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

Date of Decision: 10th May, 2018

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RFA 138/2007

CHANDA BHATIA

..... Appellant

Through: Mr. Jagdeep Singh Bakshi and Mr.
Amitesh Singh Bakshi, Advocates.
(M:9811025921 & 9818223833)

versus

RAJ KUMAR BAWEJA & ANR.

..... Respondents

Through: Mr. Vikas Tiwari (M:9971336949),
Advocate with Mr. Madan Kumar and
Mr. Akshay, husband and son of
Respondent No.2.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. Present appeal arises out of the impugned judgment/decreed dated 4th December, 2006 by the Trial Court by which the suit filed by the Appellant/Plaintiff (*hereinafter 'Plaintiff'*) was dismissed.
2. The case in brief of the Plaintiff is that the corner shop no.6 admeasuring 14 x 12 ft. was let out by her to one Mr. Raj Kumar Baweja - Defendant no.1 (*hereinafter, 'D1'*) vide registered lease deed dated 28th January, 2003. D1 paid rent only for one month i.e. till 28th February, 2003. Thereafter, one Ms. Monika - Defendant no.2 (*hereinafter, 'D2'*), had started sitting in the shop and managing the affairs therein. The exact relationship between D1 and D2 was not clear to the Plaintiff. There were

huge arrears of rent and despite repeated reminders the rent was not paid. It is the case of the Plaintiff that even the electricity charges to the tune of Rs.35,000/- had fallen due.

3. The Plaintiff then terminated the tenancy vide notice dated 20th November, 2003. The said notice was duly served upon the Respondents/Defendants (*hereinafter 'Defendants'*). The Plaintiff then claimed arrears of rent of Rs.1,65,000/- with effect from 1st March, 2003 to 31st January, 2004 along with damages @ Rs.60,000/- per month with effect from 1st February, 2004 till premises are handed over. There was an apprehension that the shop has been sub-let or possession may have been handed over to third parties. In these circumstances, the Plaintiff filed a suit praying for the following reliefs.

"It is therefore prayed that suit of the Plaintiff be decreed with costs and decree for

(a) Possession by eviction of defendants from the shop premises measuring 14 ft. X 12 ft. forming part of property no. B-191, Derawal Nagar, Delhi - 09 as shown in red in the plan,

(b) Rs.1,65,000/- as rent due with effect from 01.03.2003 to 31.01.2004 @ Rs.15,000/- per month and future monthly damages @ Rs. 60,000/- per month till possession is delivered to plaintiff,

(c) Interest @ 2% per month on the amount found due till payment,

(d) By order of mandatory injunction defendant be directed to clear the arrears of electricity consumption due on account of electric connection bearing K.No.31733 of North Delhi Power limited.

(e) By order of perpetual injunction defendant be restrained from sub letting, parting with

possession and creating any third party interest in the shop premises, as shown in red in the plan”

4. In the written statement filed by D2, she made various allegations against the Plaintiff being in collusion with her own husband and one Mr. Madan Kumar. It was averred by her that the rent agreement was for shop no.6 whereas she is in possession of the shop no.5. She claimed that the husband of the Plaintiff - Shri Gullu Bhatia had given her the shop on rent and also that her husband had paid an advance amount to him. The rent according to her was Rs.2,500/- and hence she took the plea that the suit was barred under the provisions of the Delhi Rent Control Act (*hereinafter, 'DRC Act'*). Her further claim was that she was running the business in the name of Raj World Communication in the shop from June, 2003.

5. D1- Mr. Baweja did not put in appearance in the trial court. Vide order dated 16th August, 2004, the right of D1 to file the written statement and his defence was struck off.

6. On 10th February, 2005, the following issues were framed in the matter.

“1) Whether plaintiff is entitled to a decree of possession as prayed for? OPP

2) Whether plaintiff is entitled to a sum of Rs.1,65,000/- towards rent from 1.3.2003 to 31.1.2004 @ Rs.15,000/- p.m.? OPP

3) Whether plaintiff is entitled damages @ Rs.60,000/- p.m. w.e.f. 1.2.2004 till the handing over possession to the plaintiff? OPP

4) Whether plaintiff is entitled to interest @ 2% p.m. on the amount due? OPP

5) Whether there is no privity of contract between the parties? OPD-2

6) Whether suit premises was taken on rent by

Madan Kumar at a monthly rent of Rs.2500/- from one Sh. Gullu Bhatia? OPD-2

7) Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD-2

8) Relief.”

7. The Plaintiff - Ms. Chanda Bhatia appeared as PW-1, Shri Sachin Jain appeared as PW-2 and Shri Dharam Pal Chadda appeared as PW-3. D2 - Ms. Monica appeared as DW-1.

