

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

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Date of decision: 20th May, 2016

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RFA NO. 124/2015

**VIRENDER KUMAR SIKKA (DECEASED)
THROUGH LRS.**

..... Appellants

Through: Mr. Vivek B. Saharya, Adv.

Versus

JUGINDER ARORA

..... Respondent

Through: Mr. Shailendra Babbar, Adv.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This first appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree (dated 29th November, 2014 of the Court of Additional District Judge-03 (ADJ) (East), Karkardooma Courts, Delhi in CS No.277/2014 bearing Unique ID No.02402C0158212013) on admission of ejectment of the four legal heirs of the deceased appellant Virender Kumar Sikka from the property No.C-5, ad-measuring 200 sq. yds., opposite Park, situated on Road No.2, Ghazipur Dairy Farm, Ghazipur, Delhi. The suit, insofar as for the reliefs of recovery of rent and *mesne profits* is pending.

2. The appeal came up first before this Court on 27th February, 2015 when, after some hearing the senior counsel then appearing for the appellants confined the relief in the appeal to grant of one year's time to the appellants to vacate the property. Notice of the appeal limited to the said aspect was issued and execution stayed. The attempt at amicable settlement however failed and on 15th April, 2015 / 7th May, 2016 the appellant no.2 Anju Sikka appearing for her mother-in-law Kunti Sikka (appellant no.1) and her minor children Simran Sikka and Ashmit Kumar Sikka (appellants no.3&4) stated that she had discharged the advocate earlier appearing for her and was unable to afford another advocate. Accordingly, the Delhi High Court Legal Services Committee was directed to provide a counsel to the appellants. After some hearing on 17th July, 2015, again time was sought to reach a settlement but no settlement could be reached. In these circumstances and upon the appellants expressing inability to pay any amount for use of the property even if further time was to be granted to them and further finding that the time of one year which the appellants had sought was also nearly over, vide order dated 28th August, 2015, the stay of execution earlier granted was vacated. Thereafter on 12th February, 2016,

since none appeared for the respondent / plaintiff, the appeal was admitted for hearing and ordered to be listed in the category of 'regulars'.

3. The appellants have filed CM No.19398/2016, again seeking stay of execution contending that the appeal will become infructuous if during pendency thereof the appellants are ejected. The said application has come up for the first time today and the counsel for the respondent appears on advance notice. The counsel for the appellants today also states that the appellants are not in a position to pay even the charges for use and occupation of the property to the respondent for future if stay of execution is granted.

4. The counsel for the respondent / plaintiff informed that the appellants / defendants had preferred SLP(C) No.1080/2016 against the order dated 28th August, 2015 of vacation of interim stay and which had been dismissed vide order dated 28th January, 2016.

5. Being of the view that, to grant stay of execution when the appellants are not even willing to pay any charges for use and occupation for future to the respondent/plaintiff, would cause injustice to the respondent, the counsel for the appellants has been asked to argue the appeal itself.

6. The counsel for the appellants has been heard and the trial court record perused.

7. The respondent / plaintiff on 21st May, 2013 instituted the suit from which this appeal arises pleading i) that the respondent / plaintiff on 14th January, 2008 had inducted the deceased appellant / defendant in the property aforesaid at a monthly rent of Rs.25,000/-; ii) that the deceased appellant / defendant with effect from the month of October, 2012 stopped paying rent and electricity charges and did not pay the same inspite of repeated requests and reminders; iii) that the tenancy of the deceased appellant/defendant had been terminated.

