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

% *Date of decision:* 22.02.2017

+ CM(M) 1183/2015 and CM No. 29267/2015

M/S KARAN & CO.

.... Petitioner

Through Mr.Sudhanshu Batra, Sr. Advocate
with Mr.Rajiv Diwan and
Mr.Shashwat V.Dubey, Advocates.

versus

S K GUPTA

..... Respondent

Through Mr.C.P.Vig, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 16.10.2015 by which an application filed by the petitioner under Section 151 CPC seeking examination of handwriting expert in respect of the lease deed dated 18.11.1986 was dismissed.
2. The respondent has filed the present petition under Section 14(1) (a), (d), (h) and (j) of the Delhi Rent Control Act, 1958 in respect of a residential flat on the first floor alleged to be on the property bearing No. 84, Tolstoy Lane, Janpath, New Delhi. The municipal number of the premises is disputed by the petitioner who states that the number of the premises is 82/12, Tolstoy Lane, Janpath, New Delhi.
3. The evidence of the respondent is over. The petitioner had filed a list

of witnesses which included the handwriting expert. For the purpose of leading evidence, the petitioner sought permission to get examined the signatures of Smt. Kailash Gupa, Mr. Devi Charan Gupta and Mr. S.K. Gupta, the first two being the predecessors of the respondent on the original lease deed dated 18.11.1986 from the same handwriting expert. The application was dismissed by the impugned order.

4. The trial court held that lease deed dated 18.11.1986 is unregistered lease deed and can be looked into only for collateral purpose and that collateral purpose cannot be interpreted to include therein the terms and conditions by which parties are related to each other. It also relied upon Section 45 of the Indian Evidence Act and concluded that there was no need for the petitioner to examine handwriting expert and that it is only an attempt to delay the matter.

5. I have heard the learned counsel for the parties.

6. Learned senior counsel appearing for the petitioner submits that the lease deed dated 18.11.1986 is extremely important for the defence of the petitioner as the lease deed states that the property was let out for commercial purpose. He further submits that the fact that it was let out for residential or commercial purpose can be gone into for collateral purpose and Section 49 of the Registration Act would not be a bar on the same. He relies upon the judgment of this Court in the case of *M/s. Keshav Metal Works & Anr. vs. Sh.Jitender Kumar Verma, 1994 (28) DRJ 206*.

7. Learned counsel appearing for the respondent has submitted that the submission which are now sought to be raised before this court have not been raised before the trial court.

8. Section 49 of the Registration Act reads as follows:-

“49. Effect of non-registration of documents required to be registered.—No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) 55, 56 [***] or as evidence of any collateral transaction not required to be effected by registered instrument.”

9. This court in the case of *M/s. Keshav Metal Works & Anr. vs. Sh.Jitender Kumar Verma(supra)* held as follows:-

“24. Now, so far as merits are concerned, the learned Addl. Rent Controller took note of the evidence adduced before her and came to the conclusion that premises in question was let for residential purpose. Even otherwise when a tenant uses the premises for receiving his business Dak or correspondence it would not make the use as commercial. The Addl. Rent Controller rightly concluded that merely because the tenant had given his address for correspondence purpose in Sales Tax Department and/ or for business purpose, it would not change the letting purpose to non-residential. The land underneath the house was taken by the landlord on perpetual lease hold basis. The perpetual lease-deed Ex.AW1/1 prohibits the user of the building constructed on the plot or for trade or business. Coupled with this document is the statement of tenant's son RW-2, who deposed that the premises was never used for commercial purpose. This fact further find support from clause 5 of the lease agreement Ex.AW-1/3 where in it has been mentioned that the premises was let out for residential purpose

