

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

+ **RFA No.637/2017**

% **21st July, 2017**

RAJAN Appellant
Through: Mr. K.K. Sharma, Advocate
with Mr. S. Khan, Advocate.

versus

SHREE DURGA MANDIR PRABHANDAK SABHA (REGD.)
..... Respondent
Through: Ms. Sonali Malhotra, Advocate
with Mr. Amit Sanduja,
Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.25526/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.25527/2017 (for condonation of delay)

2. For the reasons stated in the application, delay of seven days in re-filing the appeal is condoned.

C.M. stands disposed of.

RFA No.637/2017 and C.M. No.25525/2017 (stay)

3. This Regular First Appeal is filed by the defendant in the suit impugning the judgment of the trial court dated 6.4.2017 decreeing the suit so far as possession is concerned with respect to the suit property being one shop in Durga Mandir, R Block, Professor Ram Nath Vij Marg, Opposite Double Storey, New Rajinder Nagar, New Delhi-110060 and as shown in red colour in site plan filed with the plaint.

4. In Delhi, a suit for possession in civil court can be filed against a person who is a tenant if there is a relationship of landlord and tenant between the parties, rate of rent is above Rs 3,500/- per month and the tenancy of the tenant has been terminated under Section 106 of the Transfer of Property Act, 1882. In fact the last aspect of service of notice is complied when summons of the suit are served on the defendant and so held in the judgment in the case of ***Jeevan Diesels & Electricals Ltd. Vs. Jasbir Singh Chadha (HUF) & Anr. 2011 (183) DLT 712.***

5. In the present case, the court below has found that the appellant/defendant admitted himself to be a tenant of Rs 5,000/- per month in an earlier suit for injunction filed by the appellant/defendant against the respondent/plaintiff/society. This is observed by the court below in para 6 of the impugned judgment and this para 6 reads as under:-

“6. Now, the question arises whether the defendant admitted that he is a tenant in respect of suit property at monthly rent of Rs.5,000/-.

The defendant has filed suit against one Shri Rohit Jolly, Smt. Asha Gandhi and M/s Shri Durga Mandir Prabhandak Sabha (Regd.) for perpetual and mandatory injunction which was registered as Suit No.46/12. In para no.6 of this suit, defendant has mentioned that he was inducted as tenant of the defendant no.3 for the shop as shown red colour in the site plan on a monthly rent of Rs.3,000/- but the greed and temptation of the defendant no.2 is so high and because of said reason she now and then used to used to increase the rent in arbitrary manner and the same has now reached to Rs.5,000/- per month. The defendant has also admitted in para no.3 of plaintiff that he took the shop in question on monthly rent of Rs.3,000/- in the year 2008 and he is paying the rent to the defendant no.2 who accepted the same on the pretext and on behalf of the defendant no.3 but no receipt to that effect was issued even after making several requests. Plaintiff has also enclosed the application under Order 39 Rule2-A CPC filed by the defendant in suit No.46/12 and in para no.5 of the application, it is mentioned that the applicant paid Rs.5,000/- to the respondent Nos.3 & 4 towards the payment of rent for the month of June, 2012. In para no.7 of evidence by way of affidavit, he has categorically mentioned that defendant no.2 i.e. Smt. Asha Gandhi has increased the rent to Rs.5,000/- per month. Thus, defendant in the suit filed by him admitted himself to be tenant of Shri Durga Mandir Prabhandak Sabha (Regd.) at the rate of Rs.5,000/- per month at the suit property. He also admitted that earlier he was inducted as tenant of the defendant no.3 for the shop as shown red colour in the site plan on a monthly rent of Rs.3,000/- but the greed and temptation of the defendant no.2 is so high and because of the said reason she now and then used to used to increase the rent in arbitrary manner and the same has now reached to Rs.5,000/- per month. The defendant has also admitted to receive the legal notice from the plaintiff and he also sent reply to the legal notice dated 05.1.2015.”
(underlining added)

6. I completely agree with the reasoning and conclusions of the trial court for decreeing the suit for possession under Order XII Rule 6 CPC as the appellant/defendant himself admitted in the earlier litigation to be a tenant of the respondent/plaintiff at rent of Rs 5,000/- per month. There is also no dispute that appellant/defendant received the notice dated 5.1.2015 terminating the tenancy. It is trite that in an application under Order XII Rule 6 CPC besides pleadings the admitted documents can also be looked in view of the language of the provision which entitles looking into pleadings as also all other admitted facts and documents.

7. Learned counsel for the appellant/defendant argued that the suit is not properly instituted through Smt. Asha Gandhi and Smt. Asha Gandhi is not the President, however, I may note that there is no opposition by any other member of the respondent/plaintiff/society that Smt. Asha Gandhi is not the President and has no right to institute the suit. Under Section 6 of the Societies Registration Act, 1860 a suit by and/or on behalf of the society instituted in its name through the President, Chairman, or Principal Secretary or trustees as determined by the rules and regulations of the governing body. In my opinion,

once there is no opposition by any member of the society to filing of the suit by the respondent/plaintiff/society through Smt. Asha Gandhi, then, appellant/defendant will have no *locus standi* to question the filing of the suit by the respondent/plaintiff/society through Smt. Asha Gandhi. In any case, I clarify that any benefit of the decree will not go to Smt. Asha Gandhi but will only go to the respondent/plaintiff/society and it is the society which will be the beneficiary under the subject decree.

8. In view of the above discussion, I do not find any merit in the appeal. Dismissed.

JULY 21, 2017
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VALMIKI J. MEHTA, J