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

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Date of Decision: 28.09.2015

% **RSA 355/2015**

SATYA PRAKASH GUPTA

..... Appellant

Through: Ch. Rabindra Singh & Ms. Ekta
Singh, Advocates.

versus

PRAMILA CHAUHAN

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

Caveat No.1016/2015

1. Even though the caveat is listed, none has appeared for the caveator.
2. The caveat stands discharged.

C.M. No. 21377/2015

3. Exemption allowed, subject to all just exceptions.
4. The application stands disposed of.

RSA 355/2015 and C.M. No. 21376/2015

5. The present second appeal is directed against the judgment & decree dated 23.07.2015 passed by the First Appellate Court, namely the ADJ-02 (East), Karkardooma Courts, Delhi in RCA No.50/2014 preferred by the appellant/ defendant in the suit. By the impugned judgment, the First Appellate Court has dismissed the said first appeal and affirmed the judgment & decree dated 06.12.2013 passed by the Trial Court, namely the Civil Judge (East) in CS No.229/2010 preferred by the respondent/ plaintiff.

6. The respondent/ plaintiff filed the suit to seek reliefs of possession, mesne profits and damages. M/s Bhartiya Water Cooling Plant was arrayed as the defendant through the appellant Satya Prakash Gupta.

7. The case of the plaintiff was that she is the owner/ landlord of property bearing No.29-A, Village Samaspur Jagir, P.O. Patparganj, Delhi – 110 091. The plaintiff averred that the defendant is a partnership concern running its business at the hall on the ground floor of the suit property. The plaintiff claimed that late Sh. Hargyan Singh – father-in-law of the plaintiff, one Ajaib Singh and Satya Prakash – the defendant had started a partnership firm under the name and style of M/s Bhartiya Water Cooling Plant on 15.03.1985. Late Sh. Hargyan Singh expired on 15.12.1993. The plaintiff claimed that the defendant had been regularly paying the share of profits of the partnership firm to the plaintiff since then, and the last paid rent/ occupational charges to the plaintiff were Rs.3,000/- per month.

8. The plaintiff claimed that the defendant defaulted in payment of rent/ occupation charges since June 2003, excluding the electricity and water

charges, which had to be paid directly to the concerned authorities. The plaintiff claimed that bills to the tune of Rs.23,900/- were required to be paid by the defendant – being the actual consumer. However, the plaintiff had to make payment of the said bills. The plaintiff claimed that she had issued receipts for the occupational charges on receiving the rent from the defendant. However, since June 2003, no receipt could be issued, as no payment of rent had been made by the defendant.

9. The plaintiff claimed to have terminated the occupancy right of the defendant vide notices dated 13.05.2004 and 05.07.2004, whereafter the suit for possession was filed against the defendant. The defendant had taken a legal plea with regard to the validity of the legal notice. Consequently, to avoid the said controversy, a fresh legal notice dated 10.09.2007 was issued to the defendant and the first suit was withdrawn with liberty to file fresh suit on the same cause of action. Yet another legal reminder was sent on 04.01.2008, calling upon the defendant to vacate the suit premises and deliver the physical possession but to no avail. Consequently, the plaintiff filed the present suit claiming recovery of possession, arrears of rent, along with electricity charges to the tune of Rs.23,900/-, and damages against the defendant.

10. The stand of the defendant/ appellant in the suit, as contained in the written statement, was, *inter alia*, that the suit had been filed on the foundation of there being a partnership firm M/s Bhartiya Water Cooling Plant - on the basis of the partnership deed dated 15.03.1985. However, the said document was not registered and, accordingly, the suit was barred under Section 69 of the Partnership Act. The defendant also pleaded the bar under

Section 50 of the Delhi Rent Control Act, as the rate of rent for the said premises was less than Rs.3,500/- per month.

