

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

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Date of decision: 28th January, 2016

+ RFA 751/2015 & CM Nos.25327/2015 (for stay)

MADHU MALLICK @ MADHULATA MALLICK..... Appellant

Through: Ms. Deepali Gupta, Adv.

Versus

NEHRU BAL SAMITI (REGD) THR ITS

JOINT SECRETARY RAMA GOVIL

..... Respondent

Through: Mr. Sanjay Sawhney, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. On 19th January, 2016, when this appeal came up for admission, the following order was passed:

“1. The appeal impugns the judgment and decree dated 31st July, 2015 of the Court of Shri Sunil Chaudhary, Additional District Judge-12, Central District, Tis Hazari Courts, Delhi on admissions of recovery of possession of Room No.9 situated in property bearing Khasra No.376M, Masjid Moth Development Area, New Delhi from the appellant.

2. Notice of the appeal was issued and the counsel for the respondent appears.

3. The appeal is accompanied with CM No.25328/2015 for waiver of 50% of the total Court fees of Rs.7,000/-. However the appellant in the application has not stated any grounds for waiver of the Court fees. Moreover, there is a procedure prescribed therefor of appealing as an indigent person and the application is misconceived and is dismissed. Steps be taken against the appellant for recovery of the balance Court

fees.

4. Though the Trial Court record has not been requisitioned but the decree impugned being on admissions, need therefor is not felt and it is deemed expedient to hear this appeal today itself as the appellant who is also present in person along with the counsel, appointed by the Delhi High Court Legal Services Committee to assist her, is not agreeable to pay any *mesne* profits during the pendency of the appeal. Moreover the suit from which this appeal arises is of 2007 vintage and it is not deemed expedient to deprive the respondent any further from the room aforesaid in the school being run by the respondent in the said premises if were to be found entitled thereto and that too without the appellant depositing any *mesne* profits.

5. However at this stage it is found that the appeal is not even accompanied with the copy of the pleadings on the basis of purported admissions wherein the decree was passed.

6. The Trial Court record be requisitioned for through special messenger.

7. List on 28th January, 2016.”

2. The Trial Court file has been received and perused and counsels heard.

3. The respondent filed the suit from which this appeal arises for ejectment of the appellant from Room No.9 within the property of Nehru Bal Samiti, Opposite R-2, South Extension Part-II, near Jain Mandir, New Delhi and for recovery of *mesne profits* / damages for use and occupation pleading i) that the respondent / plaintiff, a Society registered under the Societies Registration Act, 1860, was/is *inter alia* running an unaided recognised primary school upto Class V in the name and style of Bal Vikas Vidhyalya at Masjid Moth, New Delhi; ii) that the land underneath the said

school was granted on perpetual lease to the respondent / plaintiff; iii) that the appellant / defendant in July, 2004 had approached the respondent / plaintiff offering her voluntary services for the school aforesaid and the respondent / plaintiff believing the representation made by the appellant / defendant qua her educational qualifications allowed the appellant / defendant to join the respondent / plaintiff to render her services as voluntary honorary worker; iv) that the respondent / plaintiff also arranges classes in the aforesaid premises on hourly basis for rendering service to National Institute of Open School, New Delhi and to help the appellant / defendant, started paying her a sum of Rs.3,000/- for the services being rendered by the appellant / defendant; v) that the appellant / defendant on her request was also allowed to use Room No.9 in the property of the respondent / plaintiff at South Extension Part-II on leave and licence basis for her residence; vi) that however upon the failure of the appellant / defendant to submit original certificates of her educational qualification which she had claimed to profess and on account of the conduct of the appellant / defendant, the respondent / plaintiff in November, 2004 decided to dispense with the honorary service of the appellant / defendant and so informed the appellant / defendant about the same and also called upon the appellant / defendant to vacate the aforesaid room in which she had been permitted to reside; vii) that though the appellant / defendant filed CM(M) No.1073/2006 in this Court for release of her salary but the said petition was dismissed; viii) that the appellant / defendant however did not vacate the aforesaid room and in or about the year 2005 instituted a suit against the respondent / plaintiff *inter alia* for specific performance of the contract of employment and in which suit an interim order restraining the respondent /

plaintiff from taking over possession of the aforesaid room save by due process of law was passed; and, ix) that the appellant / defendant has no right to continue in occupation of the room aforesaid.

4. The appellant / defendant contested the suit by filing a written statement contending i) that the respondent / plaintiff had employed the appellant / defendant as a Resident Teacher initially for three years as confirmed vide letter dated 29th November, 2004 and subject to further extension and that she is residing in the said room in the said capacity; ii) that the appellant / defendant was receiving her salary of Rs.3,000/- per month after signing blank vouchers; iii) that on 15th December, 2004, the respondent / plaintiff asked the appellant / defendant to vacate the said room; iv) that the suit filed by the appellant / defendant for specific performance of her contract of employment was still pending consideration and till the pendency thereof the respondent / plaintiff could not claim possession of the room from the appellant / defendant; v) that the proceedings in the subject suit were liable to be stayed owing to the question and issue therein being the subject matter of the previously instituted suit by the appellant / defendant.

