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

% *Date of decision: 1.2.2017*

+ CM(M) 1137/2015 & CM No.25211/2016

SHIV NARAYAN BHARDWAJ & ANR Petitioners

Through Mr.Ajay Kumar, Adv.

versus

M/S RAMAN EDUCATIONAL WELFARE
SOCIETY & ORS

..... Respondents

Through Mr.J.P.Sengh, Sr.Advocate with
Mr.Ravinder Narwal, Mr.Naresh
Chahar & Ms.Manisha Mehta,
Advocates for R-1 & R-2
Mr.Smita Maan, Advocate for R-3

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CM No.27462/2015 (Delay)

For the reasons stated in the petition the delay of 8 days in filing the petition is condoned.

Application is allowed.

CM(M) 1137/2015 & CM No.25211/2016

1. By the present petition filed under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 13.7.2015 by which an

application filed by the petitioner under Order 12 Rule 6 CPC for passing of a decree against the respondent was dismissed.

2. The petitioners have filed a suit against the respondents No.1 and 2 for possession, recovery of rent, mesne profit and damages. The suit pertains to a property measuring 2500 sq.yards situated in Khasra No.14/19, Village Mubarakpur Dabas, Delhi. It is contended in the plaint that respondent No.1 was inducted as a tenant at a monthly rent of Rs.25,000/- by virtue of a registered lease deed dated 1.1.2010. It is admitted that as per the registered lease-deed the lease is for 30 years beginning from 1.1.2010. However, it was alleged that the respondents have caused certain manipulations in clause 4 of the lease deed and played a fraud on the petitioner and hence the petitioner served a legal notice and terminated the lease agreement and filed the present suit.

3. The trial court by the impugned order noted that in the written statement the respondents admit the factum of execution of the lease and the rent. It also noted clause 5 of the agreement whereby an option is given to the petitioner to have the property vacated due to “unavoidable circumstances” before expiry of the lease period. Noting that the petitioner relies upon the alleged alterations in clause 4, it concluded that these are no grounds which can be covered by the term “unavoidable circumstances”, which ground permits premature cancellation of the lease deed. Hence, the application was dismissed.

4. I have heard learned counsel for the parties. The stress of the argument of both the parties is on an order dated 12.2.2016 which was passed by this court in this petition whereby it was directed that the respondent shall clear

all arrears of rent of Rs.25,000/- per month within a period of four weeks, failing which the petitioners are at liberty to get the order executed.

5. Learned senior counsel for the respondents points out that the respondent have filed CM No.25211/2016 in this regard seeking for recall of the order dated 12.2.2016. Learned senior counsel has stressed that the petitioners had also filed an application under Order 39 Rule 10 CPC before the trial court. The said application was disposed of by the trial court holding that the school building which has been constructed by the respondent would be a security against the rent payable by the respondent and further directed the respondent to place on record an FDR of Rs.2 lacs. This order was passed on 28.1.2016. It has been stressed that against this order under Order 39 Rule 10 CPC, no appeal or revision has been filed and it has attained finality. It is urged that the respondent without bringing this order to the notice of this court, on 12.2.2016 persuaded this court to direct payment of entire arrears of rent @ Rs.25,000/- per month. It is urged that the order of this court dated 12.2.2016 has been passed in ignorance of the order of the trial court under Order 39 Rule 10 CPC and hence is liable to be vacated. He further submits that on that date a proxy counsel had appeared who could not apprise this court about the order passed under Order 39 Rule 10 CPC by the trial court on 28.1.2016. He relies upon judgment of the Supreme Court in ***Bhanu Kumar Jain vs. Archana Kumar and another, AIR 2005 SC 626*** to contend that *res judicata* can also apply at different stages of the proceedings.

6. Learned counsel for the petitioner has submitted that the petitioners are suffering due to the gimmicks of the respondents and no rent is being

paid despite admission that as per the lease-deed they are liable to pay Rs.25,000/- per month.

