

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

+ **RSA No. 228/2017**

% **20th September, 2017**

ELCEE PLASTIC INDUSTRIES & ORS. Appellants

Through: Mr. A.K.Singla, Sr. Adv. with
Mr. Sudhir Sukhija, Mr. Shivam
Garg and Mr. Rama Shankar,
Advocates

Versus

HARKISHAN DASS (SINCE DECEASED) THROUGH ITS LR.s.

..... Respondents

Through: Mr. Ajay Gupta and Mr.
Siddharth Aggarwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugning the concurrent judgments of the courts below; of the trial court dated 7.6.2014 and the first appellate court dated 7.6.2017; by which the suit for possession filed by the respondents/plaintiffs with respect to the tenanted premises being land comprised in Plot No.21, Friends

Colony, Krishna Nagar, Khasra No.1126/347-370 in Village Jhilmil Tahirpur, G.T.Road, Shahdara, Delhi admeasuring 462 sq. yards has been decreed. The operative para of the judgment of the trial court decreeing the suit is para 11 and this para 11 reads as under:-

“11. As all the issues have been decided in favour of the plaintiff and against the defendant, the suit of the plaintiff is liable to be decreed. Accordingly, the suit is decreed in favour of the plaintiff and against the defendant and plaintiff is entitled to the following reliefs:-

(i) Decree for ejectment/possession of the plot of land measuring 462 Sq. yards along with the boundary wall and the superstructure existing thereon forming part of plot No.21, Friends Colony, Krishan Nagar, Khasra No.1126/347-370 in Village Jhilmil, Tahirpur, G.T. Road, Shahdara, Delhi as shown in site plan Ex. P-2 and defendants are directed to remove all the construction whatever existing on the tenanted land and to hand over the land with boundary walls of 12 feet to plaintiff and in case of failure of defendants to remove the construction within 6 months from the date of judgment, plaintiff will be entitled to get the decree of possession executed by removing the existing construction at the cost of defendants.

(ii) The recovery of damages/mesne profits from 01.04.1993 with 15% yearly cumulative increase on the last rent paid i.e Rs. 750/- along with simple interest @ 10% per annum to be payable from the end of each illegal month of occupation and till the date of decree only and interest will be paid on the difference of amount to be payable by the defendant as per above calculation and the amount which has already been paid by the defendant to the plaintiff till handing over the possession of the suit property to the plaintiff.

(iii) Cost of the suit is also awarded in favour of the plaintiff and against the defendant.

(iv) Decree Sheet be prepared after payment of court fee on arrears of rent/damages/mesne profits till the date of judgment.

File be consigned to the record room after due compliance.”

2. The subject suit was filed by the respondents/plaintiffs against the appellants/defendants pleading that only an open plot of land of about 462 sq. yds. with a boundary wall, being the said

tenanted land, was let out by the respondents/plaintiffs to the appellants/defendants in terms of the lease deed dated 10.1.1973. In terms of the lease deed a boundary wall was to be constructed by the respondents/plaintiffs up to 31.3.1973, which was done, and the lease thereafter commenced from 1.4.1973. In terms of the registered lease deed dated 10.1.1973 the period of lease was 20 years and which had to be commenced after construction of the boundary wall around the plot by the respondents/plaintiffs/landlord which was constructed by 31.3.1973, and therefore, period of 20 years of the lease will have to be taken from 1.4.1973. Respondents/plaintiffs pleaded that the term of the lease of the suit land expired on 31.3.1993 and since the appellants/defendants failed to vacate the suit/tenanted premises, hence, the subject suit for possession and *mesne* profits was filed. I may note that the appellants/defendants are partnership firm and its partners and who were the tenants of the suit premises.

3. The appellants/defendants contested the suit and the main defence, and really the only defence, was that what was let out to the appellants/defendants was not a plot of a land but was premises i.e the constructed premises, and therefore, the appellants/defendants have

protection of their tenancy under the Delhi Rent Control Act, 1958 and the suit before the civil court is therefore said to have been barred under Section 50 of the Delhi Rent Control Act. In fact, this is the only issue which is addressed before this Court on behalf of the parties, and which requires decision of this Court.

