: 14th January, 2015

SHRI CHRISTOPHER DARUWALA

..... Petitioner

Through: Mr. Prosenjeet Banerjee with Ms.
Princy Ponnann, Advs.

versus

SMT. LEENA BARETTO

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. Despite pass over none is present on behalf of the respondent. Even on the last date despite pass over none was present on the respondent. I have heard learned counsel for the petitioner and perused the paper book.
2. The petitioner is aggrieved by the order dated 10th February, 2014 passed by the learned Senior Civil Judge-cum-Rent Controller whereby the order of the learned Civil Judge dated 13th November, 2013 was reversed. Learned Civil Judge vide order dated 13th November, 2013 had allowed the application under Order 7 Rule 11 CPC filed by the petitioner/defendant in Suit No.923/2013 thereby rejecting the plaint.
3. A brief background of facts is that the respondent/plaintiff filed a suit before the learned Civil Judge seeking permanent injunction against the petitioner/defendants before learned Civil Judge seeking permanent injunction against the petitioner and his mother from dispossessing the

respondent/plaintiff from the suit property bearing No. E-56 (Garrage) Sujan Singh Park, New Delhi without due process of law. In the plaint it was the case of the respondent/plaintiff that the plaintiff was an old lady, working as domestic servant for the last 8 years with defendant No.1 being the mother of petitioner herein who was impleaded as defendant No.2. The plaintiff/respondent was allotted a servant quarter bearing No.E-56 (Garrage) Sujan Singh Park, New Delhi by defendant No.1 during the course of her employment for residence of the plaintiff/respondent and her family members and since then the plaintiff is in peaceful possession of the said quarter. The plaintiff had got installed a telephone connected in the name of her husband in the suit premises. However, electricity connection was got installed in the suit premises in the name of husband of defendantNo.1at her own cost. When the plaintiff was employed with defendant No.1 as domestic servant the husband of defendant No.1 was bedridden due to old age ailments. The plaintiff was looking after him and doing other household work. Defendant No.1 had agreed to pay a sum of Rs.5000/- per month besides allotting the suit premises for residential purposes and had assured that when the plaintiff would be in need of money, the entire salary/wages will be given. In the month of February, 2007 the plaintiff demanded her earned wages/salary for the entire period from the defendants but the defendants instead of paying any heed to the requests and demands of plaintiff extended threat to vacate the suit premises immediately otherwise they would dispossess her forcibly and illegally. It is further stated that on 10th March, 2007 the defendants came at the suit premises and threatened the plaintiff and her family members to vacate the suit premises. With this cause

of action the suit was filed seeking injunction as noted above. It may be noted that there was no prayer for recovery of the salary in the plaint.

4. An application was filed by the petitioner/defendant no.2 under Order 7 Rule 11 CPC pleading that no cause of action arose in the suit and the suit was not maintainable. On hearing the parties, the learned Civil Judge vide order dated 13th November, 2013 allowed the application relying on the decision of the Supreme Court in *Maria Margarida Sequeira Fernandes and Ors. Vs. Erasmo Jack De Sequeira (Dead) through LRs.*(2012) 5 SCC 370. It was held that the plaintiff had no right in the suit premises as according to her own averment she was allotted the suit premises on the ground that she was the servant of the defendants. Thus directions were issued to the plaintiff to hand over possession of the suit premises within one month from the date of the order and the plaint was rejected. Against the order dated 13th November, 2013 passed by the Civil Judge, the respondent/plaintiff preferred an appeal before the learned Senior Civil Judge who vide order dated 10th February, 2014 set aside the judgment of the learned Civil Judge and held that the Civil Judge had no right to reject the plaint for non-disclosure of cause of action and further no right to give directions to the plaintiff to hand over possession within one month. While setting aside the order dated 13th November, 2013, the matter was remanded back to learned Civil Judge to proceed with the trial on merits. The suit of the plaintiff was restored.

5. As noted above, there is no dispute on facts. The respondent/plaintiff in the suit has admitted that the suit premises was given to her for residing as she was the domestic servant in which electricity meter was also in the name

of husband of defendant No.1. In the month of February, 2007 she was asked to vacate the suit premises.

6. It is trite law that an application under Order 7 Rule 11 CPC has to be considered by way of demurer on the basis of averments made in the plaint. The legal position with regard to possession of a care-taker/watchman/servant was considered by the Supreme Court in *Maria Margarida Sequeira Fernandes (supra)* and while crystallizing the law it was held-

“97. Principles of law which emerge in this case are crystallised as under:

(1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

(2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

(3) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

(4) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour.

(5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.”

7. These principles were further reiterated by the Supreme Court in *A. Shanmugam Vs. Aria Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*, (2012) 6 SCC 430 wherein the following propositions were laid down:-

“43.6. The watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession. The watchman, caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, the courts are not justified in protecting the possession of a watchman, caretaker or servant who was only allowed to live into the premises to look after the same.

43.7 The watchman, caretaker or agent holds the property of the principal only on behalf of the principal. He acquires no right or interest whatsoever in such property irrespective of his long stay or possession.

43.8 The protection of the court can be granted or extended to the person who has a valid subsisting rent agreement, lease agreement or licence agreement in his favour.”

8. In *Maria Margarida Sequeira Fernandes (supra)* while discussing the due process of law the Supreme Court reiterating the decision of this Court in *Thomas Cook (India) Ltd. Vs. Hotel Imperial*, 18 (2006) 88 DRJ 545 held that “due process”, “due course of law” and “recourse to law” have been interchangeably used in the decision. However, “due process of law” would not mean a full-fledged trial. It simply means that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner. The said rights can be adjudicated merely on filing of written statement or by the pleadings of the parties itself. The Court

further noted that it was not necessary that only if a suit for eviction was filed by the respondent claiming the suit premises then only orders of eviction can be passed. Even in a suit for injunction filed by the caretaker/watchman/servant directions for handing over the possession can be passed by the Court concerned. It was held:

79. Due process of law means that nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity to the defendant to file pleadings including written statement and documents before the court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated upon by a competent court.

80. The High Court of Delhi in Thomas Cook (India) Ltd. v. Hotel Imperial[(2006) 88 DRJ 545] held as under: (DRJ p. 566, para 28)

“28. The expressions ‘due process of law’, ‘due course of law’ and ‘recourse to law’ have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed ‘forcibly’ by the true owner taking law in his own hands. All these expressions, however, mean the same thing—ejectment from settled possession can only be had by recourse to a court of law. Clearly, ‘due process of law’ or ‘due course of law’, here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.

Now, this ‘due process’ or ‘due course’ condition is satisfied the moment the rights of the

parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the 'bare minimum' requirement of 'due process' or 'due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e. for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the 'recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law."

We approve the findings of the High Court of Delhi on this issue in the aforesaid case.

9. Considering the legal position as noted above in the two decisions of the Supreme Court and of this Court, the impugned judgment of the learned

Senior Civil Judge cannot be sustained and is set aside and that of learned Civil Judge dated 13th November, 2013 is restored.

10. The petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

JANUARY 14, 2015
'v mittal'