

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

% **Date of decision: 26th September, 2018**

+ **RSA No.143/2018**

SHEKHAR ARORA

..... Appellant

Through: Mr. Arun Kumar Srivastava & Mr.
Arvind Pandey, Advs.

Versus

RAM KRIPAL YADAV

...Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.39756/2018 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

RSA No.143/2018, CM No.39755/2018 (for stay) and CM No.39757/2018 (for condonation of delay of 50 days in re-filing the appeal)

3. This Regular Second Appeal under Section 100 of the Code of Civil Procedure Code, 1908 (CPC) impugns the judgment and decree [dated 8th March, 2018 in RCA No.61853/2016 of the Court of Additional District Judge (ADJ)-06, Central] only partly allowing the First Appeal under Section 96 of the CPC preferred by the appellant / defendant against the judgment and decree [dated 30th April, 2016 in Civil Suit No.45/2013 of the Court of Civil Judge-04, Central] allowing the suit of the respondent / plaintiff to recover a sum of Rs.2,76,178/- from the appellant / defendant, in the sum of Rs.2,61,238/- along with interest *pendente lite* and future at 10% per annum.

4. The First Appellate Court has partly reversed the judgment of the Suit Court and held that the appellant / defendant “shall not be liable to pay any dues arising out of the ledger entries Ex.PW1/9, towards alleged supply of goods on credit by plaintiff to defendant” and sustained the rest of the decree of the Suit Court.

5. The appeal is accompanied with an application for condonation of delay of 50 days in re-filing thereof. However the question of considering the said application would arise only if it were to be found that this Second Appeal entails any substantial question of law.

6. The counsel for the appellant / defendant has been heard and the copies of the trial court record appended to the memorandum of appeal as well as shown by the counsel for the appellant / defendant during the hearing have been perused.

7. The respondent / plaintiff instituted the suit, from which this appeal arises, pleading that (i) the respondent / plaintiff is running a shop selling domestic articles on the ground floor of his house at No.7, Main Masjid Road, Opp. Ram Ghat, Wazirabad Village, Delhi-110084; (ii) the appellant / defendant approached the respondent / plaintiff for taking the first floor of the said building on rent and the said first floor was let out by the respondent / plaintiff to the appellant / defendant from 1st November, 2008, for a period of 11 months and an Agreement Deed of Rent dated 15th December, 2008 was executed; (iii) the appellant / defendant ran a welfare society in which he kept some old persons and servants to look after the old persons and the appellant / defendant, after taking the premises on rent from the respondent / plaintiff, started living in the premises along with servants

and cooks; (iv) as per Rent Agreement dated 15th December, 2008, the appellant / defendant had to pay rent of Rs.15,000/- per month excluding electricity and water charges; (v) the appellant / defendant also requested the respondent / plaintiff to supply domestic materials for day-to-day requirements from the shop of the respondent / plaintiff, on credit and the respondent / plaintiff, from time to time, supplied the said goods to the appellant / defendant; (vi) the appellant / defendant was not regular in payment of rent and / or in payment of price of the domestic articles purchased; (vii) an amount of Rs.1,45,000/- was in arrears towards rent and the appellant / defendant was also liable to pay electricity charges of Rs.14,990/- and all of which the appellant / defendant assured the respondent/plaintiff that he will pay; (viii) the appellant / defendant also purchased domestic articles of the value of Rs.1,16,238/- from the respondent / plaintiff and the price whereof also had not been paid; (ix) a total amount of Rs.2,76,178/- was thus due from the appellant / defendant to the respondent / plaintiff and which he had not paid; and, (x) three cheques for Rs.20,000/- each delivered by the appellant / defendant to the respondent / plaintiff, in part discharge of obligations aforesaid were returned unpaid for the reason of 'Insufficiency of Funds' in the account on which the said cheques were issued.

8. The appellant / defendant contested the suit pleading that (a) the appellant / defendant had paid the entire amount of rent along with electricity and water charges to the respondent / plaintiff for the period of Rent Agreement and nothing was outstanding on that account; (b) when the term of tenancy of the appellant / defendant was about to expire, the

appellant / defendant, owing to his illness, requested the respondent / plaintiff for extension of Rent Agreement for one year and the respondent / plaintiff, as a condition therefor, demanded four cheques of Rs.20,000/- each as security and which were delivered by the appellant / defendant to the respondent / plaintiff; (c) otherwise, the rent earlier also used to be paid in cash and continued to be paid in cash; (d) however owing to situations created by the respondent / plaintiff, the appellant / defendant, of his own vacated the premises on 4th October, 2010 and demanded return of the cheques given by way of security but which the respondent / plaintiff failed to return; and, (e) the appellant / defendant never made any purchases from the shop of the respondent / plaintiff.

9. On the pleadings aforesaid of the parties, the following issues were framed in the suit on 6th July, 2011:

- “1) Whether the plaintiff is entitled for decree in the sum of Rs.2,76,178/-? OPP.
- 2) Whether the plaintiff is entitled for any interest, if yes, at what rate and for what period? OPP
- 3) Whether the suit of the plaintiff is without any cause of action? OPD.
- 4) Whether the plaintiff has not approached the Court with clean hands? OPD.
- 5) Relief.”

