

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

+ **Ex.F.A. No.18/2017**

% **24th July, 2017**

VIJAY GUGNANI

..... Appellant

Through: Mr. Kailash Vasdev, Senior
Advocate with Ms. Anjali Jha
Manish, Advocate.

versus

PANNA LAL RATHORE AND ANR.

..... Respondents

Through: Ms. Ripu Adlakha, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

C.M. No. 25697/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

Ex.F.A. No.18/2017 and C.M. No. 25696/2017 (stay)

2. This Execution First Appeal impugns the judgment of the Executing Court dated 1.4.2017. By the impugned judgment, the executing court has accepted the objections filed by the respondent no.2/partnership firm M/s Awesome and its partner Sh. Vijay

Adlakha. It has been held *inter alia* by the impugned judgment that the decree of the civil suit dated 16.8.2010 obtained by the appellant/plaintiff/decreed holder would not bind the objector Sh. Vijay Adlakha since the objector was not a party to the suit. It may be noted that the suit was filed against Sh. Panna Lal Rathore as a sole proprietary concern of Salem Handloom Textiles and as per the objections filed the tenancy was actually of the partnership firm M/s Awesome of which Sh. Panna Lal Rathore and the objector Sh. Vijay Adlakha were the partners and hence the co-tenants. I may note that the objections filed in the present case though are on behalf of M/s Awesome and Sh. Vijay Adlakha, really it is Sh. Vijay Adlakha who is the objector inasmuch as the firm M/s Awesome is pursuing the objections only and only through Sh. Vijay Adlakha and not the stated second partner Sh. Panna Lal Rathore.

3. So far as the impugned judgment is concerned possibly there cannot be found any fault in the reasoning *per se* if it is seen that the issue decided was that a third party/objector who was not the party to the suit is not bound by the decree in the suit, however learned senior counsel for the appellant argues that without doubting the

application of such a principle that a decree is not binding against a person/objector who is not a party to the suit, the provisions of Order XXI Rules 96 to 103 of Code of Civil Procedure, 1908 (CPC) provide for filing of objections which have to be treated as a suit, and that a person who claims independent title to the suit property is barred from filing a fresh suit to claim his rights in terms of Order XXI Rule 101 CPC because the rights of such a person have only to be decided in terms of the procedure provided in Order XXI Rules 96 to 103 CPC, and it is therefore further argued by the learned senior counsel that admittedly the facts are that the objectors are claiming that Sh. Vijay Adlakha was a co-tenant in the suit property with Sh. Panna Lal Rathore, and that it is also an admitted fact that the lease of the suit property was at a rent of more than Rs. 3500/- per month being Rs.74,694/- per month (Rs.74,694 /- as per the appellant and as per the objector Sh. Vijay Adlakha Rs. 70,000/- per month), and further admittedly that there is no registered lease deed for a fixed period which has not expired, accordingly, once the aforesaid facts and aspects are undisputed on record, then consequentially since the lease rent is above Rs.3,500/- per month, the leased premises are outside the

protection of the Delhi Rent Control Act, 1958 and once the leased premises are outside the protection of the Delhi Rent Control Act with the fact that there is no registered lease deed for a period which is still unexpired, therefore and hence there does not exist any independent title or legal right of the objector Sh. Vijay Adlakha to claim any right to stay in the suit premises. The impugned judgment it is argued has to be set aside as the objector Sh. Vijay Adlakha is found to have no right, title or interest in the suit premises. The suit premises in this case is property no.GF-2, Door No.75-76, Manisha Building, Nehru Place, New Delhi comprising an area of approximately 683 square feet.

4. I may note that as per Order XLI Rule 24 CPC once the record of the court below is complete i.e the case before the court below is decided in terms of admitted facts on record, then this appeal can be decided by this Court on a totally independent reasoning which is not found in the impugned judgment and issue of remand would have arisen if only fresh evidence has to be led (Order XLI Rule 23 CPC) or the court below had decided the objections only on a preliminary issue (Order XLI Rule 23A CPC). The object of Order

XLI Rule 24 CPC is that a case should not be remanded once the matter can be decided as per the record of the case being the pleadings and evidence led in the case or the admitted facts on record not requiring any remand under Rules 23 and 23A of Order XLI CPC vide *Lisamma Antony and Another Vs. Karthiyayani and Another (2015) 11 SCC 782*.

5. In response to the arguments urged on behalf of the appellant, learned counsel for the respondent no.2/objectors has argued the following points:-

(i) In this appeal only one objector has been made a party namely M/s Awesome/respondent no.2 through Sh. Vijay Adlakha, although there were two objectors whose objections were decided by the impugned judgment, namely M/s Awesome and Sh. Vijay Adlakha and hence it is argued that the appeal is therefore incompetent in the absence of Sh. Vijay Adlakha having been made a respondent in this appeal.

