

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

+ **RSA No.212/2017 & RSA No. 213/2017**

% **22nd August, 2017**

+ **RSA No. 212/2017**

M/s SARU SMELTING PRIVATE LIMITED Appellant
Through: Mr. Sultan Singh, Sr. Adv. with
Thakur Sumit, Adv.

versus

SHARDA GUPTA Respondent
Through: Mr. T.C.Yogi, Adv.

+ **RSA No. 213/2017**

M/s SARU SMELTING PRIVATE LIMITED Appellant
Through: Mr. Sultan Singh, Sr. Adv.
with Thakur Sumit, Adv.

versus

SHRADA GUPTA Respondent
Through: Mr. T.C.Yogi, Adv.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. (i) By this judgment the two Regular Second Appeals are
being disposed of. Both the appeals have been filed by the tenant.

Two appeals pertain to disposal of two suits. One suit is the suit filed by the appellant/tenant for specific performance seeking grant of a registered lease deed every three years for the suit premises pursuant to Clause 2 at internal page 5 of the last registered lease deed dated 1.4.1987. The second suit is the suit filed by the respondent/landlady seeking possession of the suit/tenanted premises by terminating tenancy as the appellant/tenant on account of rent being more than Rs.3500/-, (i.e Rs.3660.25/-) did not have protection of the Delhi Rent Control Act, 1958.

(ii) By the impugned judgments the suit for specific performance filed by the appellant/tenant stands dismissed and the suit of the respondent/landlady has been decreed on the aspect of possession.

(iii) As regards the issue of the right of *mesne* profits to be paid by the appellant to the respondent, trial is going on before the court below.

(iv) The judgment of the trial court is a common judgment disposing of the two suits and is dated 20.1.2014. The common judgment of the first appellate court dismissing the two appeals filed by the present appellant is dated 6.5.2017.

2. The suit property is a commercial flat bearing no. 207, second floor, Rohit House, Tolstoy Marg, New Delhi-110001. As per the lease deed appellant/tenant had an area of approximately 540 sq. ft. with one store of 45 sq. ft.

3. That there is a relationship of landlady and tenant between the parties is not disputed and nor is disputed the fact that rate of rent became Rs.3660.25 w.e.f 1.4.1999. Rent was regularly increased by 10% every three years after expiry of the lease deed dated 1.4.1987.

4. Once there is a relationship of landlord and tenant between the parties and the rate of rent admittedly is above Rs.3500/-, then suit for possession filed by the respondent/landlady with respect to the suit premises had necessarily to be decreed because the legal notice dated 9.7.1999 terminating tenancy has been proved before the trial court as Ex. PW1/4 and reply of the appellant/tenant to the legal notice is Ex.DW1/PX2. In any case, the issue of service of notice terminating tenancy under Section 106 of the Transfer of Property Act, 1882 is no longer required inasmuch as service of summons in the suit is treated as notice under Section 106 of the Transfer of

Property Act in terms of the judgment of this Court in the case of *M/s. Jeevan Diesels and Electricals Limited Vs. Jasbir Singh Chadha (HUF) and Anr. (2011) 183 DLT 712.*

5. Therefore, let us examine the only relevant issue which is to be decided as to whether the appellant was entitled to grant of lease deed every three years in terms of Clause 2 at internal page 5 of the registered lease deed dated 1.4.1987. It is also argued on behalf of the appellant that the relevant Clause 2 at internal page 5 in fact amounts to a perpetual lease deed. This relevant Clause 2 reads as under:-

“2. That the Lease is for the period of 3 Yrs. commencing from 1.4.87 and after the expiry of the period of this lease deed on 31.3.90. Fresh lease deed will be executed. The rent will be increased by 10% by the Lessee and after every 3 years of the last paid rent and the Lease shall stand extended automatically for further period of 3 Yrs. on the same terms & conditions and the said lease shall accordingly stand extended thereafter.”

