

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

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Date of decision: 28th July, 2015

+ RFA No.285/2015, CM No.8059/2015 (for condonation of 58 days delay in filing the appeal) & CM No.8060/2015 (for stay).

DILIP NIGAM

..... Appellant

Through: Mr. Rajiv Garg & Mr. Rajeev Kapoor,
Advs.

versus

SANJAY KUMAR

..... Respondent

Through: Mr. Sanjay Khanna &
Ms. Sonam Bhardwaj, Advs.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This appeal under Section 96 of the Code of Civil Procedure, 1908 impugns the decree dated 3rd December, 2014 on admissions, of ejectment of the appellant from DDA MIG Flat bearing no.CA/70-A, Ground Floor, Shalimar Bagh, Delhi – 110 088.

2. The appeal came up first on 1st May, 2015 when the counsel for the respondent appeared on caveat and the Trial Court record was requisitioned and the appeal posted for hearing on admission. Though parlays for amicable settlement were held and certain proposals exchanged, including in today's hearing, but have remained unsuccessful.

3. The counsels have been heard.

4. The undisputed fact is that the respondent landlord had let out the aforesaid premises to the appellant tenant vide registered lease deed dated 9th

May, 2007 for a period of two years till 9th May, 2009 at a rent of Rs.6,000/- per month.

5. It is the case of the appellant tenant that after the expiry of the term of the lease, the appellant continued as a tenant at a rent of Rs.7,000/- per month and a fresh unregistered lease deed dated 4th April, 2012 was executed between the parties for a period of three years with effect from 1st February, 2012.

6. The respondent landlord denies that any fresh lease deed dated 4th April, 2012 was executed.

7. It is not in dispute that the respondent landlord determined the tenancy of the appellant tenant vide notice dated 3rd May, 2013 and thereafter instituted the suit from which this appeal arises, for ejectment of the appellant and for recovery of *mesne* profits.

8. The learned Additional District Judge, after issuance of the summons of the suit and completion of pleadings, has allowed an application of the respondent landlord under Order 12 Rule 6 of the CPC and passed the impugned decree for ejectment on admissions. The suit, insofar as for recovery of *mesne* profits, is still pending consideration before the Additional District Judge.

9. In the aforesaid state of facts, it was enquired from the counsel for the appellant tenant that, even if it were to be believed that the respondent landlord had agreed to allow the appellant tenant, vide unregistered lease deed dated 4th April, 2012 *supra*, to continue as a tenant for three years with effect from 1st February, 2012, the said period of three years also having

expired, how can the appellant tenant be allowed to now continue in possession.

10. The only argument of the counsel for the appellant tenant is that the order under Order 12 Rule 6 CPC of the learned Additional District Judge impugned in the appeal is bad and hence the appeal should be allowed.

11. Though I do not find any error in the impugned order or decree requiring interference, but do not feel the need to elaborate thereon because, with the passage of time, the defense taken by the appellant to the suit, insofar as to the relief of ejectment, as well as the opposition of the appellant tenant to the application under Order 12 Rule 6 CPC, have become infructuous. The Court, under Order 7 Rule 7 of the CPC is empowered to mould the relief in consonance with the subsequent events. Reference in this regard can be made to the recent judgment of the Supreme Court in ***Gaiv Dinshaw Irani Vs Tehmtan Irani*** (2014) 8 SCC 294. A Division Bench of the Madras High Court in ***Hindustan Petroleum Corporation Ltd. Vs. Uma Rani*** 1996-2-LW 568 followed in ***T.B. Nath Vs. Hindustan Petroleum Corporation Ltd.*** 1999-2-LW 552, SLP (C) No.6967/1999 whereagainst was dismissed on 12th May, 1999, applying the said principle held that where the renewal / extension of lease pleaded, on the basis whereof the suit for ejectment is being defended, comes to an end during the pendency of court proceedings, an order of ejectment is to follow forthwith. I have also taken the same view in ***Mohinder Pal Singh Vs. Sunil Kumar*** 2013 SCC Online Delhi 3292.

12. No other argument has been raised.

13. There is thus no merit in the appeal which is dismissed.
14. Decree sheet be prepared.
15. Trial Court record be returned forthwith.

RAJIV SAHAI ENDLAW, J

JULY 28, 2015

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(corrected and released on 24th August, 2015)