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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ LPA 437/2016
MOHD HAROON

..... Appellant

Through Mr Ritesh K. Chowdhary and Mr
Rahul Kumar, Advs.

versus

NDMC

..... Respondent

Through Mr Vivek B. Saharya, Addl. Standing
Counsel – NDMC with Mr M.
Mishra, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

O R D E R

% 08.08.2016

CM 28277/2016 (exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CM 28276/2016 (delay)

This is an application for condonation of delay of 60 days in filing the present Intra-Court Appeal.

Learned counsel appearing for NDMC does not oppose the application.

In view of the statement made, the application is allowed and the delay is condoned.

LPA 437/2016

We have heard the learned counsel for the appellant who submits that the appellant, in fact, has a shop by the name of 'Lovely Shoes' located in

Palika Bazar, Regal Subway, Connaught Place, New Delhi. The petitioner was allotted a show window number 3, in the pedestrian subway at Sansad Marg near Palika Bazar, New Delhi on license fee of Rs.2261/- per month vide licence deed dated 09.11.1989 with effect from 15.11.1989. The license fee could be enhanced by 10% on expiry after 5 years.

There was a dispute over the arrears of license fee and in 2004, the respondent – NDMC had sealed the show window. However, the matter was compromised, as recorded in the order dated 23.07.2008 passed by this Court in W.P.(C) No.2978/2008. The respondent – NDMC had agreed to waive the interest and the appellant had agreed to pay the charges towards license fee as computed. Thereafter, the appellant was given possession of the show window on 05.09.2008.

The respondent – NDMC took possession of the show window on 18.01.2010 as the subway had to be redeveloped and renovated.

The claim of the appellant is, that at that time the respondent – NDMC had promised that they would re-allot a show window in the subway after the renovations were completed. The respondent – NDMC have broken the said promise.

The promise it is claimed was oral. The appellant accepts that he has no letter or communication to establish his claim. The files of the respondent – NDMC are missing. The appellant submits that he had continued to pay license fees for the show window till August, 2010. Thus the promise was there and his contention should be accepted.

We have examined the deed of licence. The recitals stipulate that the appellant would not carry on business from the show window. The licensor, i.e. the respondent-NDMC would have absolute right at all times to

undertake any additional construction to ensure better utilization of the subway and to improve its revenue. The allotment of the show window was temporary and would be a bare licence, revocable at any time without assigning any reasons thereto. The relevant clauses of the Licence Deed read as under:

- “23. Notwithstanding anything contained in any clause heretofore mentioned the licensor shall have the absolute right at all times to undertake any additional construction to ensure better utilization for the subway and to improve its revenue.*
- 24. The allotment of the show window in favour of the licensee would be purely temporary one and the same shall be a bare license which would be revocable at any time without assigning any reasons and in the event of revocation of the license on account of breach of any of its terms and conditions of the license, the licensee shall be bound to quit the premises within 10 days of the notice of revocation of the license by the Committee and shall not claim any compensation for any resultant injury of the licensee by the Committee and shall not claim any compensation for any resultant injury thereof.*
- 25. The license is revocable at the will of the licensor and does not create or vest any interest of the licensee in the licensed premises and that the licensee shall not remove from the licensed show window the furnishings, fittings, fixtures etc. belonging to the licensee of the type, removal of which is likely to cause damage to the subway and the same shall belong to the licensor without payment of any compensation. In case the licensor deciding not to retain all or any of the fittings, furnishings the licensee shall remove the same peacefully and restore the licensed space to the original conditions at his own cost.*
- 26. In the event of license having been terminated earlier in terms of the relevant clause the licensee shall vacate the*

show-window under license in a peaceful manner. The licensee shall also be responsible for making good the damages, losses etc. to the licensed show-window, fittings and fixtures noticed by the licensor at the time of vacating the licensed show window by the licensee except for depreciation arising out of normal wear and tear and usage. The decision of the licensor as to the extent of damages loses will be final and binding. The licensee shall be bound to quit the show window within 10 days of the notice of revocation of license by the licensor and shall not claim any compensation for any resultant injury thereof.”

The contention of learned counsel for the appellant that the relevant file of the respondent – NDMC is missing would not, in our opinion, show that the respondent – NDMC had made any promise. The appellant is trying to take advantage of the said position. The appellant had vacated the premises in January, 2010. The appellant has not filed any letter or communication addressed by or to him, to show and establish that at any time the respondent-NDMC had promised reallocation or allotment of a show window. The appellant had first written such a letter only on 11.02.2014, almost 4 years after the possession of the show window was taken. Pertinently, he pleads oral promise.

The respondent-NDMC have, in the written statement, submitted and stated that the petitioner is in arrears of license fee, which fact is disputed by the appellant. Mere payment of licence fees upto August, 2010, even if accepted, would not show and prove that there was a promise by the respondent – NDMC. Once the possession of the show window was taken, the appellant was not required to pay the licence fee thereafter. It is not pleaded, or the case of the appellant, that any communication was made or

letter was written asking him to pay the licence fee even after and when he had voluntarily vacated and handed over the show window. The payment, if made and relatable to licence fee, it is apparent cannot be connected and linked to the “purported” promise. It so happens that the subway has been constructed but there is no show window in the subway. Something which does not exist cannot be allotted to him.

In such circumstances, we are not inclined to issue notice in the present Letters Patent Appeal and the same is dismissed. No costs.

SANJIV KHANNA, J

SUNITA GUPTA, J

AUGUST 08, 2016/*rd*