5. Though replication was filed by the respondent / plaintiff but need to refer thereto is not felt.

6. The appellant / defendant filed an application under Section 10 of the Code of Civil Procedure, 1908 which was dismissed in default and the application filed for restoration thereof was also dismissed. The appellant present in person states that she also filed a fresh application under Section 10 of the CPC but which was also dismissed.

7. The suit though instituted on 22nd December, 2007 remained pending for the reason of filing of one application or the other by the appellant / defendant. The learned Additional District Judge (ADJ) has vide the impugned order allowed the application of the respondent / plaintiff under Order XII Rule 6 of the CPC and decreed the suit insofar as for the relief of possession, on admissions, *inter alia* holding i) that according to the appellant / defendant also she had joined the school of the respondent / plaintiff as a Resident Teacher initially for three years only subject to further extension; ii) that the appellant / defendant had not disputed the title of the respondent / plaintiff to the property qua which possession was claimed; iii) that the appellant / defendant had admitted that the respondent / plaintiff had allowed her to use the room aforesaid on account of her services with the respondent / plaintiff and that the respondent / plaintiff had not been assigning any work to the appellant / defendant since January, 2005, iv) that the appellant / defendant had not disputed that her status in the said room was of a mere licensee; v) that it was also not in dispute that the said license had been terminated by the respondent / plaintiff; vi) that thus as far as the relief of possession was concerned, no disputed questions of law or fact arose from the pleadings of the parties.

8. On enquiry, it is informed by the counsel for the appellant / defendant that the suit filed by the appellant / defendant is still pending consideration and is at the stage of evidence.

9. The Trial Court file contains:

- i) the order of the learned Civil Judge, before whom the suit filed by the appellant / defendant is pending, on the application of the appellant / defendant under Order XXXIX Rule 1&2 CPC

and restraining the respondent / plaintiff from dispossessing the appellant / defendant from the said room without due process of law;

ii) the plaint in the suit filed by the appellant / defendant against the respondent / plaintiff and its Administrator, claiming the reliefs:

- a) of permanent injunction restraining the respondent / plaintiff from terminating the services of the appellant / defendant before the expiry of the period of three years;
- b) for mandatory injunction directing the respondent / plaintiff to extend the contract of service beyond three years;
- c) of declaration that the appellant / defendant continues as a teacher in the school of the respondent / plaintiff.

10. Though I could not locate in the Trial Court record the letter on which the appellant / defendant relies upon as the contract of her employment but the counsel for the appellant / defendant has in Court shown certified copy thereof and which is as under:

“Date: 29.11.2004

TO WHOMSOEVER IT MAY CONCERN

This is to certify that Miss Madhu Mallick D/o Late Shri R.S. Mallick is residing in the campus of Nehru Bal Samiti, NBS Educational Complex, Opp. R-2 South Ex. Part-II New Delhi-49 under the capacity of a resident Teacher since 1st July, 2004.

Sd/-

Narendra Multani
Director (Admn.)”

11. The counsel for the appellant / defendant on enquiry states that the contract averred by the appellant / defendant of three years with provision for further extension is an oral one and else there is no letter of appointment or contract of employment.

12. The counsel for the respondent / plaintiff has informed that upon the respondent / plaintiff filing the suit from which this appeal arises, the appellant / defendant had filed an application under Order XXXIX Rule 2A of the CPC in the suit filed by her averring violation by the respondent / plaintiff of the interim order in that suit and which application was dismissed holding that there was no bar to the respondent / plaintiff taking possession of the room in accordance with law.

13. In the aforesaid scenario, I am unable to find any error in the impugned judgment and decree on admissions of recovery of possession from the appellant / defendant of the room in her occupation.

14. As per the appellant / defendant's own plea, the contract even if any of employment of the appellant / defendant with the respondent / plaintiff was for a period of three years only and which period of three years also expired as far back as in 2007. The appellant / defendant admittedly has not been rendering services to the respondent / plaintiff since January, 2005 itself but is continuing in occupation of the property of the respondent / plaintiff and which property was of the respondent / plaintiff, a society for charitable purposes, used for running a school was allotted to appellant / defendant on account of her rendering services to the said school of the respondent / plaintiff. The appellant / defendant has already continued in occupation of the accommodation, meant according to the appellant / defendant herself for a Resident Teacher, apparently to the deprivation of

the person now rendering service as Resident Teacher of the said School of the respondent / plaintiff and for this reason also there is no right of the appellant / defendant to continue in occupation of the said room.

15. Though undoubtedly the suit filed by the appellant / defendant is still pending consideration and for which reason it is not deemed appropriate to make any observation qua merits of the same but it is evident that the appellant / defendant for the purposes of retaining possession of the room is pursuing the said suit at her own slow pace, having already kept it pending for the last over eleven years. Merely because a suit filed by the appellant / defendant is pending consideration cannot be a ground to allow the appellant / defendant to continue in possession of the premises which admittedly were allotted to her only on account of her then rendering services to the respondent / plaintiff and which services also the appellant / defendant has not been rendering for the last over eleven years.

16. There is thus no merit in the appeal.

Dismissed.

No costs.

Decree sheet be drawn.

RAJIV SAHAI ENDLAW, J.

JANUARY 28, 2016

‘gsr’