

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

+ **RSA No.179/2016**

% **20th July, 2016**

VIJAY KUMAR SHARMAAppellant

Through: Mr. A. Maitri, Advocate.

Versus

MANOJ KUMAR GARG Respondent

Through:

**CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

RSA No.179/2016 and C.M. No.25477/2016 (stay)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed against the Judgment of the First Appellate Court dated 4.5.2016 whereby the first appellate court on the appeal of the present appellant/tenant partly allowed the appeal by setting aside the money decree passed with respect to mesne profits but sustained the Judgment of the Trial Court dated 3.9.2015 decreeing the suit for arrears of rent. The original suit filed by the respondent/landlord/plaintiff was for possession, mesne profits and arrears of rent for the period from 1.5.2011 till 30.8.2011 when the tenancy was terminated. The suit was for possession with respect to the shop bearing private no.33-34, in

property no. 1/1300 to 1318, Balaji Motor Market, Sultan Singh Building, Kashmere Gate, Delhi-110006.

2. The case of the respondent/plaintiff/landlord was that the suit shop/premises were taken initially at a monthly rent of Rs.11,000/- per month but since the appellant/defendant/tenant vacated half portion of the shop on 1.1.2011, a fresh Agreement was executed between the parties on 2.5.2011 whereby a new tenancy w.e.f 1.5.2011 was entered into at a rent of Rs.8,000/- per month. This fresh agreement was only for four months and therefore tenancy expired by efflux of time on 30.8.2011. The subject suit came to be filed after the appellant/defendant was served with a Legal Notice dated 14.2.2012. During the pendency of the suit, it was found that though the suit property was outside the protection of the Delhi Rent Control Act, 1958 inasmuch as the rent was more than Rs.3,500/- per month, but the premises were found to be admittedly situated in a slum area covered by the Slum Areas (Improvement and Clearance) Act, 1956 (hereinafter referred to as 'the Slum Act'). As per Section 19 of the Slum Act, before filing proceedings for eviction against a tenant, permission of the competent authority had to be taken. Accordingly, the respondent/plaintiff filed an application under Order II Rule 2 CPC seeking permission to file fresh proceedings with respect to the suit for possession after obtaining permission of the slum authority. This application under Order II Rule 2 CPC of the respondent/plaintiff/landlord was allowed by the Trial Court vide Order dated

2.4.2013 and therefore the suit continued so far as recovery of mesne profits and arrears of rent are concerned.

3. Trial Court by its Judgment dated 3.9.2015 decreed the suit of the respondent/plaintiff/landlord for arrears of rent and recovery of mesne profits in the following terms:-

“Relief.

As a sequel to the discussion and decision of the issues, the suit of the plaintiff is decreed. The plaintiff is held entitled to the recovery of Rs.32,000/- towards arrears of rent for the period 01/05/2011 till 30/08/2011 and for future sum of Rs.8,000/- per month towards occupation charges for the defendant occupying the property even after the lapse of the tenancy period. The plaintiff is held entitled to the costs of the suit. Decree Sheet be prepared accordingly. File be consigned to record room after necessary compliance.

**Announced in the open court
on 03.09.2015**

(Jitender Pratap Singh)
Civil Judge, Central (09)
Tis Hazari Courts, Delhi
03.09.2015”

4. The first appellate court held that since prior permission was required before eviction of the appellant/defendant/tenant under Section 19 of the Slum Act, therefore, only arrears of rent could be granted and not mesne profits which are granted when a person is an unauthorized occupant of the property. The operative portion of the Judgment of the First Appellate Court dated 4.5.2016 is contained in para 10 of the judgment and which reads as under:-

“10. I have perused the record and heard the arguments and I may observe that the appellant has not brought on record any proof whatsoever as regards the payment of rent amount which is due to the respondent. The issue as regards the rate of rent has been duly considered by the Trial Court and evidence has been led by the appellant who has failed to discharge the onus upon him to show that the rate of rent was Rs.2,000/- per month. Further, as regards the order directing the payment of Rs.8,000/- regarding the occupation charges from the date of termination of the tenancy till the date of the possession, the Ld. Trial