(ii) Another argument for the appeal for being held to be incompetent is that the affidavit which has been sworn by the appellant is said to be dated 1.6.2017 but the appeal was originally

filed on 20.5.2017 i.e it is argued that there cannot be an affidavit which is sworn of a later date than the filing of the appeal on 20.5.2017. Hence the appeal is argued is liable to be dismissed.

(iii) It is argued that the court below has rightly passed the impugned judgment allowing the objections and giving time to the objectors to file their written statement, inasmuch as, no decree could have been passed against the objectors unless they were made parties to the suit in which the decree was passed. Reliance is placed upon the order of this Court dated 29.9.2014 passed in EFA No. 14/2014 whereby this Court had directed filing of objections by M/s Awesome and Sh. Vijay Adlakha. It is argued that in accordance with such directions the objectors had filed objections, and therefore, objections have been rightly allowed.

(iv) It is argued that the court below has not taken on record the application which was filed by the objectors under Section 144 CPC with the fact that the court below has not granted restitution and re-possession of the property in spite of the observations made in the order dated 29.9.2014. Accordingly the impugned judgment, it is argued, should be sustained.

(v) There is a delay in re-filing of the present appeal and hence the appeal be dismissed as time-barred.

(vi) It is finally argued that the agreement to sell dated 3.7.2008 is not a registered or stamped document and therefore it is hit by Section 53A of the Transfer of Property Act, 1882 (and with the fact that since the same is not a sale deed), hence no title rights in the suit property have been created in favour of the appellant in terms of this agreement to sell dated 3.7.2008

6. In my opinion, the appellant is entitled to succeed. The objections were admittedly filed under Order XXI Rules 96 to 103 CPC, and in which issue was to determine as to whether the objector Sh. Vijay Adlakha had an independent title. It was because the objector Sh. Vijay Adlakha was not made party to the suit which was decreed as per the judgment and decree dated 16.8.2010 in favour of the appellant/plaintiff/decreed holder with respect to the suit property, that by the order of this Court dated 29.9.2014 objections were allowed to be filed and which were to be decided in terms of the procedure specified in Order XXI Rules 96 to 103 CPC. Learned senior counsel for the appellant has rightly argued that the objections

are in the nature of the suit itself because objections are decided as per the procedure for deciding a suit i.e after completion of pleadings and as per the admitted facts on record. It is argued that no evidence is required to be led in this case since the objections can be decided on admitted facts appearing on record, and hence the impugned judgment has to be set aside because even a suit can be decided either under Order XII Rule 6 without leading evidence or the suit can be decided at the stage of issues when only a legal issue arises i.e there are no disputed facts requiring trial. As per admitted facts on record, it is argued by the appellant, that the objector Sh. Vijay Adlkaha has clearly failed to prove any valid and existing title to the suit premises and therefore the impugned judgment allowing objections is to be set aside.

7. In my opinion, once the issue is of deciding existence of independent title of the objector Sh. Vijay Adlakha to the suit premises i.e of right, title and interest existing in the suit premises and hence disentitlement to execute the judgment and decree for possession dated 16.8.2010, the onus was upon the objector Sh. Vijay Adlakha to show that he had the right, title and interest in the suit

premises. In this regard the objector has however miserably failed inasmuch as a right as a tenant would have only existed if the premises had the protection of the Delhi Rent Control Act with rent being below Rs.3,500/- per month or there was a registered lease deed continuing for an unexpired lease period. In this case, admittedly rent even as per the objector Sh. Vijay Adlakha was Rs.70,000/- per month, and therefore the suit premises have no protection of the Delhi Rent Control Act and also that there is no registered lease deed in favour of the objector Sh. Vijay Adlakha for continuation as a tenant in the suit premises for an unexpired period under the registered lease deed. Accordingly, it is held that there is no right, title and interest existing in the suit premises of the objector Sh. Vijay Adlakha, and hence the impugned judgment is liable to be set aside.

8. The objection of the respondent no.2 that the appeal is not maintainable as it is not duly accompanied by an affidavit, this objection is misconceived for the reason that the appeal was originally filed on 20.5.2017, but, thereafter re-filed on 17.7.2017. An appeal which is dated 17.7.2017 can be supported with an affidavit of the appellant which is of an earlier date of 1.6.2017. This affidavit is duly

notarized in terms of the certificate of the Notary Public of the State of New York. This Court is bound to take judicial notice of seals of Notaries as per Section 57 of the Indian Evidence Act, 1872. Therefore the argument of the respondent no.2 has no merit that the appeal is not properly filed. In any case, in my opinion, such technical objections are only arguments of desperation and need to be rejected as they have no bearing on the merits of the disputes.

