

\$~14

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

DECIDED ON: 15.11.2010

+ **IA No.12743/2010 (U/O XII Rule 6 CPC) & CS (OS) 450/2009**

RAJPAL SINGH

..... Plaintiff

Through: Mr.R.S.Chaggar, Advocate

versus

ORIENTAL BANK OF COMMERCE

..... Defendant

Through: Mr.Saran Suri, Advocate

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

- | | | |
|----|---|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

%

1. In this suit, decree for possession, damages and mesne profits etc. are claimed. This order will dispose of plaintiff's application under Order XII Rule 6 CPC.

2. The necessary facts for disposal of the application are that the suit property i.e. E-4/11, Jhandewalan Extension comprises of about 19,000 sq. feet housed in a building owned by three brothers, i.e. Bahadur Singh, Balwant Singh and Saudagar Singh. Saudagar Singh apparently died in 1991 and was survived by his widow who died in 2001. Since they died issueless; their

share devolved on the other brothers i.e. Balwant Singh and Bahadur Singh. Bahadur Singh died on 30.12.2006 and Balwant Singh, on 31.7.2007. Before these events, a portion of the property, i.e. 10,000 sq. ft. had been leased to M/s. Indraprastha Builders Pvt. Ltd. The defendant, Oriental Bank of Commerce had entered into a sub-lease with the said Indraprastha Builders. The owners apparently were involved in several litigations with the said Indraprastha Builders.

3. In respect of the balance portion of 9797.32 sq. ft., (the suit premises) the defendant entered into a lease deed in 1998 with the three co-owners, i.e. Bahadur Singh, Balwant Singh and the widow of Saudagar Singh, sometime in 1998. The tenure of this lease – including the extended period was till 2003. It is not denied that the tenure expired on 25.2.2003. The parties apparently agreed for extension; however no registered lease deed was executed. The extension also ended in February, 2008. The Bank at that stage was paying monthly rent of Rs.43.70 per sq. ft.

4. The plaintiff Rajpal claimed to be power of attorney holder entitled to pursue the present proceedings for recovery of possession and damages against the Bank on behalf of other legal representatives. He relies upon a deed of power of attorney dated 30.1.2009. The same has been placed on record. It is stated that the plaintiff caused a legal notice to be issued to the Defendant/Bank on 30.01.2009 requiring the suit premises sought to be vacated by it. Since there was no compliance to the demand, the present suit was filed.

5. The defendant/Bank has contested the suit as well as the application for decree on admission. It was contended initially that the legal notice served on 30.01.2009 was defective and did not amount to a valid termination of lease, in the eyes of law. It was further argued that not all legal representatives of the co-owners had authorized filing of this suit. The defendant/Bank had further argued that the lease, in fact, subsists till 2013 and relied upon some letter issued by it to the plaintiff's predecessors.

6. Since the defendants had all along resisted the maintainability of the suit and contended that they could not recognize the power of attorney produced by the plaintiff and that the legal representatives on whose behalf the present suit claims to have been filed were required to be present, the Court directed their appearance on 19.8.2010. Sixteen of them were present; their statements were recorded. All of them clearly stated that they wished to proceed in the suit which

had been authorized by them and that they wanted the Bank to vacate the premises. It is submitted that so far as the other legal representatives are concerned, Smt Kawaljeet Kaur lives abroad and could not be present in Court; Smt. Harbans Kaur is of advanced age and is unable to move around due to her illness. It is stated that the last legal representative Sukhdev Singh has also executed the power of attorney in question.

7. As far as the objection with regard to the legal notice not being valid is concerned, this Court is of the opinion that the contention is vague. The Bank is unable to support its argument about the subsisting lease. Concededly, the arrangement ended sometime in February, 2008. In fact, the tenure of the lease deed ended on 25.02.2003. In the circumstances, the Bank's status was one of monthly tenant holding over. Even otherwise, it has been held that the filing of a suit for possession under these circumstances itself amounts to a notice to the erstwhile lessee/occupier. Therefore, this contention by the Bank is unfounded.

8. As regards the second contention, i.e. maintainability of the suit on the ground that not all the legal representatives of the original co-owners had authorized the present plaintiff to institute this suit, in this Court's view this argument requires to be rejected in view of the statement made by the legal representatives who categorically submitted on 19.8.2010 that they wished to proceed in the suit and wanted the Bank to vacate the premises. Learned counsel for the defendant had pointed out to the power of attorney in an attempt to contend that it did not, in fact, invest the present plaintiff with an authority to file the present suit but only authorized him to prosecute the existing proceedings against Indraprastha Builders. This Court is of the opinion that this contention has to be rejected since the power of attorney is wide in its terms. Besides, the legal representatives have deposed in the Court that they wish to continue with the present proceedings and also want the Bank to vacate the premises.