10. The Suit Court, on the basis of evidence led found/observed/held, that (i) the rate of rent was not in dispute; (ii) the respondent / plaintiff had proved the dishonoured cheques, issuance whereof was not denied by the appellant / defendant; (iii) the appellant / defendant had not proved payment of rent for the period of occupation of the premises and had merely stated

that before vacating the premises, entire rent and electricity charges were paid; (iv) the appellant / defendant, in evidence admitted to running an NGO namely Balaji Orphans and Educational Welfare Society at the tenancy premises but did not produce any books of accounts of the said society to show the payment of rent; (v) the appellant / defendant had thus failed to prove that the entire rent had been paid; (vi) the respondent / plaintiff had proved his ledger regarding sale of daily need goods to the appellant / defendant; (vii) the respondent / plaintiff had also proved such sale from testimony of other witnesses examined; (viii) the appellant / defendant had not disclosed, from where else the daily need articles were being procured if not from the respondent/plaintiff; (ix) the respondent / plaintiff had however failed to prove the electricity charges claimed and was thus not entitled thereto. Resultantly, decree for recovery of Rs.2,61,238/- was passed in favour of the respondent / plaintiff and against the appellant / defendant.

11. The First Appellate Court partly allowed the appeal of the appellant / defendant reasoning that (a) the Suit Court erred in putting reverse onus on the appellant / defendant to prove how he procured the daily need articles; (b) the respondent / plaintiff, though had tendered the ledger in evidence, but in cross-examination admitted that the entries therein were not in his handwriting and further deposed that he did not remember the exact time when the ledger was prepared; (c) the respondent / plaintiff as well as his wife in their respective cross-examinations stated that they were not personally sitting at the shop and their employee used to sit at the shop and deliver the goods to the employee of the appellant / defendant; (d) there

was no receipt of delivery of such goods; (e) the ledger did not bear the signatures of the respondent / plaintiff or his wife or of any other person; (f) there was no mention in the ledger, of the name of the person to whom goods were delivered; (g) it was also in evidence that the ledger was not regularly recorded in the usual course of business; (h) thus, the entries in the ledger remained unproved and could not be relied upon as proof of delivery of goods on credit to the appellant / defendant; and, (i) accordingly, the decree in favour of the respondent / plaintiff to the extent of recovery of Rs.1,16,238/- was set aside.

12. The appellant / defendant, on the date when the First Appeal, after hearing arguments thereon, was listed for pronouncement of judgment, presented an application under Order XLI Rule 27 of the CPC to adduce additional evidence through copy of account statement of Shri Balaji Orphans & Educational Welfare Society contending that the said society through appellant / defendant paid rent to the respondent / plaintiff in cash including through bearer cheques, all reflected in the statement of account sought to be proved. It was further the contention that the respondent / plaintiff ought to have impleaded Shri Balaji Orphans & Educational Welfare Society as a defendant to the suit.

13. The learned ADJ dismissed the application reasoning that (i) the appellant / defendant in the written statement admitted the contract of tenancy being in his personal capacity and the appellant/defendant had throughout the suit and the appeal also maintained the said stand; (ii) there was no privity of contract between the respondent / plaintiff and Shri Balaji Orphans & Educational Welfare Society; (iii) no issue also in this respect

had been framed; (iv) it was not the case that the documents sought to be then filed were not available or not known earlier; rather, it was the case that the said documents were handed over to the counsel for the appellant / defendant in the suit and who failed to file the same; and, (v) there was no other explanation for non adducing the said evidence during the suit and no application having been filed for two years since when the first appeal was pending.

14. The counsel for the appellant / defendant, before me also, besides urging the ground of sympathy i.e. of appellant / defendant being engaged in philanthropic activities, has emphasized more on dismissal by the First Appellate Court of the application under Order XLI Rule 27 of the CPC.

15. No error is however found in the reasoning given by the First Appellate Court for dismissal of the application. Order XLI Rule 27 is not intended to be a tool in the hands of litigants to, as and when they want, merely by blaming the earlier counsel and as an afterthought, set back the clock of the litigation after it has run for several years. The suit, from which this Second Appeal arises also was instituted as far back as on 21st October, 2010 and there indeed was no reason for the appellant / defendant to suddenly wake up on 8th March, 2018, when he had already lost in the Suit Court and was unable to convince the First Appellate Court also qua his defence to the claim for arrears of rent.

16. The counsel for the appellant / defendant, from his own file has also drawn my attention to the Rent Agreement dated 15th December, 2008 between the parties and which records the same to be between respondent / plaintiff and “Shri Shekhar Arora Son of Late Shri Bhagwan Dass resident

of Mahasachiv Balaji Orfence and Educational Welfare Society, C-46, Ashok Vihar, Phase-IV, Delhi-110052 (hereinafter called the second Party / Tenant) and has contended that from the same also it is evident that the appellant / defendant was not a tenant in his personal capacity but it was the society aforesaid which was a tenant. Attention is also drawn from own file, to the Certificate of Registration of the said society under the Societies Registration Act, 1860 and to the Statement of Account sought to be produced under Order XLI Rule 27 of the CPC and which contains the entries of proof as cheques or bearer cheques.

17. The Rent Agreement, to which attention is drawn, though for eleven months is signed by both the parties and not merely by the tenant alone and under law was required to be compulsorily registered. Neither is it registered nor is it engrossed on appropriate stamp paper. The same thus cannot be seen for any purpose whatsoever. Exemption from registration is available only to a unilateral rent note executed by a tenant alone for a period of less than one year and once a bilateral lease is created, the same is required to be registered. Reference in this regard can be made to ***Sai Motors Vs. Aditya Jain*** 2017 SCC OnLine Del 9366.

18. Even otherwise, the same does not show that the society and not the appellant / defendant was the tenant. Moreover, the appellant / defendant, throughout the suit and the appeal having admitted being a tenant in his personal capacity, cannot be allowed to turn turtle and to withdraw the admission and plead another to be the tenant.

19. The appeal even otherwise does not raise any substantial question of law and is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 26, 2018

‘gsr’