4. The Delhi Rent Control Act applies to 'premises'. Premises are defined under Section 2(i) of the Delhi Rent Control Act, which Section reads as under:-

“Section 2(i) "premises" means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose, and includes.-
(i) the garden, grounds and outhouses, if any, appertaining to such building or part of the building;
(ii) any furniture supplied by the landlord for use in such building or part of the building;
but does not include a room in a hotel or lodging house;”

5. A reading of the definition of premises under Section 2(i) of the Delhi Rent Control Act leaves no manner of doubt that the premises has to be a building or part of a building. Putting it in other words, if what is let out is only land and not building, the tenanted premises being land will not be a premises which will have benefit of protection under the Delhi Rent Control Act. This is clear from even a cursory reading of a definition of premises and therefore I need not

refer to a catena of judgments on the point that the Delhi Rent Control Act only applies when what is let out are premises under Section 2(i) of the said Act and not where only land is let out or land is let out with a temporary structure only.

6.(i) On behalf of the appellants/defendants it is argued by inviting attention of this Court to the indenture of the lease deed dated 10.1.1973, and the typed expression 'premises' which is found at two places at page 2 of the lease deed; and two more places at page 3 of para 4 of the lease deed and at one place at para 7 of page 4 of the lease deed, with a simultaneous reference to the prayer clause of the plaint and the operative para of the impugned judgment of the trial court, and it is resultantly argued that conjoint reading of the expression 'premises' as used in the lease deed with the prayer clause of the plaint, and the operative para of the judgment of the trial court which travels beyond the relief prayed in the plaint, and therefore, the courts below have committed illegality and perversity in holding that what was let out was only land and not premises. It is argued that once what is let out is premises then the Delhi Rent Control Act will apply and the civil court has no jurisdiction to try the subject suit.

(ii) The second argument which is urged is in fact an offshoot of the first argument and which argument is that the lease deed Ex.P-1 dated 10.1.1973 has to be read with the rent receipt Ex.P-3 which is with effect from 1.4.1973, and therefore, in view of the fact that the boundary wall was complete when the first rent receipt was issued for the first tenancy month of 1.4.1973, therefore, the land with the boundary wall in fact has become premises within the meaning of the definition of premises under the Delhi Rent Control Act. This argument is sought to be buttressed by reference to paras 4, 7 and 8 of the lease deed which entitles the appellants/defendants/lessees to raise construction on the suit plot and to remove the construction on the suit plot on the termination of the lease.

7. Let me take the first argument advanced on behalf of the appellants/defendants as to whether by use of the word 'premises' at five places in the lease deed dated 10.1.1973, whether what is let out becomes a premises under the Delhi Rent Control Act. For taking up this argument I am presuming that the typed expression 'premises' at five places in the lease deed having been scored out by substitution of the said expression 'premises' by the expression 'land' in handwriting,

inasmuch it is argued by the appellants/defendants that the typed expression 'premises' in the lease deed has wrongly and illegally been scored out by writing the hand written expression 'land'. In support of the argument, reliance is placed by the appellants/defendants upon Sections 20 and 58 of the Registration Act, 1908 that the unauthorized changes in a registered lease deed cannot be looked into.

8. Before I deal with the arguments urged on behalf of the appellants/defendants, let me reproduce the lease deed dated 10.1.1973 Ex.P-1 entered into between the parties and this lease deed dated 10.1.1973 reads as under:-

“

INDENTURE OF LEASE DEED

THIS DEED of lease made this 10th day of January, 1973, BETWEEN Shri Har Kishan Dass son of L. Banwari Lal resident of 949, Gali Nai Basti, Kucha Pati Ram, Delhi-6, hereinafter called the 'LESSOR' in which expression are included, unless such inclusion is inconsistent with the context, his heirs, executors, administrators and assigns of the First Part and M/s. Elcee Plastics Industries, through its partners Sh. Ravinder Kumar Jain and Sh. Umesh Chand Jain, sons of Sh. Lakhmi Chand Jain, resident of 570/1, Gali Jain Mandir, Shahdara, Delhi-32 hereinafter called the 'LESSEE' in which expression are included, unless such inclusion is inconsistent with the context, their heirs, executors, administrators and assigns of the SECOND part.