6. The issues which have been framed by the trial court and the evidence which has been led by the parties are stated in para 4 and 6 of the judgment of the trial court and these paras read as under:-

“4. On completion of pleadings of parties, following common issues for both these suits were framed on 22/01/2004 in Civil Suit No.97/10/1998:

- (i) Whether the plaintiff is entitled for the decree of possession as prayed? OPP
- (ii) Whether the plaintiff is entitled for the recovery of mesne profits if so, at what rate and for what period? OPP

- (iii) Whether the defendant is entitled for the decree of specific performance in view of the lease agreement dated 01/04/1987 (Extn: Clause 2)? OPD
- (iv) Whether the defendant is lawful tenant or not? OPD
- (v) Relief.

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XXXXX

XXXXX

6. **Evidence brought on record:** Plaintiff, Smt. Sharda Gupta has led evidence as PW1 vide affidavit dated 22/03/2004. In her affidavit, Plaintiff has reiterated the averments of plaint.

Plaintiff has relied upon Ex.PW1/2 which is the site plan, the lease deed dated 01/04/1987 is Ex.PW1/3, the legal notice dated 09/07/1999 is Ex.PW1/4 and the documents showing the dispatch of said notice to defendant is Ex.PW1/5.

Plaintiff has been cross examined by Ld. counsel for the defendant.

The documents put to plaintiff during cross examination are Ex.PW1/X1 i.e lease deed dated 28/04/1972, Ex.PW1/X2 i.e. lease deed dated 04/01/1978, rent receipts executed by plaintiff are Ex.PW1/X3 to Ex.PW1/X7 and had admitted signatures on Ex.PW1/X8. Ex. PW1/X9 and Ex.PW1/X12.

Defendant has led the evidence through Sh. V.K.Kapoor, Branch Manager of defendant company, vide affidavit dated 19/07/2004 as DW1, Ex.DW1/1 is the resolution of defendant company dated 28/08/2000 authorizing DW1 to represent defendant in present suit.”

7. Let us now discuss the relevant Clause as to whether the said Clause is a perpetual lease deed or the suit for specific performance filed by the appellant/tenant should be decreed by allowing a registered lease deed every three years.

8. In my opinion, the argument of the appellant/tenant that Clause 2 is a perpetual lease deed is not only a misconceived argument but is in fact a dishonest argument. If the lease was to be a perpetual lease then there was no need of the Clause requiring that a fresh lease deed was to be executed every three years. The fact that a fresh lease

deed has to be executed every three years, the same demolishes the case of appellant/tenant of the lease deed dated 1.4.1987 being a perpetual lease deed because of Clause 2 thereof. This argument of the appellant/tenant is therefore rejected.

9. The issue then to be examined is that whether the appellant/tenant is entitled to specific performance. Specific performance in a case like this would be to grant a registered lease deed with respect to the tenancy premises once for every three years. Appellant/tenant pleaded that the respondent/landlady had making written offers dated 2.3.1990, 15.2.1993, 25.2.1996 and 15.3.1999 to extend the lease on payment of 10% increase, however, the admitted fact is that no registered lease deed has been ever executed after the expiry of the lease period of three years in terms of the lease deed dated 1.4.1987. Once the appellant/tenant has itself not sought enforcement of the Clause within the limitation period, and which limitation period would be three years from 1.4.1990 for seeking specific performance by grant of registered lease deed every three years, then by filing of the subject suit in the year 2001

appellant/tenant is barred by limitation from seeking the relief of specific performance.

10. I would like to note that I am giving additional reasoning to the reasoning given by the courts below, and which this Court is empowered to do under Order XLI Rule 24 CPC read with the ratio of the recent judgment of the court in the case of ***Lisamma Antony and Another Vs. Karthiyayani and Another (2015) 11 SCC 782.***

11. In view of the above discussion, there is no merit in these appeals. No substantial question of law arises. The appeals are dismissed. However, it is noted that an aged landlady of 70 years is pitted against a company and which is now sitting in the premises illegally after tenancy being terminated by a legal notice way back of the year 1999 i.e around 18 years back. Accordingly, I exercise my powers under ***Volume V*** of the ***Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15*** to grant actual costs, and therefore each of the appeals of the appellant is dismissed with costs of Rs.1,00,000/- towards counsel fees and which costs shall be paid to the respondent/landlady within a period of four weeks from today.

AUGUST 22, 2017/ib

VALMIKI J. MEHTA, J