

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

+ **RFA No. 919/2017**

% **3rd November, 2017**

VIRENDER KUMAR GAUR & ORS. Appellants

Through: Mr. Satyendre Kumar and Ms.
Sunita Bhardwaj, Advocates.

versus

MEERA BISWAS Respondent

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

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

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 39566/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

RFA No. 919/2017

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by plaintiffs in the suit impugning the judgment of the trial court dated 17.8.2017 by which the trial court has dismissed the suit so far as relief claimed by the appellants/plaintiffs for possession of the tenanted premises having premises No. 340 (old) B-340 (new), Sector-19, Dwarka, New Delhi.

2. Suit for relief of possession was dismissed by the trial court on the trial court returning a finding that the subject lease deed between the parties dated 9.6.2015 does not contain a clause for forfeiture of the tenancy in case of non-payment of the rent.

3. The facts of the case are that appellants/plaintiffs filed the subject suit claiming possession, arrears of rent, *mesne* profits, etc. Appellants/plaintiffs pleaded that by a registered lease agreement dated 9.6.2015 the suit premises were let out to the respondent/defendant for a period of 5 years from 1.6.2015 to 1.7.2020. It was pleaded in the plaint that though the period of tenancy had not expired, but the respondent/defendant has defaulted in making payment of rent since the year 2015 and no rent has been paid from October, 2016 to May, 2017.

4. Trial court has held that there is no express clause in the subject lease deed allowing forfeiture of the lease on account of non-payment of the rent and the trial court held that Clause 7.2 and Clause 8.4 of the lease agreement dated 9.6.2015 cannot be read to mean that forfeiture of lease is allowed for non-payment of rent. These Clauses 7.2 and 8.4 read as under:-

“7.2 That the lessee paying the rent hereby reserved and observing and performing the several covenants and stipulations herein on his part to be observed and performed should peacefully hold and enjoy the premises during the terms of 5 (Five) years without any interruption by the lessor rightfully claiming under or in his trust.

8.4 This Agreement constitutes the entire understanding between the parties. The breach of any condition of this agreement is to be considered substantial. If any part or all of any provision of this Agreement is illegal or unenforceable, it may be severed from this Agreement and the remaining provisions of this Agreement shall continue to remain in force.”

5. In my opinion, trial court has clearly erred in holding that Clause 7.2 cannot be interpreted that it does not allow forfeiture of lease for non-payment of rent.

6. In my opinion the very language of Clause 7.2 is that it is only on the respondent/defendant/lessee complying with all the covenants and stipulations in the lease deed that the respondent/defendant/lessee would peacefully hold on the lease premises for the period of five years i.e putting it in other words if the covenants and stipulations in the lease deed are not complied with, of which is the most important of payment of rent, then if the clause of payment of rent was not complied with in such a case the respondent/defendant could not peacefully hold on to the tenanted premises and meaning thereby the tenancy would stand terminated by forfeiture. There has to be a purposive construction of Clause 7.2 inasmuch as any other construction of Clause 7.2, and as has been

done by the trial court, will lead to the absurd position that a tenant for years and years will not pay rent and claim that since there is no clause in the lease deed for forfeiture of the lease yet inspite of non-payment of rent, the tenant/lessee can continue in the tenanted premises.

7. I, therefore, hold that Clause 7.2 of the lease deed entitles the appellants/plaintiffs to forfeit the lease on account of non-payment of rent. Suit was, therefore, maintainable for possession on account of lease being forfeited for non-payment of rent.

8. Trial court has relied upon a Division Bench judgment of this Court in the case of *Allahabad Bank Vs. K. Kishore (HUF)* **MANU/DE/4014/2007** to hold that once there is no clause of forfeiture on account of non-payment of rent then there cannot be a suit filed seeking possession, however, there is no quarrel as regards the ratio contained in the judgment in the case of *Allahabad Bank (supra)*, but it is seen that in the case of *Allahabad Bank (supra)* there was no clause for forfeiture whereas in the present case there is a clause of forfeiture being Clause 7.2 of the lease deed dated 9.6.2015.

9. Learned counsel for the appellants/plaintiffs has taken me through the orders sheets of the trial court dated 4.9.2017, 18.9.2017

and 27.9.2017 and which shows that respondent/defendant was duly served in the suit, yet she did not appear and her right to file the written statement was closed. In my opinion, there is no need of service of respondent/defendant in this appeal because the right of the respondent/defendant to file written statement stands closed and she did not appear in the suit inspite of service. The relevant orders of the trial court dated 4.9.2017, 18.9.2017 and 27.9.2017 read as under:-

1. Order dated 4.9.2017

“04.09.2017

Present: Sh. Satyendra Kumar, counsel for the plaintiffs.