9. Learned counsel for the Bank submitted that he has instructions through a letter dated 27.8.2010 to submit that the defendant is willing to vacate the premises excluding basement, ground and mezzanine floor where Currency Chest is located within a period of one year from the date the Court directs it to do so. It is stated that the said letter dated 27.8.2010 (to the defendant's counsel) also states that the Currency Chest premises which are basement, ground

and upper ground floor would be vacated within three years from the Court order. The relevant portion of the said order which was shown to the Court, reads as follows:-

"H/O/Services/Lease/ /2010 27.08.2010

Sh. Saran Suri (Advocate)

11/30, West Patel Nagar,

New Delhi-110008

Dear Sir,

Re: HO Premises at 4E/11, Jhandewalan Extn., New Delhi

We refer to your letter dated 20.10.2010 on the subject matter wherein you have opined that the Bank may have to inform the Hon'ble Court as regard the time required for vacating the said premises. In this connection, we inform you that we may inform the Hon'ble Court as regards the time required by the Bank for vacating the said premises as under:

1. The Bank shall vacate the said premises excluding Basement, Ground and mezzanine/upper ground floor where Currency Chest is located, within a period of one year from the date of Court order.

2. Currency Chest premises i.e. Basement, Ground and mezzanine/upper ground floor shall be vacated within 3 years from the Court order as finalization and acquisition of alternate premises, construction of vault/strong room and obtaining several approvals from different Govt. Deptts. is a long drawn process & take considerable time.

3. In respect of vacation of other ½ portion of the said premises pertaining to M/s. Indraprastha Builders Pvt. Ltd., the Bank may inform the same time limit as stated here above at Sr. No.1 & 2, to the lessor/Court as the lessor has filed eviction suit against the Bank for its portion.

Please take a note of the same and do the needful accordingly.

Thanking you,

Yours faithfully,

Sd/-

Dy. General Manager (Services)"

10. In view of the above discussion and the further statement by the defendant's counsel the court is of the opinion that the application has to succeed, as there is unambiguous admission about lease termination, and the suit has to be decreed in part so far as the claim for possession is concerned.

11. So far as the defendant's request for grant of an year's time to vacate the premises and three years to vacate the portion which contains the currency chest is concerned, the Court notices that no such plea has been, in fact, mentioned in the written statement. No documents are forthcoming in this regard that the counsel had argued that the currency chest has to be maintained in accordance with the regulations of the Reserve Bank of India.

12. Having regard to these perspectives and the facts, the Court is of the opinion that the Bank should vacate the premises – excluding the mezzanine/upper ground floor and basement of the premises within four months from today i.e. 28.02.2011. The balance of the premises, i.e. basement, ground floor and upper ground and mezzanine floor shall be vacated and peaceful possession handed over on or before 31.8.2011. The suit claim (a), i.e. for decree of possession in respect of the area of 9797.32 sq. ft. forming part of property bearing No.4E/11, Jhandewalan Extension is decreed to the above extent.

13. The other claims towards future damages/mesne profits however survive. The parties are directed to be present before the Joint Registrar to take further steps towards leading evidence in regard to the surviving issue of damages on 10.01.2011.

14. List before the Court after parties record their evidence on 17.03.2011.

IA No.9750/2010 (U/S. 151 CPC)

This application seeks release of the portion of the rent to which late Shri Balwant Singh was entitled to. Balwant Singh had ten legal heirs. The bank objected to grant of this relief and contended that one of the legal heirs, i.e. Sukhdev Singh has objected to the release of his share of the said amount to his mother, Harbans Kaur.

In view of these facts, the Court directs that half share enuring to the legal representatives of late Balwant Singh except 1/10th of a portion thereof (to which Sukhdev Singh is entitled)

shall be permitted to be withdrawn by M/s. Harbans Kaur, the widow of late Balwant Singh. The said 1/10 of one half share shall remain deposited in Court. The plaintiff and his counsel shall be present before the Joint Registrar for taking consequential steps in this regard on 10.01.2011.

The IA is allowed in the aforesaid terms.

**S. RAVINDRA BHAT
(JUDGE)**

NOVEMBER 15, 2010
vg