8. Upon the demise of deceased appellant/defendant, his mother, widow and children were substituted in his place.

9. Three separate written statements, though identical and by the same advocate, were filed on behalf of the widow, mother and minor children of the deceased appellant / defendant respectively, pleading i) that the deceased appellant / defendant who was the tenant expired on 19th May, 2013 and the tenancy had been jointly inherited by the appellants / defendants; ii) that the deceased appellant / defendant had filed a suit for

permanent injunction against the respondent / plaintiff and in which the respondent / plaintiff had undertaken not to dispossess the deceased appellant / defendant from the property without due process of law; iii) that the respondent / plaintiff had let out the property to the deceased appellant / defendant “about 10 years ago” at a monthly rent of Rs.5,000/- which was increased from time to time and at that time the rent was Rs.10,000/- per month and not Rs.25,000/- per month; iv) that the tenancy was oral and no rent agreement was executed; v) that a security amount of Rs.5,00,000/- was also given by the deceased appellant / defendant to the respondent / plaintiff and the respondent/plaintiff was intending to usurp the same; vi) that in consideration of the security deposit of Rs.5,00,000/- the property was let out for an unlimited period; vii) that the value of the property was beyond the maximum pecuniary jurisdiction of the District Judge of Rs.20,00,000/-.

10. An application under Order XII Rule 6 of CPC for decree of ejectment on admissions was filed by the respondent / plaintiff and which as aforesaid has been allowed by the learned ADJ.

11. The need to refer in detail to the reasoning given by the learned ADJ is not felt as it is evident from the narrative of the defence of the appellants /

defendants in their written statements itself that the appellants / defendants did not plead any fact which disentitled the respondent / plaintiff from the relief of ejectment. Only if such a fact had been pleaded and the same was disputed by the respondent/plaintiff, would the need of putting the said fact to trial would have arisen.

12. The appellants / defendants as aforesaid a) admitted the relationship of landlord and tenant; b) admitted that the rent was in excess of Rs.3,500/- per month i.e. the threshold till which the provisions of the Delhi Rent Control Act, 1958 providing protection from eviction to tenants apply; c) admitted that the tenancy was oral i.e. not by a registered lease deed vide which only a tenancy for a definite term before which it could have been terminated could have been created.

13. The counsel for the appellants / defendants has however made his best efforts for the appellants / defendants and has argued i) that since it is the case of the appellants / defendants that they had paid security of Rs.5,00,000/- at the time of inception of tenancy, no order of ejectment can be passed without simultaneously directing refund of the said security amount by the respondent / plaintiff to the appellants / defendants; ii) that

according to the respondent / plaintiff also no time for which the premises were let out by the respondent / plaintiff to the deceased appellant / defendant was agreed and hence the tenancy was for an indefinite period and could not have been terminated; iii) that the tenancy of the appellants has in any case not been terminated; iv) that two of the appellants are minors and attention is drawn to Section 103 of the Transfer of Property Act, 1882 (TP Act); v) reliance is placed on *Jeevan Diesels & Electricals Ltd. Vs. Jasbir Singh Chadha* (2010) 6 SCC 601 to contend that there was no clear admission on which a decree on admissions could have been passed; vi) the appellants / defendants nowhere in their written statements admitted that a decree for ejectment was liable to be passed against them.

14. I may at the outset state that the notice of the appeal having been issued only on the plea of the appellants / defendants of grant time of one year from 27th February, 2015 for vacating the premises and which time is already over, the contentions aforesaid of the counsel for the appellants/defendants need not be considered. However since this Court has still till now not dismissed the appeal on this ground, I proceed to deal with the said contentions. To say the least, there is no merit therein.

15. The appellants / defendants themselves in their written statements claimed to have inherited the tenancy rights from the deceased appellant / defendant. The tenancy of the deceased appellant / defendant having been determined (service of notice of determination of tenancy was also not disputed) in his lifetime, there was no tenancy which could have been inherited by the appellants / defendants on the demise of the appellant / defendant and hence the argument that the tenancy of the appellants / defendants has not been determined is misconceived. All that the appellants / defendants inherited from their predecessor was the status of continuing in possession after determination of tenancy. Moreover, Supreme Court in *Nopany Investments (P) Ltd. Vs Santokh Singh* (2008) 2 SCC 728 has held that even institution of a suit for ejectment serves as a notice of determination of tenancy. Thus, even if it were to be correct that the appellants / defendants had inherited tenancy rights and the same were required to be determined, the same were determined on service of summons of the suit on the appellants / defendants and more than three years have elapsed since then. The appellants / defendants for this reason also have had sufficient notice to vacate the premises.