11. On merits, the stand of the defendant was that there was no partnership firm. Rather, M/s Bhartiya Water Cooling Plant was a sole proprietary concern of the appellant/ Satya Prakash Gupta. The defendant claimed that the partnership firm dissolved with effect from 15.12.1995. Thereafter, the business was continued by the defendant/ appellant as his sole proprietary concern under the name and style of M/s New Bhartiya Water Cooling Plant. The defendant admitted that he was paying rent to the plaintiff in respect of the suit premises for carrying on the business @ Rs.3,000/- per month. He claimed to have dispatched the arrears of rent for the period from 01.06.2003 to 30.06.2004 @ Rs.3,000/- per month to the plaintiff through postal money order. Since the same was refused, he deposited the amount before the learned Additional Rent Controller, from where the plaintiff had withdrawn the rent.

12. The defendant claimed that the plaintiff had arbitrarily disconnected the electricity supply. The defendant was forced to approach the police, and the Court, for the purpose of restoration of electricity supply. Finally, a separate electricity meter connection was installed on 28.07.2005 at the defendant's expense of Rs.28,500/-. The defendant, while denying the averments in the plaint, expressed his willingness to pay/ deposit the lawful arrears of rent @ Rs.3,000/- per month in favour of the plaintiff without prejudice to his rights & contentions. He denied service of notice issued by the plaintiff dated 10.09.2007, and the reminder issued on 04.01.2008.

13. On the basis of the pleadings, the Trial Court framed the following issues:

- “1) Whether the plaintiff is entitled to decree of possession as prayed? OPP*
- 2) Whether the plaintiff is entitled to decree of mesne profits/ damages as prayed? OPP*
- 3) Whether the suit of the plaintiff is barred u/s 69 of Indian Partnership Act? OPD*
- 4) Whether the suit of the plaintiff is barred u/s 50 of Delhi Rent Control Act? OPD*
- 5) Whether the suit of the plaintiff is not maintainable in its present form? OPD*
- 6) Relief.”*

14. The plaintiff examined herself as PW-1 and led in evidence several documents, including the partnership deed dated 15.03.1985 (Ex.PW-1/2) and the copy of Lal Dora Certificate (Ex.PW-1/15). She was cross-examined by the defendant and discharged. The defendant examined himself as DW-1.

15. The Trial Court held that the plaintiff had not described the defendant as a tenant in the suit property. The Trial Court proceeded to discuss the cross-examination of the plaintiff/ PW-1. In her cross-examination, the plaintiff had stated that she had nothing to do with the business of the defendant and that the defendant was carrying on the business in the suit property of his own. There was nothing on record to show that she was deriving a share from the proceeds of the business of the defendant. Thus,

the plea of the plaintiff being a partner in the business of the defendant was not substantiated. The Trial Court observed that the nomenclature of occupational charges given by the plaintiff cannot change the essential relationship of landlord and tenant, which exists between the parties. The Trial Court also relied upon the evidence of the defendant - led in support of his claim that he is tenant in the suit property. Firstly, the defendant admitted himself to be the tenant in the suit property, initially under late Sh. Hargyan Singh – father-in-law of the plaintiff. He also stated that he had been regularly paying rent to the plaintiff, apart from making payment of water and electricity bills. He also led in evidence the rent receipts issued in the year 1999-2000. He also claimed himself to be a tenant of the plaintiff in proceedings under Section 45 of the Delhi Rent Control Act. Thus, the defence of the defendant that he was a tenant in the suit premises was accepted by the Trial Court on the basis of his admission, and his evidence.

16. The legal consequence of the defendant's establishing his rights as a tenant in the suit premises was that the defendant also could not challenge the title of the plaintiff. It appears that the defendant sought to heavily rely on his defence that the suit was barred under Section 50 of the Delhi Rent Control Act. However, this defence was rejected by the Trial Court on the premise that the defendant/ appellant had failed to establish that the suit premises was covered by the Delhi Rent Control Act. The plaintiff led in evidence the Lal Dora Certificate to establish that the suit property situated in village Lal Dora and was not covered by the Delhi Rent Control Act. Pertinently, the appellant/ defendant did not led any evidence to establish that the suit property was covered by the provisions of the Delhi Rent

Control Act. The appellant/ defendant did not produce any notification issued under Section 1(2) of the said Act to show that the provisions of the Delhi Rent Control Act had been extended to the suit property. The Trial Court placed reliance on the decision of the Supreme Court in ***Mitter Sen Jain Vs. Shakuntla Devi***, 85 (2000) DLT 658 (SC) while rejecting the said defence of the defendant.