Court had itself vide order dated 2.4.2013 directed “*suit to be proceeded henceforth only for recovery of arrears of rent*”, upon allowing the application under **Order 2 Rule 2 CPC** for abandoning the relief claimed for recovery of possession and mesne profits. Thus the **order of Ld. Civil Judge dated 3.9.2015 does not suffer from any infirmity, except to the limited extent of directing the appellant towards the occupation charges (same as rental amount), which has been awarded without prayer. Thus the judgment and the decree viz-a-viz the recovery of arrears of rent to the tune of Rs.32,000/- in favour of the plaintiff is uphold. However, award for the future sum of Rs.8,000/- per month towards the occupation charges against the defendant is set aside.** The appeal is accordingly allowed in aforesaid terms. Decree sheet be prepared accordingly. Trial Court record be sent back along with copy of the order.”

5. Before advertng to the contentions urged on behalf of the appellant, I may note that possibly the understanding of the respondent/plaintiff/landlord that permission was required of the slum authority for eviction of the appellant/tenant is based upon a wrong understanding of law inasmuch as permission under Section 19 of the Slum Act is required with respect to a tenant and not a trespasser. Once the appellant/defendant was a tenant at a rent of Rs.8,000/- per month and was not having protection under the Delhi Rent Control Act as per the case of the respondent/landlord as his tenancy was terminated by efflux of time, as against such a person being the appellant/defendant who continued in possession in spite of expiry of lease by efflux of time, such continuation in possession is as a trespasser and as against an illegal occupant/trespasser no prior permission was required of the slum authority under the Slum Act as held by a Full Bench judgment of this Court in the case of *Punnu*

Ram and Others Vs. Chiranji Lal Gupta and Others AIR 1982 Delhi 431. Para

27 of the judgment is relevant and the same reads as under:-

“27. This brings us to the consideration of a few other aspects agitated at the Bar. Sub-section (3) of Section 19 of the Act postulates grant or refusal of the permission to institute any suit or proceedings for obtaining a decree or order for eviction of a tenant or where any decree or order is obtained in any suit or proceedings instituted before the commencement of the Act for eviction of a tenant from any building or land in an area declared as a slum area. The question that arises for consideration is what is the meaning of the term “tenant”. As noticed earlier, this term is not defined by the Act. Mr. Narula submits that tenant contemplated by Section 19 is a person in occupation or a person likely to be evicted, if permission is granted to institute eviction proceedings or execute an order of eviction. We do not agree. The protection contemplated is for a tenant as recognized by law. A mere occupier cannot be equated to a tenant. An occupier may be a trespasser or a licensee or a tenant. The concept of welfare State cannot extend to giving protection to the trespassers or persons who have no right of occupation. Therefore, when the Legislature used the term ‘tenant’ in Section 19 as well as in the Preamble of the Act it meant tenant-in-law”

(underlining added)

6. Possibly therefore the respondent/plaintiff could have continued his suit for possession, mesne profits and arrears of rent without giving up his claim for possession on the ground that the suit premises were situated in a slum area which required presumably prior permission of the slum authority before seeking eviction of the appellant/defendant.

7. Learned counsel for the appellant/defendant has urged before this Court the following points:-

(i) The Order passed by the trial court under Order II Rule 2 CPC dated 2.4.2013 is illegal on the ground that all of the claims had to be relinquished and not only some of the claims/reliefs.

(ii) The courts below have relied upon the Rent Agreement Ex.PW-1/3 dated 2.5.2011 but the courts below have not even read this document because it is seen that this document does not contain the property number which actually is 1/1300 to 1318. Once the property number is not mentioned on the rent agreement Ex.PW-1/3, it is argued that the same cannot be co-related with respect to tenancy of the appellant/defendant with respect to the suit property and therefore the entire finding with respect to arrears of rent on the basis of rate of rent mentioned in this document deserves to be set aside.

(iii) The first appellate court has committed an error in wrongly appreciating the evidence and the first appellate court was authorized being the first appellate court under Section 96 CPC to reappraise the evidence.

(iv) Even if the judgments of the courts below are upheld, this Court should observe that findings in the same with respect to rate of rent should not operate as *res judicata* as against the appellant/defendant.

8. In my opinion, all the arguments raised on behalf of the appellant/defendant have no merit whatsoever. In fact, it is found that the appeal itself is totally frivolous in nature by a tenant who is not even wanting to pay the rent of the premises taken by him on lease.