8. The Trial Court came to the conclusion that the monthly rent was Rs.2,500/-. The Trial Court also held that the suit is bad for non-joinder and dismissed the suit in view of bar under Section 50(1) of the DRC Act.

9. In the present appeal, notice was issued on 7th March, 2007 and since there was no appearance for both the Respondents on the next date, they were proceeded ex-parte. Thereafter, on some dates D2 began to appear. On 15th January, 2018 after hearing some submissions on behalf of the Plaintiff and D2 the following order was passed:

“1. Counsel for the Appellant submits that Respondent No.1 was the original tenant who had sub-let the property to the Respondent No.2, as per the Appellant. Respondent No.2, however, claims that her husband was handed over possession of the property as a tenant by the Appellant’s husband. On query from the court, Respondent No.2 submits that he does not have the possession of the suit property as the same has already been demolished. The Respondent No.2’s admitted case was that Respondent No.2’s husband has taken the shop on rent from Appellant’s husband in June, 2003 on a monthly rent of Rs.2,500/-. However, the Respondent no.2, under instructions from the

son of Respondent no.2, who is present in court, submits that currently no payment is being made as the property stands demolished. Before proceed further, it is necessary to ascertain the actual status of the suit property.

2. Accordingly, Ms. Vasudha Trivedi, Advocate (M-9971722185) who is present in court is appointed as a Local Commissioner to visit the suit property. The Local Commissioner shall:

a) take photographs of the suit property;

b) ascertain as to who is in possession of the suit property;

c) ascertain if any business activity is being conducted from the suit property.

3. The report of the Local Commissioner shall be submitted within 10 days. The fee of the Local Commissioner shall be Rs.10,000/- (Rupees Ten Thousand) to be shared equally by both the parties.

4. The Commission shall be executed on 18th January, 2018 at 5 pm.

5. List this matter in the category of 'After Notice Miscellaneous Matters' on 12th February, 2018.

6. Appellant and Respondent No.2 shall remain present on the next date of hearing.

7. Copy of this order be given dasti under signature of the Court Master."

10. A Local Commissioner was appointed as per the above order as it was stated that the suit property already stood demolished. The Local Commissioner's report was received which showed that none of the Defendants were in possession of the shop. The Local Commissioner was again appointed to hand over the shop to the Plaintiff who was directed to

use and occupy the said property, which belonged to her, subject to an undertaking that the same would be subject to final orders in the appeal. Thus, as on date of hearing of the appeal, the possession of the shop is with the Plaintiff. On 12th February, 2018, submissions were made on behalf of D2, to the following effect.

“5. At this stage, learned counsel for Respondent No.2 submits that if no further claims are being made against Respondent No.2 for use and occupation charges, then he is willing that the matter may be finally settled. He has submitted the same on the instructions given to him by both the husband and son of Ms. Monica, who is Respondent No.2. Parties to file an application under Order XXIII Rule 3 of the CPC if a settlement is arrived at.”

11. On 22nd February, 2018 and 19th April, 2018 learned counsel appearing for D2 was directed to file vakalatnama on behalf of Ms. Monika. However, till date no vakalatnama has been filed. On 19th April, 2018 arguments were finally heard but even till that date the vakalatnama on behalf of D2 was not filed. Husband of D2 and her son were present in Court who submitted that D2 had disputes with them and she had gone away to her parental home. Thus, filing of the vakalatnama was absolutely essential. However, despite repeated directions no vakalatnama on behalf of the D2 has been filed. Under these circumstances, this Court has no other option but to proceed further in the matter. Detailed arguments were heard on the last date of hearing. However, the submissions made on behalf of D2 in the past few hearings have been considered by the Court. Today, the matter was merely fixed for filing of vakalatnama. The order dated 19th

April 2018, reads as under:

"Arguments have been heard. Appellant has filed written note of arguments. Respondent No.1 wishes to file his written note of arguments and also to file his vakalatnama on behalf of Respondent No.2.

List on 10th May, 2018. Husband and son of Respondent No.2 are also present in Court. Let the vakalatnama be filed within a week"

12. A perusal of the registered rent agreement dated 22nd January, 2003 clearly shows that the shop was given to Mr. Raj Kumar Baweja- D1, on a monthly rent of Rs.15,000/-. As per the said rent agreement the shop that was given to D1 was a two side open shop. Irrespective of the number of the shop, it is clear that D2 was in possession of the corner shop which is obviously two side open. Even the dimension of the shop is 168 sq. ft. As per the deposition of D2 the shop which was in her possession was also 14 x 12 i.e., 168 sq. ft. Thus, there is no doubt as to the identity of the shop. In the face of a registered rent agreement, therefore, oral evidence to the effect that the shop was given on rent to D2 at Rs.2,500/- per month cannot be accepted. The registered rent agreement clearly shows that the monthly rent was Rs.15,000/- per month. Thus, provisions of the DRC Act have no application in the present case.