WHEREAS the Lessor is absolute owner of industrial plot of land bearing No.21, Friend's colony, Krishan Nagar, Khasra No.1126/347-370 in village Jhilmila Tahirpur, G.T.Road, Shahdara, Delhi measuring about 1317 Sq. Yds. And is desirous of leasing out a portion of the said land measuring about 462 sq. yds., more particularly delineated in the plan hereto annexed, and thereon shown with its boundaries coloured Red.

AND WHEREAS the Lessees are desirous of taking the said **portion of the land on lease** under the terms and conditions hereinafter mentioned and agreed upon between the LESSOR and the LESSEES.

NOW THIS INDENTURE WITNESSETH.

In consideration of the rent hereinafter reserved and of the covenants and conditions on the part of the Lessees hereinafter agreed to be observed and performed the lessor demise unto the Lessees **all that portion of the plot of land measuring about 462 sq. yds** referred to in the plan mentioned above situate together with boundary wall 7 ft. high to be erected thereupon. TO HOLD the said ~~premises~~ land (*Hand written expression "land" is written scoring out premises and some initials are appearing with the hand written expression "land"*) to the Lessees from the date of completion of the said boundary wall for a period of 20 years paying therefore during the said term monthly rent of Rs.750/- on the 10th of each month according to English Calender, the first payment of rent to be made as soon as the boundary wall to be erected by the Lessor is completed. After expiry of the said period this agreement may be renewed on the mutual terms agreed thereupon between the Lessor and the Lessees.

That the Lessees paying the rent hereby reserved and performing the covenants herein contained may hold and enjoy the demised ~~premises~~ land (*Hand written expression "land" is written scoring out premises and some initials are appearing with the hand written expression "land"*) during the said term without any lawful interruption by the Lessors.

The Lessees hereby covenants with the Lessors as follows:

1. The Lessee hereby agree to pay monthly rent of Rs.750/- only for the said land but in case the portion of the land measuring about 44 sq. yds. more fully delineated on the plan annexed hereto in yellow colour, of the demised ~~premises~~ land (*Hand written expression "land" is written scoring out premises and some initials are appearing with the hand written expression "land"*) is to be vacated by the Lessees for road widening, the rent of the demised (*Hand written expression "land" is written scoring out premises and some initials are appearing with the hand written expression "land"*) shall be reduced @ Rs.75/- per month from the date of vacation of the said portion of land. The rent thereon shall be Rs.675/- per month for the balance period of tenancy.
2. That they have paid a sum of Rs.3,000/- (Three thousand only) to the Lessor (the receipt of which the Lessor doth hereby acknowledge) as advance rent for the construction of the boundary wall to be erected upon by the Lessor.
3. That the said sum of Rs.3000/- (Three thousand only) shall be adjustable at the rate of Rs.250/- per month, out of the monthly rent of Rs.750/- till such time the advance rent amounting to Rs.3000/- is completely adjusted in this manner.
4. That the Lessees shall be at liberty to raise any building construction, shed or super structure on the existing ~~premises~~ land (*Hand written expression "land" is written scoring out premises and some initials are appearing with the hand written expression*

"land") and also to install machines, meters, fittings and fixtures for the manufacturing of PVC Compound, allied products or any other line of production which the lessees may decide in their absolute discretion. All these constructions, licences, structures etc. shall be improvised and installed at the complete cost and expenditure of the Lessees. However, the Lessor shall obtain initial sanctions of building plans from the concerned authorities at his complete cost and expenditure. The lessee shall have complete rights to amend, modify, demolish or alter the building structure on the demised ~~premises~~ land (*Hand written expression "land" is written scoring out premises and some initials are appearing with the hand written expression "land"*) at their own cost.

