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

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Date of Decision: February 16, 2017

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RSA 55/2017

SUBHASH CHAND

..... Appellant

Through: Mr.Pramod Kumar, Advocate with
appellant in person.

versus

DELHI PINJRA POLE SOCIETY

..... Respondent

Through: Mr.Gaurav and Mr.Vikramjeet,
Advocates.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

CM No.6118/2017

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

RSA 55/2017

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 has been preferred by the appellant against the concurrent finding of the Courts below i.e. judgment dated 08th December, 2016 passed by the First Appellate Court and dated 26th May, 2016 passed by the learned Trial Court declaring the status of the appellant to be that of a licensee in the suit property and that the licence stood terminated by the respondent. Vide impugned judgment, the appellant was also directed to pay mesne profit/damages at the rate of ₹1000/- per month from the date of filing the suit till its realization with interest @ 6% per annum.

2. In brief, the facts are that Civil Suit No.95/2016 was filed by the respondent/plaintiff – Delhi Pinjra Pole Society pleading that the

appellant/defendant joined the services of the Society on 1st February, 1996 as Sweeper (*Safai Karamchari*). As an employee of the society, he was allotted one room in Premises No.9271, Goshala, Kishan Ganj, Delhi to be used as licensee without charging any amount and no licence deed was executed. It was further pleaded that on 24th August, 2011, the appellant/defendant left the service of respondent/plaintiff Society by tendering his resignation letter. At that time, all his statutory dues have been paid by the respondent/plaintiff Society and his licence to use the said room was also terminated.

3. Despite termination of the licence, the licensee failed to vacate the premises, hence a legal notice dated 18th September, 2013 was served upon him to vacate the room. On his failure to vacate the room even after service of legal notice, the respondent/plaintiff filed the suit praying for decree of mandatory injunction thereby directing the appellant/defendant to remove himself alongwith his family members from the suit property and also for decree of permanent injunction thereby restraining the appellant/defendant from creating any third party interest in the suit property and for recovery of mesne profits.

4. The suit was contested by the appellant/defendant denying the averments made in the plaint and claiming himself to be tenant in the suit property and paying rent @ ₹75/- per month.

5. On the basis of pleadings of the parties, following issues were settled by the learned Trial Court:-

(1) Whether the defendant is tenant of the plaintiff? OPD.

(2) Whether the plaintiff is entitled to mandatory injunction against the defendant for removal of defendant from the suit property? OPP

(3) *Whether the plaintiff is entitled for permanent injunction against the defendant as prayed for? OPP.*

(4) *Whether the plaintiff is entitled for mesne profit from the defendant @ ₹4000/- per month with interest as claimed? OPP.*

(5) *Other relief, if any.'*

6. Vide impugned judgment, the learned Trial Court in its finding on Issue No.1 held the status of the appellant/defendant was not that of a tenant but that of a licensee. It was also held that licence was duly terminated. The learned Trial Court also decided Issues No.2 and 3 in favour of the respondent/plaintiff and against the appellant/defendant. While disposing of Issue No.5, the following relief was granted to the respondent/plaintiff:-

Issue No.5

Relief.

21. In view of above discussions, defendant is directed to remove himself from the suit premises within 60 days from today. He is also restrained from creating any third party interest in the suit property and is directed to pay mesne profits/damages at the rate of ₹1,000/- per month to the plaintiff from the date of filing of the suit till realization with interest of 6% per annum.'

7. The First Appellate Court concurred with the findings of the learned Trial Court for the reasons recorded in para 16 and 17 of the judgment dated 08th December, 2016 which are extracted as under:-

'16. In the facts of the present case PW-1 Sh.Prakash Chand Barathi has specifically testified that defendant was provided one room in the property of the society for limited use as licensee. PW-1 further says that since defendant started misconducting and committing illegal activities, therefore defendant left the services of plaintiff society by tendering his resignation letter dt. 24.8.2011 which is Ex.PW1/2. PW-1 has further testified that after termination of licence defendant was asked several times to leave the premises but defendant did not pay heed to it. Now if we consider the evidence

DW-1/appellant Subhash Chand, he though has testified in examination in chief that he is a bonafide tenant in the premises, however, appellant has admitted in his cross examination that he left the job of Safai Kramchhari with plaintiff society on 24.8.2011. DW1 admits that he has not placed on record any document to show that he became tenant in the premises with rent @ ₹10/- per month and said rent was increased to ₹75/- per month.