13. The rent agreement is exhibited as Ex.PW-1/2. Notice of termination of tenancy dated 20th November, 2003 and the AD card have been exhibited as Ex.PW-1/3 and Ex.PW-1/5. A copy of the said notice was also issued to D2 as she was apparently managing the affairs at the shop. No reply was received to the said termination notice. On behalf of the Defendants, no documents have been exhibited or filed. The so called partnership deed filed

by the Defendants between Mr. Madan Kumar and D2 is a photocopy which is not exhibited. Even the certificate dated 26th April, 2004 alleged to be issued by the Registrar of Firms to M/s. Raj World Communication, Shop No.5, Ground Floor, B-191, Derawal Nagar, Delhi is a photocopy and is not a exhibited document. Thus, not a single document has been placed on record to prove the case of the Defendants.

14. Oral evidence of PW-1 shows that the D1 was running a *halwai* shop in the suit property for about two months. Thereafter, according to PW-1, one Mr. Madan Kumar and D2 started doing business of sale purchase and repairing of mobiles in the suit property. PW-1 denied the suggestion that any *pagdi* rent of Rs.1 Lakh was paid to her husband or that he created any tenancy in favour of D2.

15. PW-2 is a property dealer who confirmed that D1 had taken the suit property on rent through him for running the *halwai* shop in the name of Aggarwal Sweets. He admitted that he has been paid Rs.8,000/- from the said deal. He lived about 1 km away from the suit property and confirmed that he has seen the *halwai* shop being run from the suit property. PW-3 Shri Dharam Pal Chadda was the landlord of another property bearing no.G-26, Gujrawalan Town, which was given on monthly rent to Shri Madan Kumar, husband of D2. He confirmed that the shop of the Plaintiff is better located than his own shop which was given on monthly rent of Rs.6,000/-. He deposed that he knew the husband of the Plaintiff. He also deposed that he had filed a suit for possession against Mr. Madan Kumar and there were disputes going on between them.

16. On the other hand, D2 - Ms. Monika who appeared was not able to produce any document in support of her case. Her affidavit in evidence is

absolutely sketchy. It only makes allegations that the monthly rent was of Rs.2,500/- against security deposit of Rs.1 Lakh. There is not a single document filed by D2 to prove her case. She admitted that the notice of termination Ex.PW-1/3 was served upon her before filing of the suit.

17. In ***Prem Singh & Ors. v. Birbal & Ors., (2006) 5 SCC 353*** the Supreme Court held that there is presumption as to the validity of a registered document. The Supreme Court held in the said case as under:

“.....There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent No.1 has not been able to rebut the said presumption.

.....”

18. An appreciation of the documents on record, pleadings and evidence clearly shows that there is a registered rent agreement for the suit property executed between the Plaintiff and D1. The rent as per this agreement is Rs.15,000/- per month. Deposition of PW-3 shows that in the same neighbourhood, he had given a shop to the husband of D2 at Rs.6,000/- per month. Thus, the rent is much more than Rs. 3000/- for a shop in the said vicinity. D2 has not proved that the rent is Rs.2,500/-. She has not paid a single penny as rent to the Plaintiff and she admitted to have been running a shop from the suit property. She does not dispute the ownership of the Plaintiff in the suit property.

19. The Trial Court has thus erroneously dismissed the suit. The Trial Court has completely ignored the evidence on record. The version set up in defence by D2 has not been established. The so called partnership deed

between D2 and her husband, a copy of which was filed, was not exhibited or proved. The Trial Court could not have relied upon the said documents to hold that Shri Madan Kumar was a necessary party in the suit.

20. The impugned judgment is, therefore, liable to be set aside. Possession of the shop is already with the Plaintiff. As per order dated 12th February, 2018, the Plaintiff had filed an undertaking from which she is discharged. The Plaintiff would be entitled to damages at the admitted rent. The suit for possession is decreed. A further decree is passed in favour of the Plaintiff against the Defendants for a sum of Rs.15,000/- per month from 1st March, 2003 till 12th February, 2018. Interest @ 6% per annum would be liable to be paid from the date of suit till the date of actual payment. Decree sheet be drawn up accordingly.

21. Appeal is allowed in the above terms.

PRATHIBA M. SINGH
JUDGE

MAY 10, 2018/dk