5. That Lessees shall during the said term, besides the rent mentioned above, pay all electricity, water, power and factory licenses charges hereinafter to become payable in respect of the demised ~~premises~~ land (*Hand written expression "land" is written scoring out premises and some initials are appearing with the hand written expression "land"*) and the building except the property tax and the house tax. The lessor shall, however, pay all necessary expenses to be incurred in getting a Municipal water connection at the demised ~~premises~~ land (*Hand written expression "land" is written scoring out premises and some initials are appearing with the hand written expression "land"*).
6. That it will be exclusive liability of the Lessees to obtain Electric connection to the demised ~~premises~~ land (*Hand written expression "land" is written scoring out premises and some initials are appearing with the hand written expression "land"*) and the Lessor shall not at all be liable to supply or provide electric connection.
7. That the Lessees shall be at liberty to sublet the entire demised ~~premises~~ land (*Hand written expression "land" is written scoring out premises and some initials are appearing with the hand written expression "land"*) and the buildings thereupon or any portion thereof during the period of their tenancy. But that will not effect the liability of the Lessees to pay rent and other charges and to observe and perform all the conditions and terms of this deed i.e. the Lessees shall continue to remain liable to pay the rental charges and to observe and perform all the terms and conditions stated herein.
8. That at the expiration of the term hereby reserve the Lessees shall have rights to remove the building structures on the **demised land** and they shall surrender a vacant peaceful possession of the **said land** to the Lessor. If the Lessees fail to remove the structure the Lessor shall be entitled to take the possession of the demised land alongwith all super structure existing thereon without payment of any compensation.

9. that it is hereby agreed that if the rent hereby reserved or any part thereof shall at any time, be in arrears for a period of three months after due date or there shall be a breach of any of the covenants by the Lessees herein contained, the Lessor may re-enter upon the demised premises and determine the lease.

In witness whereof the parties here to have set their hands on this deed on the day and year first hereinabove written in presence of the witnesses mentioned below:

Harikishandass
LESSOR
(emphasis supplied)”

9.(i) In my opinion, the argument urged on behalf of the appellants/defendants that what is let out to them are premises under the Delhi Rent Control Act is a totally frivolous argument. It is seen that the appellants/defendants/tenants are in a completely dishonest manner contesting the subject suit for possession which was filed way back on 12.10.1993, i.e soon after expiry of the 20 years period of the lease deed in terms of the lease deed entered into between the parties, and today we are in the year 2017 i.e 24 years later. For 24 years, dishonest tenants such as the appellants/defendants have harassed and illegally prevented taking of possession by the respondents/plaintiffs of the suit premises. In my opinion, the argument urged on behalf of the appellants/defendants/tenants is puerile that if there is a boundary wall constructed along with a land than what is let out is premises as the Delhi Rent Control Act because for this reason of construction of

boundary wall there comes into existence a premises under the Delhi Rent Control Act. Obviously, this Court expects no differently from dishonest tenants who somehow or the other want to continue in possession of the tenanted premises after expiry of a lease deed and are using the delays of litigations for their benefit. Merely because the lease deed uses the expression 'premises' will not mean that there will exist a premises under the Delhi Rent Control Act because premises under the Delhi Rent Control Act necessarily has to be a constructed building. The terms of the lease deed clearly show that what is let out is only land. Merely because a boundary wall is built around the land there will not exist a premises.

(ii) Wherever a tenant is let out a land and he is allowed to construct a superstructure then what is let out is still only land inasmuch as after expiry of the lease of the land the tenant has to remove whatever superstructure which is constructed on the demised premises being land. This is also clear in the facts of the present case in terms of the lease deed clause 8 which provides that appellants/defendants/tenants will remove the superstructure on the demised land and handover a peaceful possession of the leased land to

the lessor. It is further provided in clause 8 that if the lessee fails to remove the structure then respondents/plaintiffs/lessor would be entitle to take possession of the demised land along with all superstructures existing thereon. Accordingly, in view of clause 8 of the lease deed Ex.P-1, I do not find any illegality in the prayer clause in the plaint of the respondents/plaintiffs when the respondents/plaintiffs sought possession of the demised land along with the superstructure inasmuch as the appellants/defendants/tenants failed to hand over vacant physical possession of the demised land to the respondents/plaintiffs/landlord after expiry of the lease period. Therefore, in fact I am exercising my powers under Order XLI Rule 33 CPC and I modify the judgment of the courts below wherein as per the operative para appellants/defendants have been directed to remove superstructure as existing on the demised land. In fact, appellants/defendants are held not entitled to remove the superstructure in view of the categorical language in para 8 of the lease deed which is reproduced above, and which provides that in case of failure of the appellants/defendants to vacate the demised land after

expiry of the lease deed then the respondents/plaintiffs/landlord will become entitled to all the superstructures existing on the demised land.

