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

% *Date of Decision: August 19, 2015*

+ **RFA(OS) 163/2014**

NAVEEN GARG

..... Appellant

Represented by: Mr.Amit Sharma, Advocate

versus

RAJRANI GARG & ANR

..... Respondents

Represented by: Mr.Parag Chawala, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

CM No.21398/2014

For the reasons stated in the application 30 days delay in filing the appeal is condoned.

RFA(OS) 163/2014

1. Heard learned counsel for the parties. Perused the record of the suit.
2. At the outset we note that the pleading in para 6 of the appeal that on September 29, 2014 the appellant had filed an application under Order 6 Rule 17 to amend the plaint is not borne out from the record of the suit. No such application is to be found in the suit record. Learned counsel for the appellant has been told to identify the application in the suit record if at all any was filed. Counsel does not even make an attempt to identify the application. The reason is obvious. None exists.

3. That apart, the copy of the application seeking amendment of the written statement filed by the appellant which has been filed along with the appeal shows that it was sent to learned counsel for the plaintiff on September 30, 2014. We say so for the reason the photocopy of the postal receipt on the index of the application bears the date September 30, 2014. Thus, the application could not be even otherwise before the learned Single Judge when the impugned order was passed on October 30, 2014 allowing IA No.14691/2014 filed by the respondents and passing a decree for possession against the appellant on October 30, 2014. The impugned order does not record that counsel for the appellant made a request for hearing to be deferred stating that the appellant, impleaded as defendant No.1 in the suit, wanted to amend the written statement.

4. That apart, from the facts which we would be noting hereinafter assuming such an application was filed, it would have made no difference.

5. Raj Rani Garg and Jeevan Lata Garg, the respondents No.1 and 2 in the appeal filed a suit for possession, arrears of rent, damages and for permanent injunction, impleading the appellant as defendant No.1 as well as Chanchal Chopra and Pulkrit Chopra who were impleaded as defendants No.2 and 3. It was pleaded by Raj Rani and Jeevan Lata that they were the owners of shop No.G-1, constructed on plots No.F-1, F-2, and F-3, District Centre, Wazirpur and under a registered lease-deed dated December 27, 2010 had let-out the same to defendant No.1 and late Charanji Lal Chopra, the predecessor-in-interest of defendant No.3. The two commenced business from the tenanted premises. It was pleaded that possession of the tenanted premises was taken over by defendant No.1 and late Sh.Charanji Lal Chopra on February 01, 2011 and that rent commenced from said date.

As per the registered lease-deed the monthly rent was ₹1,50,000/- (Rupees One Lakh Fifty Thousand only) for a period of one year and thereafter had to be increased to ₹1,57,500/- (Rupees One Lakh Fifty Seven Thousand Five Hundred only) for the second year ₹1,65,375/- (Rupees One Lakh Sixty Five Thousand Three Hundred Seventy Five only) for the third year, ₹1,73,644/- (Rupees One Lakh Seventy Three Thousand Six Hundred Forty Four only) for the fourth year and ₹1,82,326/- (Rupees One Lakh Eighty Two Thousand Three Hundred Twenty Six only) for the fifth year. It was pleaded that the term of the lease was five years. It was pleaded that since January 2013 no rent was paid and arrears had accumulated till when the suit was filed in sum of ₹16,45,575/- (Rupees Sixteen Lacs Forty Five Thousand Five Hundred Seventy Five only). It was pleaded that as per the registered lease-deed the defendants were to pay the maintenance charges to the maintenance society which had accumulated in sum of ₹38,00,000/- (Rupees Thirty Eight Lacs only). It was pleaded that electricity dues payable had accumulated in sum of ₹2,00,000/- (Rupees Two Lacs only). It was pleaded that vide legal notice dated July 29, 2013 the tenancy was determined. It was pleaded that the legal notice was replied to by the counsel of the defendants on August 19, 2013 on the instruction of defendant No.3 in which every paragraph of the notice was stated to be a matter of record.

6. Whereas in the written statement filed by defendants No.2 and 3 the fact pertaining to the execution of the registered lease-deed pleaded in the plaint was not denied, it was pleaded that on the death of Charanji Lal the defendant No.1 took over the business being carried on from the tenanted premises and in said view of the matter defendants No.2 and 3 pleaded that they had no liability under the registered lease-deed.

7. The written statement filed by the appellant raises five preliminary objections as under:-

“1. That the suit of the plaintiff is not maintainable on facts and law and hence the same is liable to be dismissed.

