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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: March 07, 2017

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RSA 66/2017

RAM NARAYAN

..... Appellant

Through: Ms.Seema Sharma, Advocate with
appellant in person

versus

DELHI PINJRA POLE SOCIETY (REGD)

..... Respondent

Through: Mr.Gaurav Barathi, Advocate

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

RSA No. 66/2017

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 12th January, 2017 passed by the First Appellate Court and dated 04th August, 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.94/2016 was filed by the respondent/plaintiff – Delhi Pinjra Pole Society pleading that the appellant/defendant was working as 'Gwala' in the Goshala of the plaintiff Society. 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 vide official order dated 24th November, 2012 issued by the respondent/plaintiff, the appellant/defendant was transferred temporarily to Chayala Goshala of the respondent/plaintiff at Tehsil Ballabhgarh, District Faridabad, Haryana w.e.f. 1st December, 2012. The appellant/defendant did not accept the said transfer order intentionally till 29th November, 2012 and only on 30th November, 2012 at 5.45 pm though he accept the transfer orders but did not join the services at Chayala Goshala at Tehsil Ballabhgarh. Since the appellant/defendant failed to join the services at Chayala Goshala of the respondent/plaintiff and also to respond to the reminder dated 20th December, 2012, a letter dated 11th April, 2013 was issued to the appellant/defendant intimating him that since it was presumed that he has left the services himself as he did not act upon the official order dated 24th November, 2012, his licence to use the suit property was terminated w.e.f. 11th April, 2013.

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 permanent and mandatory injunction 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 14 and 15 of the judgment dated 12th January, 2017 which are extracted as under:-

'14. On perusal of the record, one thing appears to be clear that defendant/appellant is not claiming in himself ownership of the suit property in any manner. Therefore his status in the suit property would be that of either tenant or licensee. The claim of the

defendant/appellant in respect of the suit property is based on his tenancy whereas as per respondent/plaintiff appellant/defendant was a licensee in respect of the suit property. It is not in dispute that the appellant/defendant was employed with the respondent/plaintiff. It is also not in dispute that there is no evidence from the side of the appellant/defendant and it is also not in dispute that there is no cross examination of witness of the respondent/plaintiff. It is also not in dispute that a specific issue was framed to the effect whether the defendant is tenant in respect of the suit property. Admittedly the onus to prove the said issue was upon the defendant/appellant and when no evidence was led by the party who carries the onus, the issue gets decided against him. Therefore one there is no evidence on record to hold that defendant/appellant was tenant in the property, no infirmity could be found with the findings of the Trial Court, particularly when, there is no claim by the defendant/appellant that he was an owner or in unauthorized occupation having perfected titled by adverse possession. In these circumstances, the only status with which defendant/appellant was left with was the status of the licensee in respect of the suit property. Moreover plaintiff's witness testimony on oath went unchallenged and un-assailed and therefore there is no infirmity in the impugned judgment and decree. No other ground of appeal has been pressed or worth discussion.

15. Simply because appellant was called to lead evidence first of itself is no ground to allege that any prejudice was caused to him. Similarly when defendant/appellant was denied opportunity to lead evidence, he should not have remained content with the said order of denial. By remaining silent he allowed the said order to become final which cannot be challenged now. If appellant/defendant had been serious in leading evidence he should have preferred in the present appeal an application seeking permission to lead evidence setting out ground as laid under Order 41 Rule 27 CPC. In these circumstance it appears that appellant/defendant have no evidence to prove his own claim. Since appellant/defendant did not lead evidence nor did cross examine the plaintiff's witness, in these circumstance, when there is no inherent contradiction in the case of plaintiff and testimonies of plaintiff's witness, Court was left with no choice but to accept the case of the plaintiff and Court below rightly held the same.'

8. During the course of hearing of this appeal, Ms.Seema Sharma,

Advocate for the appellant submits that in similar matters i.e. RSA No.55/2017 titled as *Subhash Chand vs. Delhi Pinjra Pole Society* and RSA No.58/2017 titled as *Karan Singh vs. Delhi Pinjra Pole Society*, this Court granted two months' time to the appellants to vacate the suit property.

9. Ms.Seema Sharma, 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 'Gwala' at Goshala of respondent/plaintiff - 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)

MARCH 07, 2017/'st'

Present : As above.

1. Affidavit has been filed by the appellant/defendant, stating therein that

he undertakes to vacate the suit premises within two months from today. The appellant/defendant does not press this appeal.

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 6th May, 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 6th May, 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 6th May, 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.7659/2017 (Stay)

Dismissed as infructuous.

PRATIBHA RANI
(JUDGE)

MARCH 07, 2017/ 'st'