10.(i) Learned senior counsel for the appellants/defendants sought to place reliance upon a judgment of the Supreme Court in the case of *Ashok Kapil Vs. Sana Ullah (Dead) and Others* (1996) 6 SCC 342 and it was argued by the appellants/defendants by placing reliance on this judgment that a structure without a roof will also be a building, and since in the present case there is a demised land with a boundary wall, therefore there is a building and hence premises under the Delhi Rent Control Act.

(ii) The argument urged on behalf of the appellants/defendants is once again completely misconceived because *Ashok Kapil's* case (*supra*) was a judgment under the U.P. Rent Control Act and wherein the issue was that what is a premises has to be seen when the premises fell vacant as per the meaning of this expression under the U.P. Rent Control Act. It is held in *Ashok Kapil's* case (*supra*) that when the premises fall vacant, a roof should exist and which existed in that case but the roof was mischievously removed by the landlord thereafter and therefore it was held that the landlord cannot take benefit of his own

illegality of removal of the roof to contend that the building did not exist. This becomes clear from paras 5, 6 and 10 of the judgment in *Ashok Kapil's* case (*supra*) and these paras read as under:-

“5. "Building" is defined in Section 3(i) of the Act thus:

“building, means a residential or non-residential roofed structure and includes:

- (i) any land (including any garden), garages and out-houses, appurtenant to such building;
- (ii) any furniture supplied by the landlord for use in such building;
- (iii) any fittings and fixtures affixed to such building for the more beneficial enjoyment thereof.

6. It is clear from the definition that any structure without roof cannot fall within the ambit of the definition. Here the factual position is this: The structure remained a roofed building when it became vacant but the roof was later dismantled by the owner. So on the date of allotment order it remained roofless.

10. Jurisdiction of the District 40 Magistrate, therefore, is in respect of a building which is either vacant or which "has fallen vacant" or is about to fall vacant. If a structure was a building as per the definition at the time when it fell vacant, the District Magistrate, no doubt, gets jurisdiction to initiate proceedings for passing allotment order. But would he lose jurisdiction merely because the structure became roofless subsequently? No doubt, if we go by the definition in Section 3(i) *stricto sensu*, the structure without roof will cease to be building. But a roofless structure can still continue to be building outside the fixed borders of the definition. It is now necessary to notice that Section 3 of the Act, which contains all the definition clauses, prefaces with the words "unless the context otherwise requires". Thus the legislature, which fixed contours for different expressions through the definition clauses has also provided sufficient play at the joints for contextual adaptations. In other words, contextual variations are not impermissible under the Act if such variations are necessary to achieve the object of the enactment. Outside the definition in Section 3 of the Act the word "building" need not necessarily be a roofed structure for even roofless structures are, sometimes, used as buildings in certain circumstances.”

11. In my opinion, reliance placed by the appellants/defendants upon the judgment in the case of *Ashok Kapil (supra)* therefore does not help the appellants/defendants.

12.(i) The second argument urged on behalf of the appellants/defendants is that the lease commenced on 1.4.1973 in terms of the rent receipt Ex.P-3, and when this rent receipt Ex.P-3 is taken with the lease deed Ex.P-1, what is let out becomes premises because the demised land already had a boundary wall around it when the tenancy commenced on 1.4.1973.

(ii) In my opinion, this argument of the appellants/defendants is already covered as per reasoning given while rejecting the first argument of the appellants/defendants and it has to be held that merely if a demised premises being demised land has a boundary wall, it cannot be held that a demised land with boundary wall is a premises within the meaning of the expression 'premises' under Section 2(i) of the Delhi Rent Control Act.

13. I may note that the effect of the judgment of the courts below is to grant a very nominal *mesne* profits by giving 15% annual increase in the admitted rent of Rs.750/-. Considering the facts of the

present case where there is complete dishonesty of the appellants/defendants/tenants in illegally continuing in possession of the demised premises now for 24 years, and for which the respondents/plaintiffs/landlord has to be compensated suitably, this appeal is dismissed with costs of Rs.2,00,000/-. These costs shall be paid by the appellants/defendants to the respondents/plaintiffs within a period of four weeks from today. I am imposing costs in exercise my powers under *Volume V* of the *Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15* which entitles this Court to impose actual lawyers costs. Also it is high time that a dishonest litigant and dishonest litigation in this country is severely and harshly commented upon by imposing such costs.

SEPTEMBER 20, 2017/ib

VALMIKI J. MEHTA, J