

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

+ **RFA No. 558/2018 & CM No. 28370/2018 (stay)**

% 30th October, 2018

DINESH CHAND @ DINESH KUMAR & ANR.

..... Appellants

Through: Mr. R.S.Bhalla, Advocate
(Mobile No.9971730965).

versus

SANJAY SOLANKI

..... Respondent

Through: Mr. Birender Singh,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by defendants in the suit impugning the Judgment of the Trial Court dated 02.04.2018 by which the Trial Court has dismissed the leave to defend application and has decreed the suit filed by the respondent/plaintiff/landlord for an amount of Rs.3,04,850/- along with interest at 8% per annum.

2. The facts of the case are that the respondent/plaintiff/landlord filed the subject suit pleading that he and the two appellants being defendant nos. 1 and 2, entered into a Rent Agreement dated 20.03.2013 whereby the appellants/defendants took on rent from the respondent/plaintiff/landlord his premises being one industrial built-up and fully furnished premises bearing no. M-216, Pocket-J, Sector-1, DSIDC, Bawana, Delhi. The Rent Agreement was for a total period of eleven months and rent which was payable was an amount of Rs.8,00,000/- for eleven months. The respondent/plaintiff/landlord claimed that the appellants/defendants occupied the premises from 01.02.2013 till 11.04.2013 and thereafter, the appellants/defendants are pleaded to have taken their belongings and fled away from the premises without clearing electricity dues amounting to Rs.1,04,850/-. At the time of taking the premises on rent, 8 post dated cheques were given by the appellants/defendants towards rent, 4 cheques by each of the appellants/defendants, and when two cheques of Rs.1,00,000/- each were presented by the respondent/plaintiff/landlord, being cheque nos. 755452 and 728401, being the cheques issued by appellant no. 2/defendant no.2, these cheques were dishonoured by instructions of 'stop payment'. The Subject suit was, therefore, filed for recovery

of rent from 01.02.2013 till 11.04.2013 and the electricity bill amounting to Rs. 1,04,850/-.

3. As against the appellant no. 2/defendant no. 2, the Order XXXVII suit was decreed as he failed to file appearance. The suit was decreed against the appellant no. 2/defendant no. 2 in terms of the order dated 19.01.2015. Admittedly, this order has become final because this order was not challenged by the appellant no. 2/defendant no.2. This Court is thus only concerned with the impugned judgment dismissing the leave to defend application filed by the appellant no. 1/defendant no.1. In any case, issues of this appeal will also govern the aspect of appellant no. 2/defendant no. 2 not being entitled to leave to defend.

4. The appellant no. 1/defendant no.1 in his leave to defend application pleaded that the amount of Rs. 72,800/- per month towards rent was paid in cash to the respondent/plaintiff/landlord and therefore, there were no dues towards rent for the subject period from 01.02.2013 to 11.04.2013. It was also pleaded in the leave to defend application that the appellants/defendants had incurred expenses amounting to Rs. 5,00,000/- for renovating the factory premises taken on rent belonging to the respondent/plaintiff/landlord. It was pleaded that the

respondent/plaintiff/landlord threw out the appellants/defendants from the suit premises. It was, therefore, prayed that unconditional leave to defend be granted.

5. In my opinion, the trial court has committed no illegality in dismissing the leave to defend application because if a leave to defend application does not raise a triable issue or the defence raised is found to be frivolous and vexatious, then the leave to defend application has to be dismissed as held by the Supreme Court in the case of ***IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd., (2017) 1 SCC 568*** and relevant paras of which read as under:

"17. Accordingly, the principles stated in paragraph 8 of *Mechelec's* case will now stand superseded, given the amendment of Order XXXVII Rule 3, and the binding decision of four judges in *Milkhiram's* case, as follows:

17.1. If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the Plaintiff is not entitled to leave to sign judgment, and the Defendant is entitled to unconditional leave to defend the suit.

17.2 If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the Plaintiff is not entitled to sign judgment, and the Defendant is *ordinarily* entitled to unconditional leave to defend.

17.3 Even if the Defendant raises triable issues, if a doubt is left with the trial judge about the Defendant's good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see

that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4 If the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5 If the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the Plaintiff is entitled to judgment forthwith.

17.6 If any part of the amount claimed by the Plaintiff is admitted by the Defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the Defendant in court."

6. Admittedly, the suit premises were with the appellants/defendants, including the appellant no. 1/defendant no.1 on tenancy from 01.02.2013 till 11.04.2013. For this period, therefore, rent was payable and the defence of the appellant no. 1/defendant no. 1 is that the rent was paid in cash but no document at all has been filed to show payment of the rent amount in cash by the appellants/defendants to the respondent/plaintiff/landlord and therefore this defence is clearly a frivolous and vexatious defence raising no triable issue. So far as the electricity bill is concerned, there is no dispute that the said electricity bill is with respect to the

period for which tenancy was with the defendants in the suit for the period from 01.02.2013 to 11.04.2013.

7. In view of the aforesaid discussion, the trial court has rightly dismissed the leave to defend application. There is no merit in the appeal. The appeal along with pending application is dismissed.

OCTOBER 30, 2018
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VALMIKI J. MEHTA, J

