

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.182/2015 & C.M. No.8617/2015 (for stay)**

Decided on : 22nd May, 2015

VIRENDER KUMAR MALHOTRA Appellant
Through: Mr. Rakesh Tiku, Senior Advocate with
Mr. Yudhishter Sharma & Ms. Soumya
Kumar, Advocates.

Versus

MUKESH KUMAR KHURANA & ANR Respondent
Through: Mr. Arun Kr. Gupta & Mr. Achal Gupta,
Advocates.

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 9.3.2015 passed by the learned Additional District Judge in RCA No.30/2014 upholding the judgment and decree dated 13.3.2014 passed by the learned Civil Judge in Suit No.272/2009.

2. Mr. Tiku, the learned senior counsel for the appellant has contended that the only question of law which arises for consideration is that both the learned trial court as well as the first appellate court have fallen into error in not accepting the report of the CFSL which had given a categorical opinion that the rent receipts exhibit PW 1/D1 to PW 1/D8 are bearing signatures of the deceased father of the respondents, who had

purportedly inducted the present appellant as a tenant. It has been contended that this non-consideration of opinion by the CFSL is raising a substantial question of law.

3. Before dealing with the submission of the learned senior counsel for the appellant it may be pertinent here to mention that the respondents had filed a suit for ejectment against the appellant/defendant in a civil court stating him to be the tenant in respect of the suit premises on a monthly rent of Rs.7,700/-. The respondents/plaintiffs had proved the rent agreement exhibit PW 1/1 in this regard. The said rent agreement was also admitted by the appellant/defendant. Though the rent agreement was purported to have been executed in the month of March but in the month of April and thereafter, the receipts are claimed to have been issued by the respondents' father which are exhibit PW 1/D1 to PW 1/D8 wherein the rent of the premises in question is shown to be Rs.2,300/-. It is on the basis of these receipts, it has been claimed that the rent being less than Rs.3,500/-, the appellant/defendant was having the protection of Section 50 of the Delhi Rent Control Act and therefore, the order of ejectment against the appellant/defendant could not have been passed.

4. The order of ejectment which has been passed by the trial court disbelieving the contention that the rent of the premises in question was less than Rs.3,500/- has been upheld concurrently by the two courts below.

5. The submission which has been raised by the learned senior counsel is that these eight receipts exhibit PW 1/D1 to PW 1/D8 were sent to the CFSL for the purpose of comparison of the signatures on the questioned documents with the documents bearing the admitted signatures of the deceased father of the respondents. It has been stated that as per the report received from the CFSL, the signatures on the rent receipts tally with the signatures on the rent agreement. It has been stated that this aspect of the rent receipts bearing signatures of the deceased father of the respondents has been casually brushed aside by the learned trial court by observing as under :-

“39. The defendant has relied upon certain documents Ex. PW1/D1 – Ex. PW1/D8 claiming the same to be rent receipts issued by late father of the plaintiffs to the defendant. It is contended that these receipts prescribe that the rate of rent was Rs.2300/- and have been signed by late father of the plaintiffs. The plaintiffs have disputed the authenticity of these receipts. These receipts were sent to the CFSL at the behest of the defendant for seeking an opinion on whether the signatures on the receipts purported to have been of late father of the plaintiffs are the same as signatures on rent agreement Ex. PW 1/1. The CFSL has opined that the signatures on the receipts match with the signatures of the late father of the plaintiffs which appear on the rent agreement.

40. However, I am of the opinion that the admission of the defendant that the signatures on Ex. PW 1/1 are indeed his shall have precedence over expert opinion. Having upheld the validity of the rent agreement Ex. PW 1/1, I am of the opinion that rent agreement shall have precedence over the rent receipts of which authenticity is

in dispute and is deriving sanctity only on the basis of an opinion of a handwriting expert. In R Vs. Ahmed Ali 11 WR Cr. 25, Nariman, J. had made observations on expert evidence. It was stated by the learned judge that the evidence of an expert witness, however, eminent, as to what he thinks may or may not have taken place under particular combination of circumstances, however, confidently he may speak, is ordinarily a matter of mere opinion. In this regard, reference is also made to the following decision:

State of Punjab v. Hakam Singh AIR 2005 SC 3759:

“So far as the medical evidence is concerned, PW2 is Dr. S.K. Gupta who conducted the post-mortem examination. PW2 nowhere says that Harbans Singh was incapable of firing shot, likewise Dr. Malik. Moreover, whenever there is conflict between medical evidence and ocular testimony normally ocular testimony should be preferred unless it belies fundamental facts. Moreover when the ocular testimony of PW3 which speaks volume that her husband fired two gun shots which proved fatal so far as Bhola Singh is concerned, that leaves no manner of doubt that the gun shots were fired by Harbans Singh.”

6. It has been further contended that when the appeal was taken out by the appellant/defendant, the appellate court has not applied its mind and simply approved the reasoning given by the trial court. It has been contended that the learned first appellate court has not independently come to its own finding as to the reasons why it has preferred to rely on

the rent agreement in comparison to the rent receipts and this aspect of the matter has been stated to be raising a substantial question of law and therefore, needs consideration.

7. I have considered the submissions and have gone through the relevant portion of both the judgments. I do not agree with the contention of the learned senior counsel for the appellant for the simple reason that the trial court has given a valid justification for not relying upon the rent receipts which are purported to have been bearing the signatures of the deceased father of the respondents. This is on account of the fact that the opinion of the CFSL, which has been obtained, is relevant only under Section 45 of the Evidence Act. In comparison to this, the trial court has preferred to rely on the document exhibit PW 1/1 which is the rent agreement which has been proved by the respondent/landlord and on which the signatures have been admitted by the appellant/defendant, therefore, there is absolutely a valid justification for discrediting the document which is a mere opinion and in any case this is a question of fact and not a question of law.

8. So far as the appellate court is concerned, it has also considered this reasoning and approved of the same. Merely because it has not reproduced its own independent view on similar lines and approved the view given by the trial court, does not mean that there has been no application of mind. It is not necessary that it ought to have repeated the same words which have been written by the trial court. The fact of the

matter remains that the question as to which document ought to have been relied upon by the trial court is essentially a question of appreciation of evidence, oral as well as documentary, which has been produced before the court and cannot fall within the domain of question of law because admittedly it is not the case of the appellant that a finding has been returned without there being any evidence on record which would have tantamounted to perversity.

9. For the aforesaid reasons, I feel that no substantial question of law is involved in the matter. Accordingly, the appeal is dismissed.

V.K. SHALI, J.

MAY 22, 2015
‘AA’