2. That the plaint does not disclose any cause of action or any cause of action ever accrued in favour of the plaintiff and against the answering defendant to file the present suit, hence in the absence of cause of action the plaint of the plaintiff is liable to be rejected under order 7 rule 11 CPC.

3. That the plaintiff has not approached before this Hon'ble Court with clean hands.

4. That the suit of the plaintiff is false, frivolous and the same has been filed with a mala fide intention with a view to harass the answering defendant.

5. That the suit has not been properly valued for the purposes of court fees and jurisdiction, as this Hon'ble Court has no jurisdiction to entertain and try the present suit, hence the suit of the plaintiff is liable to be dismissed with exemplary cost.”

8. With respect to the preliminary objections we only need to state that it is useless to plead that the suit is not maintainable, without pleading the facts on which the stand taken is that the suit is not maintainable. It is useless to plead that the plaint does not disclose a cause of action, unless it is pleaded as to in what manner according to the defendant the plaint does not disclose a cause of action. It is useless to plead that the plaintiff has not approached the Court with clean hands. What has been done by the plaintiff as a matter of fact which constitutes soiling of the hands by the plaintiff has to be pleaded. It is useless to plead that the suit is false and frivolous and

filed with mala-fide intend. What is false, what is frivolous and what is mala-fide has to be pleaded. It is useless to plead that the suit has not been properly valued for purposes of court fee and jurisdiction. Facts had to be pleaded with reference to the Suit Valuation Act and the Court Fees Act and then brought out in what manner the valuation is defected. In what manner the Court did not have the jurisdiction had to be pleaded and it is useless to plead that the Court had no jurisdiction. On the subject matter of jurisdiction we simply need to highlight that the suit was, inter-alia, for recovery of possession of immovable property situated at Delhi.

9. The five paragraphs of the preliminary objections are worthless and not even worth the piece of paper on which they are scribed.

10. In reply on merits to paragraphs 1 to 19 of the plaint, we reproduce verbatim paragraphs 1 to 19 of the written statement, and to a reader of the said paragraphs even with the most rudimentary application of the principles of pleadings it would be apparent that the averments in the plaint have not been traversed and thus would require to be treated as admissions. The para-wise reply on merits reads as under:

“1. That the contents of para under reply are matter of record.

2. That the content of para under reply are matter of record and any submissions contrary to the records are totally wrong, false and hence denied and each and every contents of para under reply are vehemently and specifically denied in toto word by word.

3. That the content of para under reply are matter of record and the plaintiff be put to strict proof therefrom and any submissions contrary to the records are totally wrong, false and hence denied and each and every contents of para under reply are vehemently and specifically denied in toto word by word.

4. *That the content of para under reply are of matter of record.*

5. *That the content of para under reply are matter of record and any submissions contrary to the records are totally wrong, false and hence denied and each and every contents of para under reply are vehemently and specifically denied in toto word by word.*

6. *That the content of para under reply are matter of record and any submissions contrary to the records are totally wrong, false and hence denied and each and every contents of para under reply are vehemently and specifically denied in tot word by word.*

7. *That the content of para under reply are matter of record. It is submitted that the answering defendant has not violated any terms and conditions of the lease deed at any point of time.*

8. *That the content of para under reply are totally wrong, false and hence denied and each and every contents of para under reply are vehemently and specifically denied in tot word by word.*

9. *That the content of para under reply are matter of record to the extent of contents of lease deed and rest of the para are totally wrong, false and hence denied and each and every contents of para under reply are vehemently and specifically denied in toto word by word.*

10. *That the content of para under reply are matter of record and any submissions contrary to the records are totally wrong, false and hence denied and each and every contents of para under reply are vehemently and specifically denied in toto word by word.*

11. That the content of para under reply are totally wrong, false and hence denied and each and every contents of para under reply are vehemently and specifically denied in toto word by word. It is submitted that the answering defendant has not violated any terms and conditions of the lease deed.

12. That the content of para under reply are totally wrong, false and hence denied and each and every contents of para under reply are vehemently and specifically denied in toto word by word. The plaintiff be put to strict proof thereof.

13. That the content of para under reply are totally wrong, false and hence denied and each and every contents of para under reply are vehemently and specifically denied in tot word by word. The plaintiff be put to strict proof thereof.

14. That the content of para under reply are totally wrong, false and hence denied and each and every contents of para under reply are vehemently and specifically denied in toto word by word. The petitioner be put to strict proof thereof.

15. That the content of para under reply are totally wrong, false and hence denied and each and every contents of para under reply are vehemently and specifically denied in toto word by word. It is submitted that the possession of the answering defendant in respect of the suit property is perfectly, justified, warranted, rational and lawful ground.