9. The next technical argument of the respondent no. 2 is also misconceived that there is delay in re-filing of the appeal inasmuch as there is no such objection which is raised by the Registry. Even assuming for the sake of arguments that some objection has been raised by the Registry which can lead to holding that there is delay in re-filing of the appeal for a week or two, yet the same would not mean that the appeal would have to be dismissed as time-barred. Such minor delays are always condoned, assuming they existed, in view of the judgment of the Supreme Court in the case of *N. Balakrishnan Vs. M. Krishnamurthy AIR 1998 SC 3222* and more so as the delay is not of original filing but only of re-filing.

10. Learned counsel for the respondent no.2 then argued that the judgment passed by the court below is in terms of the order passed by this Court dated 29.9.2014 and which held that the objector had independent rights and therefore has to be sustained, however, the argument of the respondent no.2 is misconceived because the order dated 29.9.2014 only directed the objections of M/s. Awesome and Sh.Vijay Adlakha to be decided on merits, and the passing of the order dated 29.9.2014 is not on merits holding that M/s Awesome and Sh.Vijay Adlakha had an independent right, title and interest in the suit property. In fact, para 6 (iii) makes it clear that this Court while passing the order dated 29.9.2014 has not made any observations on merits one way or the other. This was obviously so because existence of an independent right, title and interest is decided by deciding objections and not by an order of remanding the case and directing the filing of the objections and decision on the same.

11. Learned counsel for the respondent no.2 then argued that by the order of this Court dated 29.9.2014, the objectors were entitled to file an application for restitution but the court below did not allow the application for restitution to be taken on record, and therefore, the

court below has erred. In my opinion, this argument raised assuming it to be true though it is not and as dealt with hereinafter, will only have bearing with respect to entitlement of restitution till the disposal of the objections. The objections are however already decided in terms of the impugned judgment dated 1.4.2017. I also refuse to believe the oral statement that the court below did not take on record the application for restitution under Section 144 CPC inasmuch as firstly this is not possible and secondly if this was so the objectors would have made a necessary complaint to the relevant authority with respect to the so called wrong conduct of the court below. In any case, such objection raised has no effect on the decision on merits of the objections with respect to independent right, title and interest of the objector Sh. Vijay Adlakha in the suit premises, and therefore, the objections with respect to sustaining of the impugned order merely on account of the executing court not taking on record the restitution application, is a misconceived argument and is rejected.

12. The last argument urged on behalf of the respondent no.2 by placing reliance on Section 53A of the Transfer of Property Act though *prima facie* appeared to have some substance, however, it is

seen that even if no title rights passed to the appellant by virtue of the agreement to sell dated 3.7.2008 in view of the fact that the document is not a registered sale deed nor a registered agreement to sell as required under Section 53A of the Transfer of Property Act, yet, by virtue of this agreement to sell dated 3.7.2008 appellant undoubtedly has a right on behalf of the erstwhile owner to take possession of the suit property and therefore it is not as if that the appellant had no *locus standi* to file a suit for possession and hence claim possession of the suit property. Also, admittedly the erstwhile owner has never objected against the appellant as regards the filing the suit for possession or the appellant seeking execution of the decree passed thereon. The last argument of the respondent no.2 is also therefore rejected.

13. In sum and substance it is seen that the entitlement of an objector for not being bound by the judgment and decree of the civil court is by proving an independent right, title and interest in the suit premises. Independent right, title and interest means that there is an existing right, title and interest in the suit premises. No doubt the objector Sh.Vijay Adlakha, who was objecting/suing for himself and on behalf of M/s Awesome, is one other partner and a co-tenant in the

tenanted premises, but the tenanted premises no longer continued as a tenanted premises i.e the tenancy does not continue because the tenanted premises are outside the protection of the Delhi Rent Control Act, and there was no registered lease deed entitling the tenant to stay in the suit premises for an unexpired period which continues. Once therefore the objector Sh. Vijay Adlakha has no legal right, title and interest as a tenant in the suit premises, obviously the objections filed by the objectors could not have succeeded.

14. In view of the above discussion, and on account of the reasoning given as per the arguments urged before this Court on behalf of the appellant, and which this Court has to consider in terms of Order XLI Rule 24 CPC, this appeal is allowed and the impugned order of the executing court dated 1.4.2017 is set aside. Parties are left to bear their own costs.

JULY 24, 2017

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VALMIKI J. MEHTA, J