17. In the entire evidence of DW-1, no document has been placed on record which establish tenancy in favour of appellant. Mere claim of being tenant in the premises in question was not sufficient, there should have been some evidence, documentary or circumstantial to establish that there was intention between the parties to give exclusive possession to defendant as tenant or to establish that it was not mere licence. If we further consider the evidence as a whole and documents on record, I find that trial Court was correct in its conclusion that defendant/appellant herein has failed to establish himself as tenant in the premises in question. In this context, it is important to note that premises in question was given to defendant only on account of being in services of plaintiff society, therefore, appellant in his resignation letter Ex.PW1/2 has noted that he has committed mistake by committing theft and therefore tendered his resignation. In the resignation PW1/2 itself he has further mentioned that he will vacate the premises. This document is not disputed at all in the trial.'

8. During the course of hearing of this appeal, noting the concurrent finding of facts by the Courts below that the status of the appellant/defendant was that of a licensee which stood terminated, learned counsel for the appellant was requested to argue on the substantial question of law involved in this appeal. Attention of learned counsel for the appellant was also drawn to the evidence adduced before the learned Trial Court which has also been appreciated not only by the learned Trial Court but also by the First Appellate Court before arriving at the conclusion that status of the appellant/defendant in the suit property was not that of tenant but of a licensee. It was further held that the licence stood terminated and the

respondent/plaintiff is entitled to the decree as prayed.

9. Mr.Pramod Kumar, Advocate, on instructions from the appellant who is present in person, submits that the appellant does not want to press this appeal but requests that two months time may be given to him to vacate the suit property. It has also been submitted that in view of the economic status of the appellant that he was working as a Sweeper with Delhi Pinjra Pole Society, the financial burden imposed on him by awarding damages at the rate of ₹1000/- per month from the date of filing the suit till its realization with interest @ 6% per annum, may be waived.

10. Learned counsel for the respondent, on instructions, submits that the respondent has no objection if some reasonable time is granted by the Court to the appellant to vacate the suit property and if the appellant vacates the suit property within the time granted by the Court, the respondent/plaintiff will not seek execution in respect of the damages awarded in favour of the respondent/plaintiff.

11. Learned counsel for the appellant seeks passover to place on record the affidavit of the appellant to the above effect.

12. Let matter be taken up after some time.

PRATIBHA RANI
(JUDGE)

FEBRUARY 16, 2017/‘st’

Present : As above.

1. Affidavit has been filed by the appellant/defendant stating therein that he does not press this appeal and he undertakes to vacate the suit premises by 15th April, 2017. Copy of the affidavit has also been supplied to learned

counsel for the respondent/plaintiff.

2. Learned counsel for the respondent/plaintiff submits that subject to the appellant/defendant abiding by the terms and conditions recorded in the affidavit, the respondent/plaintiff will not seek execution in respect of the money decree and will not claim any damages till the date the suit property is vacated i.e. till 15th April, 2017.

3. In view of the undertaking given by the appellant/defendant, this appeal is dismissed as not pressed.

4. The appellant/defendant is granted time till 15th April, 2017 to vacate the suit property. Subject to the appellant/defendant handing over the vacant and peaceful possession of the suit property on or before 15th April, 2017, the respondent/plaintiff shall not execute the decree passed in favour of the respondent/plaintiff towards damages and this claim shall be deemed to be waived. However, on failure of the appellant/defendant to abide by the conditions mentioned in the affidavit filed today in the Court, the respondent/plaintiff shall be at liberty to execute the decree as passed by the learned Trial Court and upheld by the First Appellate Court.

5. As prayed, copy of the order be given dasti to learned counsel for the parties.

CM No.6117/2017 (Stay)

Dismissed as infructuous.

PRATIBHA RANI
(JUDGE)

FEBRUARY 16, 2017

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