16. That the content of para under reply are totally wrong, false and hence denied and each and every contents of para under reply are vehemently and specifically denied in toto word by word. It is submitted that the answering defendant is not under any kind of legal obligation to handover the possession and to pay the damages of any kind to the plaintiff herein. It is submitted that the defendant No.1 is not carried out any kind of illegal activities at the suit property.

17. That the content of para under reply are totally wrong,

false and hence denied and each and every contents of para under reply are vehemently and specifically denied in toto word by word. It is submitted that the entire suit of the plaintiff is without any cause of action and without any merits and substance.

18. That the contents of para under reply are matter of record.

19. That the content of para under reply are totally wrong, false and hence denied and each and every contents of para under reply are vehemently and specifically denied in toto word by word. It is submitted that the plaintiff has no cause of action.”

11. To plead that paragraphs 1 to 7 of the plaint are a matter of record amounts to an admission that reference made in the record in the corresponding paragraphs of the plaint is admitted. It means that such record i.e. document referred to in the plaint is admitted. At best the pleading would mean that if a document is interpreted by the plaintiff in the plaint the defendant does not admit said interpretation. In such case it is incumbent upon the defendant to plead as to why the pleading concerning interpretation of a document is incorrect followed by a pleading as to how does the defendant interpret the document?

12. Para 1 of the plaint has been admitted as a matter of record and thus the plaintiff's being the owner of the suit property is admitted. Pleadings that para 2 is a matter of record, the admission would be to the plea in the plaint that pursuant to a registered lease-deed dated December 27, 2010 the suit property was let-out for a period of five years on the terms contained in the lease-deed which had a condition of monthly payment of rent and in default the lease was liable to be terminated. The admission therefore

would also be to the quantum of rent payable. The response to the averment to para 8 of the plaint by simple denial would require para 8 of the plaint to be admitted wherein it is pleaded that since January 2013 rent was not paid. There has to be a positive assertion in the written statement as to when and in what manner the rent was paid.

13. These admissions are sufficient for a decree on admission to be passed qua possession, for the reason the landlord-tenant relationship is admitted, the rent being more than ₹3500/- (Rupees Thirty Five Hundred only) per month and hence the subject premises not been protected by the Delhi Rent Control Act, 1957 would be admitted and that the tenant is in arrear of rent is also admitted. The effect of rent not being paid since January 2013 would be a matter of law and for which the lease-deed, which is a registered document needs to be noted. As per the lease-deed the suit premises were let-out on punctual compliance with the condition of the lease, one of which is to pay rent by the 7th day of each calendar month and vide clause 3(d) if rent is due for two months the lease is liable to be determined. The determination of lease has been pleaded in paragraphs 12 to 14 of the plaint and in respect of which the written statement filed by the appellant would show that the written statement is a simple denial. It would thus deem to be an admission. That apart, assuming that the legal notice determining the tenancy was not received by the appellant, the filing of the suit and summons received therein would itself be a notice of determination of the lease on account of non-payment of rent.

14. The learned Single Judge who has passed the impugned decree on admission qua possession of the suit property has acted within the confines of the law and we find no infirmity in the impugned order.

15. That takes us to one more point concerning the so called application seeking amendment of the written statement. As noted above, no such application was filed and none exists in the record of the suit, but photocopy of an application proposed to be filed to amend the written statement has been filed in the appeal. The proposed amendment is to incorporate preliminary objection 6 in the written statement and plead that as per clause 8(a) of the lease-deed executed between the parties the disputes if any arising out of the agreement have to be referred to arbitration.

16. It is trite that if a defendant wants to rely upon an arbitration agreement concerning the subject matter of the suit, the same has to be brought to the notice of a judicial authority before which an action is brought not later than when submitting the first statement on the substance of the dispute. Thus, the appellant had a right to make a reference to clause 8(a) of the registered lease-deed and plead that the parties be referred to arbitration when the written statement was filed. Having not done so the stage to call upon the Court to refer the parties to arbitration being in the past, the water having flown down from the bridge, it becomes immaterial to consider said issue because it could not have been raised by way of amendment to the written statement filed.

17. The instant case brings out how parties try and misuse the process of the law. The appellant who is in possession of the suit premises on the death of his partner is in arrears of rent since January 2013.

18. The appeal is frivolous and is dismissed with costs in sum of ₹50,000/- (Rupees Fifty Thousand only) imposed upon the appellant and to be received equally by respondents No.1 and 2.

CM No.21397/2014

Since the appeal is dismissed on merits, the instant application is also dismissed and ex-parte ad-interim stay granted on January 05, 2015 in favour of the appellant is vacated.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 19, 2015
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