

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

% **Date of decision: 7th August, 2018.**

+ **RSA 207/2017**

ISHTIAQ AHMAD **..... Appellant**

Through: Mr. Avadh Kaushik, Advocate

Versus

FARZANA **..... Respondent**

Through: Mohd. Iqbal, Mr. A.R. Shahdi, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Regular Second Appeal under Section 100 of the CPC impugns the judgment and decree [dated 4th May, 2017 in RCA No.61992/2016 (32/2016) of the Court of Additional District Judge-09, Tis Hazari Courts] of dismissal of First Appeal under Section 96 of the CPC filed by the appellant against the judgment and decree [dated 8th November, 2016 in Suit No.170/2010 (Unique ID No.02401C0469792010) of the Court of Civil Judge-10, Central] of dismissal of the suit filed by the appellant / plaintiff for recovery of possession of immovable property.

2. This appeal came up first before this Court on 11th August, 2017 when, without indicating the substantial question of law if any it raises, notice thereof was ordered to be issued and the trial Court record requisitioned.

3. The counsel for the respondent / defendant has been appearing. In none of the subsequent orders also, substantial question of law if any which arises, has been formulated.

4. The counsel for the appellant / plaintiff has argued:

- (i) that the appellant / plaintiff was a tenant under the respondent / defendant in the said immovable property;
- (ii) that the respondent / defendant had filed a suit against the appellant / plaintiff and against the MCD averring that the property was in a dangerous condition and seeking a direction to the MCD to demolish the property in exercise of its municipal functions;
- (iii) that during the pendency of the said suit, the respondent / defendant demolished the roof of the portion in the tenancy of the appellant / plaintiff;
- (iv) that the appellant / plaintiff, on his own, vacated the tenancy premises on the understanding that after the respondent / defendant has repaired/re-constructed/strengthened the same, the appellant / plaintiff will be put back into possession of the portion earlier in his tenancy; and,
- (v) the respondent / defendant however failed to do so and which compelled the appellant / plaintiff to institute the suit from which this Second Appeal arises.

5. I have enquired from the counsel for the appellant / plaintiff that in the aforesaid scenario, what substantial question of law this Second Appeal, against concurrent findings of the Suit Court and the First Appellate Court, can be said to be raising. The disputes aforesaid are purely factual and this Court, exercising jurisdiction under Section 100 of the CPC, cannot entertain an appeal on a finding of fact unless the parameters laid down by the

Supreme Court in *Sir Chunilal V. Mehta Vs. Century Spinning and Manufacturing Co. Ltd.* AIR 1962 SC 1314 reiterated in *Kashmir Singh Vs. Harnam Singh* (2008) 12 SCC 796 and in *Hero Vinoth Vs. Seshammal* (2006) 5 SCC 545 with respect to what constitutes a substantial question of law are satisfied.

6. I have further enquired from the counsel for the appellant / plaintiff, whether the appellant / plaintiff, in the suit filed by the respondent / defendant and during the pendency of which suit, the appellant / plaintiff claims to have vacated the tenancy premises on the understanding aforesaid, intimated the Suit Court of such understanding or the factum of the respondent / defendant having overreached the courts by demolishing the roof of the said property during the pendency of the suit.

7. The counsel for the appellant / plaintiff replies in the negative. He however contends that though the appellant / plaintiff did not file any document of having made any police complaint also of the illegal demolition of the roof of the tenancy premises carried out by the respondent / defendant, but when appeared as a witness deposed that he was carrying the said document with him and the respondent / defendant did not cross-examine the appellant / plaintiff thereon.

8. I fail to see as to how the aforesaid also would constitute proof of the document or how it can be said to raise a substantial question of law. The conduct of the suits is regulated by the procedure prescribed in the Civil Procedure Code, 1908 and other laws and which prescribe the stage at which documents are to be produced and the mode in which the same are to be

proved. Once the appellant / plaintiff had failed to file the documents and had failed to seek condonation of delay in filing the document, inspite of claiming to have the documents with him, there is no principle of law which requires the Court to draw any adverse inference against the opposite party for the reason of having not cross-examined the appellant / plaintiff on his claim of carrying some documents while appearing as a witness. The counsel for the appellant / defendant also has not cited any law / precedent requiring such adverse inference to be drawn.

9. The conduct of the appellant / plaintiff is found to be contrary to the normal course of human behaviour. Merely because a tenant vacates the premises, does not also raise any presumption that the same is on an understanding with the landlord to come back into possession of the premises. It was open in law for the appellant / plaintiff to, for the illegal act of demolition if any carried out by the respondent / defendant, seek remedies including under the provisions of the Delhi Rent Control Act, 1958.

10. The appeal is thus found to raise no substantial question of law.

11. Dismissed.

12. The Trial Court record requisitioned to this Court be returned forthwith.

RAJIV SAHAI ENDLAW, J.

AUGUST 07, 2018

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