only. The said rent agreement formed part of the pleadings and has been admitted by the tenant. Therefore, the terms of the said unregistered agreement Ex.AW-1/3 can be looked into to find out the purpose of letting because that is only a collateral purpose. In fact the nature, character and user of possession, being not a term of the lease is a collateral purpose, hence can be looked into even if the lease deed is unregistered, in order to find out the purpose of letting. Under the proviso to Section 49 of the Registration Act, purpose of lease i.e. nature of tenant's possession being only a collateral matter, unregistered lease can be used to determine the same. Letting purpose is not a term of the lease deed. It is only the terms of the lease which cannot be looked into in an unregistered lease deed. The essential elements of the lease are (i) the parties; (ii) the subject matter or Immovable property; (iii) the demise or partial transfer; (iv) the term or period; (v) the consideration or rent. But the nature and character of possession does not fall in the category of essential elements. It is distinct from the main purpose of the lease. Hence the unregistered lease deed can be looked into to find out the letting purpose. The supreme Court in the case of Rai Chand Jain (Supra) has removed all doubts in this regard. Mr.Lekhi contended that the observations of the Supreme Court in Rai Chand Jain's case regarding unregistered lease deed are only obiter, hence not binding. To my mind, it is without force. In view of the documentary evidence and admission of RW-2, no amount of oral evidence by the tenant that premises was let for residential-cum-commercial purpose can be relied. Even otherwise the letting purpose can be determined from the nature of the premises locality where it is situated, extent of the accommodation with the tenant and the purpose for which the land was purchased and building plan got sanctioned etc. The mere fact that the premises is incidentally used by the tenant for receipt of his business Dak or for correspondence purposes with Sales Tax Deptt, or other authorities where he has given this as his address, would not change the user from residential to commercial. Premises in question is a three bed rooms accommodation. Tenant has beside himself, a married son and

two unmarried daughters of the age of '21 and 18 years respectively. Looking at these facts the ARC rightly concluded that the premises was let for residential purpose.”

10. Hence, this court has taken a view that the terms of an unregistered agreement can be looked into to find out the purpose of letting because it is only a collateral purpose. I am bound by the said view taken by the learned Single Judge of this court.

11. At this stage, learned counsel for the respondent submits that the above judgment of the Delhi High Court is res integra in view of the judgment of the Supreme Court in the case of ***K.B.Saha & Sons Pvt. Ltd. vs. Development Consultant Ltd., 2008 (8) SCC 564***. A perusal of the said judgment would show that in that case Clause 9 of the lease agreement in question provided that where the premises was provided to a particular officer of the respondent and after the same is vacated by the said officer, the respondent is not entitled to allot it to another employee and if it does so was liable to be evicted. The Supreme Court held that this was an important term forming part of the lease agreement and such a clause cannot be looked into even for collateral purpose to come to a conclusion that the respondent was liable to be evicted. The facts of the present case are entirely different. The question here relates to the admissibility of a clause which provides the user of the property, namely, as to whether it was given for residential purpose or commercial purpose. The facts of the judgment of the Delhi High Court are identical as the present case.

12. In any case, I may note that before the trial court the issue was about grant of permission to the petitioner to examine a handwriting expert. It was in those circumstances, the trial court had dismissed the application, one of

the grounds being that the lease could not be looked into even for collateral purpose to determine the user of the property. These are issues which are to be adjudicated upon at the time of disposal of the case. I have only taken a prima facie view based on the judgment of the Delhi High Court to conclude that the reasoning of the trial court to disallow a handwriting expert is improper. The parties are free to adjudicate upon this aspect at the relevant stage uninfluenced by any observations made by this court.

13. I may note that even along with the list of witnesses, the petitioner had mentioned the said witnesses in the said list. There are no cogent reasons forthcoming to disallow the petitioner to examine the hand writing expert. Keeping in view the above, it is clear that the impugned order suffers from material errors. The present petition is allowed. The petitioner is allowed to examine a handwriting expert as prayed for in their application under Section 151 CPC.

14. All pending application stands dismissed.

JAYANT NATH, J.

FEBRUARY 22, 2017

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