None for defendant.

Be awaited for appearance on behalf of the defendant

(Mohd. Farrukh)

ADJ(SW)/Dwarka Courts.

04.09.2017

At 12:50 PM

Present: Sh. Satyendra Kumar, counsel for the plaintiffs.

None for the defendant despite several calls since morning.

Service has been effected upon the defendant on 29.08.2017. He is absent despite service. Absence of the defendant is considered to be deliberate on this part. Accordingly, in view of facts and circumstances, he is proceeded ex-parte. His right to file the written statement is also closed.

Now, to come up for ex-parte plaintiffs evidence as well as showing receipt of deposition of cost with DLSA by the plaintiffs, on 18.09.2017.

(Mohd. Farrukh)

ADJ(SW)/Dwarka Courts.

04.09.2017

At this stage. Sh. Sandip Gupta, counsel for the defendant has appeared and filed his vakalatnama.

He is apprised about the next date of hearing.

(Mohd. Farrukh)

ADJ(SW)/Dwarka Courts.

04.09.2017”

2. Order dated 18.09.2017

“18.09.2017

Present: Ms. Sunita Bhardwaj, counsel for the plaintiffs alongwith plaintiff no. 1.

None for defendant.

Today, the matter is listed for ex-parte plaintiff's evidence and showing the receipt of deposition of cost of Rs.10,000/- with DLSA by the plaintiffs.

It is already 12:30 PM. No one is present on behalf of the defendant despite repeated calls since morning.

Counsel for the plaintiffs submits that they were under the impression that the defendant would move an application for recalling the order dated 04.09.2017 vide which the right of the defendant to file the written statement was closed and therefore, plaintiffs have not prepared their affidavits in evidence. This is not a ground for seeking adjournment. However, in the interest of justice, last and final opportunity is granted to the plaintiffs to adduce the entire evidence.

As to the cost, counsel for the plaintiffs submits that they are in process of moving before the Hon'ble High Court of Delhi against the order dated 17.08.2017 vide which, the said cost was imposed upon them.

Now, to come up for ex-parte plaintiff's evidence on 27.09.2017.

(Mohd. Farrukh)

ADJ(SW)/Dwarka Courts.
18.09.2017"

3. Order dated 27.09.2017

"27.09.2017

Present: Ms. Sunita Bhardwaj, counsel for the plaintiffs along with plaintiff no. 1 in person.

Defendant is already proceeded ex-parte vide order dated 04.09.2017.

Previous cost of Rs.10,000- has not been deposited.

Today, the matter is listed for ex-parte plaintiff's evidence.

However, counsel for the plaintiff has moved today an application u/O 7 Rule 14 CPC for placing on record the documents of the plaintiff i.e. statement of account of State Bank of India and Bank of Baroda pertaining to the year 2015 to 2017, by submitting that these statements were not in power and possession of the plaintiffs at the time of filing of the present suit. Since the defendant is proceeded ex-parte in this case, the application is allowed and the documents/statements of accounts of the plaintiffs are taken on record. Needless to observe, the documents filed by the plaintiffs will be proved as per law.

Affidavit in evidence of the plaintiff along with application for summoning the witness and list of witnesses are filed on behalf of the plaintiff.

In view of the grounds mentioned therein, the application seeking summoning the witness is allowed.

Ex-parte evidence of the plaintiff has been recorded.

Now, to come up for entire remaining ex-parte plaintiff's evidence on 14.11.2017. Plaintiff may take steps accordingly to serve the witnesses for the next date.

(Mohd. Farrukh)

ADJ(SW)/Dwarka Courts.
27.09.2017"

10. In view of the aforesaid discussion this appeal is allowed. The impugned judgment of the trial court dated 17.8.2017 is set aside. The suit is held to be maintainable for seeking the relief of possession. Trial court will expedite the suit as respondent/defendant/tenant is sitting in the leased premises without paying rent/use and occupation charges.

11. Appellants/plaintiffs will appear before the trial court on 14.11.2017, the date already fixed, for the trial court to now proceed in accordance with law for deciding the suit and in terms of the observations made in the present judgment.

NOVEMBER 3, 2017/ AK

VALMIKI J. MEHTA, J