9(i) The first argument of the appellant that the order of the trial court allowing the application under Order II Rule 2 CPC thereby allowing the respondent/landlord/plaintiff to give up the claim for possession because

permission had to be taken of the slum authority under Section 19 of the Slum Act is illegal because all the claims had to be given up and only limited claims cannot be given up is an argument which is in fact not even understood by this Court because Order II Rule 2 CPC by its nature talks of not filing suit only on some of the claims/reliefs. Also, the very object of Order II Rule 2 CPC is that with respect to a particular cause of action exemption is sought for filing a suit qua one or more reliefs arising out of the pleaded cause of action and the relief is sought thereupon and Order II Rule 2 CPC does not apply to a separate and different cause of action. Cause of action for possession on the ground that tenant has become an unauthorized occupant is in fact a totally separate cause of action than the cause of action of claim of arrears of rent which is based on the claim during the continuation of tenancy. The language of Order II Rule 2 CPC shows that all claims must be claimed with respect to one cause of action i.e all reliefs arising from one cause of action should be claimed in the suit and it is not that a separate cause of action from which a separate relief arises is the subject matter of Order II Rule 2 CPC. The cause of action which was continued in the suit was the cause of action for arrears of rent i.e tenant continuing as a tenant and not that a tenant has become a trespasser for him to deliver possession to the landlord and which is a separate cause of action for claiming possession on the ground that tenant is a trespasser. Therefore, I do not find that there is any scope for applicability of Order II Rule 2 CPC and in fact there was no need for the

respondent/plaintiff/landlord even to move an application under Order II Rule 2 CPC.

(ii) The second reason for rejecting this argument of the appellant is that I have put a specific query to the counsel for the appellant/defendant as to whether the Order of the trial court passed under Order II Rule 2 CPC dated 2.4.2013 was ever challenged by the appellant/defendant directly or in the first appeal against the final judgment of the trial court which was filed by the appellant/defendant. Counsel for the appellant concedes that neither was the Order dated 2.4.2013 challenged directly to a higher court after passing of the same nor was any challenge laid to the said order in the first appeal which was filed against the final Judgment of the Trial Court dated 3.9.2015. Once therefore appellant/defendant has accepted the finality of the order of the trial court under Order II Rule 2 CPC, then now for the first time in second appeal this argument cannot be raised by the appellant/defendant challenging the order passed by the trial court giving permission under Order II Rule 2 CPC to the respondent/landlord as regards filing of the suit for possession.

10(i) As regards the second argument urged by the appellant/defendant with respect to property number not being mentioned in the Rent Agreement Ex.PW-1/3 dated 2.5.2011, it is once again seen that there is no such plea raised by the appellant/defendant in his written statement filed in the trial court. Not only no such plea was raised in the written statement but this plea was

not even orally argued in the trial court which passed the first Judgment on 3.9.2015. In fact, the appellant/defendant has not even argued this aspect before the first appellate court because there is no such discussion of this issue in the Judgment of the First Appellate Court dated 4.5.2016. Therefore this argument now raised for the first time in the second appeal under Section 100 CPC is misconceived and liable to be rejected *in limine* as not being raised on the records of the courts below.

(ii) There is another reason for argument urged on behalf of the appellant/defendant being misconceived because though the property number is not mentioned but the suit property is otherwise adequately described being shop private no. 33-34, Balaji Motor Market, Sultan Singh Building, Kashmere Gate, Delhi. The object of the suit with respect to a property and rent agreement with respect to a property is to see that there is such description so as to identify the property. The suit was filed with respect to shop no. 33-34, Balaji Motor Market, Sultan Singh Building, Kashmere Gate, Delhi and it has also been decreed with respect to the same description as per the Judgment of the Trial Court dated 3.9.2015. The judgment of the first appellate court also allows the appeal partly and dismissed the appeal with respect to the property which would be the subject matter of the judgment of the trial court and the property is described in the plaint and therefore nothing at all turns on the property number not having been

mentioned in the rent agreement Ex.PW-1/3, once the property is adequately described.