7. I may first deal with the application under Order 12 Rule 6 CPC. The impugned order has rightly held that there are no grounds made out for passing of a decree under Order 12 Rule 6 CPC. Clause 1 of the agreement which provides a period for 30 years for the lease cannot be ignored. The fact that Clause 4 has been manipulated by the respondent is a disputed question of fact which would have to be adjudicated upon. It is also not clear whether these facts as pleaded by the petitioner would fall under the phrase “unavoidable circumstances” as stated in Clause 5 of the agreement. Keeping in view these facts, the trial court rightly dismissed the application under Order 12 Rule 6 CPC.

8. On the issue of the directions passed by this court on 12.02.2016 to pay the arrears of rent, reference may be had to the judgment of the Supreme Court in ***Bhanu Kumar Jain vs. Archana Kumar and another (supra)*** where the Supreme Court held as follows:-

18. It is now well-settled that principles of res judicata applies in different stages of the same proceedings. [See Satyadhyan Ghosal and Ors., v. Smt. Deorajin Debi and Anr. 1960 SC 941], and Prahlad Singh v. Col. Sukhdev Singh, [(1987) 1 SCC 727] .

19. In Y.B. Patil (supra) it was held:

"4... It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent state of that proceeding..."

9. Based on the above observations of the Supreme Court, learned senior counsel for the respondents has argued that as res judicata applies to different stages of the same proceedings, the order passed by the trial court on the application under Order 39 Rule 10 CPC would operate as res judicata and hence, this court could not pass the order on 12.02.2016.

10. In the above context, reference may be had to the judgment of the Supreme Court in the case of *Satydhyan Ghosal & Ors. vs. Deorajin Debi & Anr.*, **AIR 1960 SC 941** where the Supreme Court held as follows:-

“ 16. It is clear therefore that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken could be challenged in an appeal from the final decree or order. A special provision was made as regards orders of remand and that was to the effect that if an appeal lay and still the appeal was not taken the correctness of the order of remand could not later be challenged in an appeal from the final decision. If however an appeal did not lie from the order of remand the correctness thereof could be challenged by an appeal from the final decision as in the cases of other interlocutory orders. The second sub-section did not apply to the Privy Council and can have no application to appeals to the Supreme Court, one reason being that no appeal lay to privy council or lies to the Supreme Court against an order of remand.”

11. The order passed by the trial court on the application under Order 39 Rule 10 CPC dated 28.01.2016 is an interlocutory order. No appeal was preferred against the same. However, in my opinion, this order would operate as res judicata before the same court at different stages of the proceedings. The same principle need not apply to proceedings before a higher court.

12. In any case, there is another aspect which may be taken note of. In my opinion, the petitioner has wrongly moved two forums for the same relief. On one hand the petitioner had approached the trial court with an application under Order 39 Rule 10 CPC for deposit of the admitted rent. The said prayer made before the trial court was partly allowed on 28.1.2016. Oblivious of the said order and without informing this court about the order of 28.1.2016 the petitioner has again orally without making any application requested this court also to pass an order for payment of rent which prayer has been granted on 12.2.2016. The order of 12.2.2016 has been passed by this court without being told about the earlier order of the trial court under Order 39 Rule 10 CPC dated 28.1.2016. In the absence of any challenge to the order dated 28.01.2016 before the appellate court or this court, the said order became binding. The petitioner cannot be permitted to pursue two parallel proceedings seeking the same relief. Further, when a request was made to this court on 12.02.2016 for directions to pay arrears of rent, the petitioner was obliged to bring to the notice of this court the full relevant facts including the fact that they have made this prayer before the trial court via an application under Order 39 Rule 10 CPC which has been partially allowed. In view of the said serious lapses on the part of the petitioner, in my opinion, as the said order of 12.2.2016 which is an interlocutory order is liable to be recalled. The application of respondents CM No.25211/2016 is accordingly allowed and order dated 12.02.2016 is recalled.

13. I may, however, add that in view of the order of 12.2.2016 the petitioner has not challenged the order dated 28.1.2016 passed by the trial court in the application under Order 39 Rule 10 CPC. In the peculiar circumstances of this case, liberty is granted to the petitioner to take

appropriate steps in case if he so desires to challenge the order dated 28.1.2016. In case such a challenge is made, the time spent in pursuing the present petition would be a ground to condone delay in filing of such proceedings, if any.

14. Petition stands disposed of. All pending applications, if any, also stand disposed of.

(JAYANT NATH)
JUDGE

FEBRUARY 01, 2017

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