

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

+ CM(M) 415/2015

% Decided on: 7th May, 2015

M/S HANDA DIARY MILK & ANR Petitioner
Through Mr. Anil Anand, Adv.

versus

M/S POPULAR HOSIERY MILLS & ORS Respondent
Through None.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J. (ORAL)

CM 8457/2015 (Exemption)

Allowed, subject to all just exceptions.

CM 8458/2015 (Delay)

For the reasons stated in the application, the delay in refiling the petition is condoned.

Application is disposed of.

CM(M) 415/2015

1. The petitioner filed Suit No.80/1998 titled M/s Handa Dairy Milk & Anr. Vs. M/s Populr Hosiery Mills & Ors. seeking permanent injunction against the respondents. The learned Trial Court granted status quo order on 31st January, 1998. The petitioner filed two applications under Order 39 Rule 2A CPC which were dismissed vide order dated 11th August, 2005 against which an appeal was filed which was also dismissed vide the

impugned order dated 10th August, 2011 which is in challenge before this Court.

2. On the two applications of the petitioner under Order 39 Rule 2A CPC the Court framed the issue “Whether contemnor has committed contempt of court as alleged by petitioner? OPP”. The Trial Court noted that the status quo order was passed on 31st January, 1998 in respect of suit property i.e. F-6, Udyog Nagar, Peera Garhi, New Delhi which order was continued. As per the two applications, on 20th March, 1998 the respondents committed violation of the said order. The case of the petitioners-plaintiffs in the suit seeking permanent injunction was that the plaintiffs were dealing in milk products and thus he approached defendant Nos. 1 and 2 for letting out a portion of the suit property and thus the back portion of the suit property was let out to the petitioners by the respondents on a monthly rent of Rs.6000/- per month excluding water and electricity charges. The tenancy was oral and receipts were issued. On 27th January, 1998 the defendants tried to dispossess the petitioner from the tenanted premises hence the suit was filed.

3. In the written statement, defendants No.1 to 3 denied landlord-tenant relationship and stated that plaintiff No.2 had approached defendant No.3 stating that he had technical knowledge for installation of milk processing plant and defendant No.3 was allured by plaintiff No.2 to install a milk processing plant for which payment by cash and cheque was made which was encashed by the petitioner/plaintiff. Thereafter, the defendants further purchased number of machines and installed the same against valuable consideration. However, since the defendants offered loan the plaintiff took the same. In the plaint filed, the petitioners/plaintiffs nowhere stated that an oral tenancy was created in 1992 and there was no mention of the receipts

also. Though the plaintiffs' witnesses stated that rent was paid till January, 1998 but no receipt was produced however admitted having received more than Rs.7 lakhs from respondent No.3.

4. In light of the material adduced by the parties, the Court came to the conclusion that prima facie there was no material to hold that landlord-tenant relationship was created or that the petitioners/plaintiffs were in possession of the suit property. Thus, there was no violation of the status quo order. Hence the applications were dismissed.

5. In view of the evidence noted above and the fact that the plaintiff/petitioner No.2 has admitted receipt of Rs.7,65,000/- from the defendants, the finding of the learned Trial Court that the plaintiff was engaged for the limited purpose of installation of milk processing plant and was not a tenant cannot be said to be perverse or illegal warranting interference. There is no infirmity in the impugned order.

6. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

MAY 07, 2015
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