17. The submission that notice of termination had not been served on the defendant/ appellant was rejected by, *inter alia*, placing reliance on ***Nopany Investment (P) Ltd. Vs. Santokh Singh (HUF)***, (2008) 2 SCC 728, followed by this Court in ***Jeevan Diesel and Electrical Ltd. Vs. Jasbir Singh Chhadha (HUF) & Another***, RFA No.179/2011 decided on 25.03.2011, amongst others. Consequently, the suit was decreed. The damages were assessed on the same rate of Rs.3,000/- per month, which according to the defendant/ appellant, was the rent being paid by him.

18. The First Appellate Court has concurred with the judgment of the Trial Court and dismissed the first appeal.

19. The submission of learned counsel for the appellant is that the case of the respondent/ plaintiff was that the defendant/ appellant was not a tenant in the suit premises. He has referred to the testimony of the plaintiff recorded in another suit, i.e. Suit No.18/2009 titled ***Satya Prakash Vs. MCD***, wherein she has appeared as the plaintiff's witness and deposed that the plaintiff (Satya Prakash) is not her tenant in respect of the suit property. In her testimony, she had claimed that three persons, namely Ajaib Singh, Satya Prakash – the plaintiff in the said suit, and Ms. Promila Chauhan – the

plaintiff in the present suit, were the partners in the business run in the suit premises, wherein previously her father-in-law Sh. Hargyan Singh was the partner. She had also admitted that after the death of her father-in-law Sh. Hargyan Singh, the plaintiff in the said suit, namely Sh. Satya Prakash was running the cooling plant in his individual capacity.

20. The submission of learned counsel for the appellant is that both the Courts below have failed to appreciate the stand taken by the respondent/ plaintiff herself in the earlier suit, as well as in the present suit.

21. I find no merit in the said submission of learned counsel for the appellant. It is clear that the stand of the respondent/ plaintiff was that she was claiming herself to be a partner in the business being run in the said premises by the defendant/ appellant. The status of partner, claimed by the respondent/ plaintiff, was denied by the appellant/ defendant, who, on his own, set up the plea that he was a tenant in the suit premises paying rent of Rs.3,000/- per month earlier to the appellant's father-in-law Sh. Hargyan Singh, and thereafter, to the plaintiff. The Courts below have accepted the version of the appellant/ defendant. This being the position, it does not lie in the mouth of the appellant to now turn around and claim that the plaintiff's version should have been accepted that the defendant/ appellant was not a tenant in the suit premises. The appellant/ defendant cannot blow hot & cold at the same time.

22. The issue of title/ capacity in which the occupant is occupying the property, which is subject matter of dispute, is an issue of title, which the Trial Court has to decide on the basis of evidence. In the present case, the

evidence of the defendant has been accepted, which establishes that he was a tenant in the suit premises. The appellant/ defendant cannot now turn around and claim otherwise. Even at this stage, the appellant has not been able to show how the suit property is claimed to be governed by the Delhi Rent Control Act.

23. In view of the aforesaid discussion, no substantial question of law arises for consideration in the present case, and I am not inclined to interfere with the consistent findings of fact returned by both the Courts below, which are premised on appreciation of evidence led by the parties. It has not been pointed out that there has been any perversity or misdirection in the approach of the Courts below in appreciation of evidence. It cannot be said that any extraneous evidence has been considered or material evidence left out by the Courts below.

24. Accordingly, I find no merit in the present petition. Dismissed.

VIPIN SANGHI, J

SEPTEMBER 28, 2015

B.S. Rohella