16. The reliance by the counsel for the appellants / defendants on Section 103 in Chapter IV titled “Of Mortgages of Immovable Property and Charges” of the TP Act is also misconceived and in fact the counsel was himself not able to substantiate the same. Chapter V, titled “Of Leases of Immovable Property” commences only from Section 105 of the TP Act.

17. Vide Sections 106 & 107 of the TP Act, a lease of immovable property, in the absences of a registered instrument, is from month to month terminable by a 15 days notice. The appellants / defendants by pleading “oral tenancy” expressly admitted that there is no lease in writing. Such a lease, created by oral agreement, is terminable by a 15 days notice.

18. The argument, of the appellants / defendants being not liable for ejectment till the question whether they had given a security deposit of Rs.5,00,000/- at the time of creation of lease or not is decided and if it is decided in favour of the appellants / defendants till the respondent / plaintiff pays the said amount is also totally misconceived. There is no such proposition in law. If it were to be so, it would be in violation of the express language of Sections 106 & 107 supra and would enable creation of tenancy not terminable till refund of security deposit even in the absence of a

registered instrument and thereby permitting avoidance of payment of stamp duty required to be paid on such instrument.

19. Moreover, a security deposit given by a tenant is to secure performance by the tenant of his obligations as a tenant and which includes payment of rent. Even according to the appellants / defendants, the rent of the premises is Rs.10,000/- per month. The suit from which this appeal arises as aforesaid is pending since the month of May, 2013. The order sheet of the trial court does not show any payment to have been made by the appellants / defendants towards rent at least since the May, 2013. The rent, even at the rate of Rs.10,000/- per month, for the last about more than three years, of more than Rs.3,60,000/- is already due from the appellants / defendants to the respondent / plaintiff. According to the respondent / plaintiff, the rent is in arrears since earlier. For this reason also, the question of the appellants / defendants being entitled to withhold possession till refund of Rs.5,00,000/- does not arise. The appellants/defendants, if have any claim for refund of security deposit against the respondent/plaintiff have to legally enforce the same. I have discussed the case law in this respect in ***General Electric International Inc. Vs. U.C. Jain HUF*** MANU/DE/1332/2009.

20. A defendant in a suit, who files a written statement with the assistance of an advocate, rarely in so many words states that the plaintiff is entitled to the relief claimed. If it were to be held that unless the defendant states so, decree on admission cannot be passed, the same would render Order XII Rule 6 of the CPC redundant. Moreover Order XII Rule 6 of the CPC is to be read along with Order XV Rule 1 of the CPC which requires the Court to, on first hearing of the suit, if finds that the parties are not at issue on any question of law or of facts, at once pronounce judgment. I have already hereinabove held that none of the defences taken by the appellants / defendants in their written statements were such if upon being put to trial would have disentitled the respondent / plaintiff from the relief of ejectment. The Court, while exercising suit jurisdiction, is not to mechanically put all suits to trial, without applying its judicial mind till the stage of final arguments. The Court has to be vigilant at each and every stage of hearing and to ensure that suits, which do not require trial are not unnecessarily put to trial, thereby delaying trial of those suits which cannot be adjudicated without trial.

21. Supreme Court, in *Jeevan Diesels & Electricals Ltd.* supra set aside the decree on admissions for the reason that there was a dispute about

determination of tenancy. Attention of the Court was not drawn to *Nopany Investments (P) Ltd.* supra and to a host of other judgments since then in which similar view has been taken.

22. I therefore do not find any merit in the appeal. The same is dismissed Owing to the poor pecuniary condition stated of the appellants / defendants, I refrain from imposing costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

MAY 20, 2016

‘gsr’..

(corrected & released on 21st June, 2016)