(iii) There is yet another reason why this argument urged on behalf of the appellant/defendant is frivolous because it is not the case of the appellant that he is a tenant in some other property at some other location. Once the appellant/defendant is a tenant only of one particular property, and the appellant/defendant knows which is the property and the same is the subject matter of the Rent Agreement dated 2.5.2011 (Ex.PW-1/3), I fail to understand as to how appellant can urge this argument. It may be noted that the appellant/defendant has not denied his signatures on this rent agreement, Ex.PW-1/3 but the contention is that the signatures were taken by misrepresentation. This stand of the appellant/defendant has been rejected by the courts below on the basis of the evidence and which is a finding of fact. Once there is a finding of fact by the two concurrent courts below, no substantial question of law arises in the facts of the present case under Section 100 CPC on the alleged defence of the appellant/defendant of not mentioning the property number in the Rent Agreement dated 2.5.2011.

11(i) The third argument of the appellant/defendant that the first appellate court should have reapprised the evidence being the first appellate court is correct theoretically in law but I find that the first appellate court has examined all the evidence and there is absolutely no perversity and illegality in the findings and

conclusions of the first appellate court by which the rent agreement Ex.PW-1/3 has been upheld and consequently the rate of rent at Rs.8,000/- per month and thereby upholding of the judgment of the trial court with respect to arrears of rent. It may be noted that it is not the case of the appellant/plaintiff that he has in fact paid any rent for the period from 1.5.2011 till 30.8.2011. The relevant portion of the first appellate court discussing in detail the appreciation of evidence are paras 8 and 9 and these paras are reproduced as under:-

“8. The impugned judgment dated 3.9.2015 was delivered by the Ld. Civil Judge whereby the plaintiff i.e. respondent before this court was held entitled to the recovery of Rs.32,000/- towards the arrears of rent for the period 1.5.2011 till 30.8.2011 (i.e. till date of termination of tenancy) and for a future sum of Rs.8,000/-per month towards the occupation charges. Thus upon the consideration of the pleadings, the evidence led and the arguments advanced, the Ld. Civil Judge, had vide his judgment dated 3.9.2015, held that the rent agreement stood duly proved by the plaintiff and the agreements of the defendant (i.e appellant before this court) that the signatures to the said documents were obtained by fraud, remained unsubstantiated. It was held that the defendant (i.e. appellant before this court) had admitted the landlord tenant relationship inter-se between the parties the terms of which were delineated in the said agreement and since it could not be proved that the reduction had been effected in the rent amount, the rate calculated to be the same as one agreed by the parties in the aforesaid rent agreement, i.e. @ 8,000/- per month. The court has also held that the entitlement for the period 1.5.2011 till 30.8.2011 since the case of the plaintiff (i.e respondent before this court) was that the defendant (i.e. appellant before this court) was running in arrears since 1.5.2011, remained uncontroverted.

9. The present appeal has been filed by the appellant (i.e. defendant before the Trial Court) assailing the above judgment and the decree inter-alia on the ground that the Ld. Trial Court had traversed beyond the record and had erred in granting the payment of mesne profits, which relief had already been relinquished by the respondent (i.e. plaintiff before the Trial Court). According to the appellant the present suit should have been a suit for recovery of arrears of rent and he was regular in paying the monthly rent @ Rs.2,000/- per month. He has submitted that the Trial Court has ought to have accounted for the amount of rent which he had already paid to the respondent.”

(ii) I therefore reject the argument urged on behalf of the appellant that there is no proper reappreciation of evidence by the first appellate court.

12. The last argument urged on behalf of the appellant/defendant that this Court should observe that the findings in the two judgments should not be held *res judicata* against the appellant in further proceedings to be filed is an argument once again without any substance whatsoever because surely once there would be a final judgment of the civil court holding that there is a relationship of landlord and tenant between the parties at rent of Rs.8,000/- per month in terms of the Rent Agreement dated 2.5.2011/Ex.PW-1/3, then in subsequent civil suit proceedings such findings will operate as *res judicata* because this issue has been heard at length and finally decided in these proceedings as per the expression 'heard and finally decided' found in Section 11 CPC.

13. In view of the above, I find no substantial question of law arises for this second appeal to be entertained under Section 100 CPC. Dismissed.

JULY 20, 2016
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VALMIKI J. MEHTA, J