

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

+ **RFA No. 904/2018**

% **2nd November, 2018**

SHEKHAR PILLAI

..... Appellant

Through: Mr. Satish Kumar, Advocate
(Mobile No. 9811053833).

versus

ASHOK KHETRAPAL & ORS

..... Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 46039/2018 (for exemption)

1. Exemption allowed, subject to just exceptions.

C.M. stands disposed of.

C.M. Appl. No. 46038/2018 (for delay)

2. For the reasons stated in the application the delay of 18 days in filing the appeal stands condoned, subject to just exceptions.

C.M. stands disposed of.

RFA No. 904/2018 and C.M. Appl. No. 46040/2018 (for stay)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/defendant no.3/tenant impugning the Judgment of the Trial Court dated 29.05.2018 by which the trial court has decreed the suit for possession and *mesne* profits filed by the respondent no.1/plaintiff/landlord.

4. The facts of the case are that respondent no.1/plaintiff pleaded that a Lease Deed dated 01.07.2008 was entered into between the appellant & respondents no. 2-4 with the respondent no. 1, and which was duly registered before the Sub-Registrar on 04.09.2008. The rent of the suit premises was Rs. 13,950/- per month. The Rent Deed was for a period of thirty six months and this Rent Deed expired by efflux of time on 30.06.2011. Since the appellant and respondent no. 2-4 in the suit failed to vacate the suit property in spite of termination of the tenancy vide Notice dated 29.07.2012, the subject suit for possession and *mesne* profits was filed.

5. Appellant and respondent no. 3 filed a joint written statement and pleaded that the appellant was in fact the owner of the suit property as the earlier owner being the father of the respondent

no. 1 treated appellant as his son because he was working as a domestic help in the house of the father of the respondent no.1. It was pleaded by appellant that the suit property was gifted to him by the father of the respondent no.1. It was also pleaded that the appellant was allowed to induct tenants and therefore he had inducted the appellant and respondent no. 3-4 in the suit property. Respondent no. 4 filed the written statement and pleaded that he had already vacated the suit premises and therefore the suit for possession could neither be decreed as against him nor was he liable for damages.

6. After pleadings were complete the trial court framed issues and parties led evidence, and these aspects are recorded in paras 7-12 of the impugned judgment and these paras read as under:-

7. From the pleadings of the parties, the following issues were framed on 31.03.2015:

1. Whether Vishan Singh and defendants no.2 to 4 were inducted as tenants by the plaintiff in shop bearing private no.3 on ground floor out of property no.E-47, Hauz Khas Market, New Delhi i.e. the suit premises? OPP.
2. Whether the plaintiff is entitled for recovery of rent as prayed in the plaint and if so, at what rate and for what period? OPP.
3. Whether the plaintiff is entitled for the relief of ejectment as prayed for? OPP.

4. Whether the plaintiff is entitled for recovery of damages/mesne profit/user charges as prayed for and if so, at what rate and for and if so, at what rate and for what period?

5. Whether the suit premises was gifted to the defendant no.3 Shekhar Pillae by the parents of the plaintiff Sh. Ruchiram and Smt. Rajrani? OPD3.

6. Whether the defendant no.4 Noor Mobeen had paid the rent till March 2012 and had already handed over the vacant possession of the suit premises in the month of March, 2012 with all his belongings? OPD4.

7. Whether the defendant no.3 has given leave to the plaintiff to let out the suit premises on rent to the defendant no.1, 2 and 4 for some income? OPD3.

8. Whether the suit has not been properly valued for the purpose for court-fees and jurisdiction? OPD.

9. Whether the plaintiff is entitled to any relief.

8. In support of his evidence, the plaintiff examined himself as PW-1 and tendered his affidavit as Ex.PW1/A. He reiterated and reaffirmed the contents of the plaint and replication and has relied upon following documents:

1. Site Plan of the suit premises Ex.**P-1**.

2. Original Lease Deed dated 01.07.2008 registered on 04.09.2008 Ex.**P-2**.

3. Copy of Notice dated 29.07.2012 Ex.**P-3**.

4. Postal Receipts Ex.**P-4** and Ex.**P-12**.

5. AD Card confirming the service of notice upon Vishan Singh Ex.P-13.

6. Envelops and AD Cards sent to defendant no.2 to 4 Ex.P-14 to **Ex.P-17**.

9. No other PW was examined by the plaintiff in support of his case and PE was closed vide order dated 03.03.2016.

10. In support of their evidence, defendants examined 3 witnesses in all. Defendant no.3 examined himself as D3/W1. Defendant no.4 is the second witness of the defendants and Sultan Ahmad is examined as third witness of defendants. Defendant no.3 examined himself as D3/W1 and tendered his Affidavit as

Ex.D3W1/A. He reiterated and reaffirmed the contents of the Written Statement and has relied upon following documents:

1. Copy of my Passport (original seen and returned) **Ex. D3W1/1.**
2. Copy of Election-I-Card of defendant no.3 (original seen and returned) **Ex.D3W1/2.**
3. Income tax returns of defendant no.3 for the financial year 2004-05 and 2005-06 respectively **Ex. D3W1/3 and Ex. D3W1/4.**
4. LIC Policy of defendant no.3 Ex. **D3W1/5** and Receipt of this LIC policy Ex. **D3W1/5A.**
5. Letter dated 08.03.2006 issued by Panchsheel Enclave Residents Welfare Association **Ex. D3W1/6.**
6. Copy of Delivery Challan dated 21.12.2003 **Mark A.**
7. Copy of photograph of the suit premises **Mark B.**

11. In support of his evidence, defendant no.4 Noor Mobeen examined himself as D4/W1 and tendered his affidavit as Ex.D4/1A. He reiterated and reaffirmed the contents of the Written Statement filed by him.

12. Defendant no.4 Noor Mobeen also examined Sultan Ahmad in support of his case as D4/W-3, who tendered his Affidavit as Ex.D4/3A. He deposed that he is the Manager of “Bobby Textiles” Firm and running a business of Ladies Garments from shop situated at Lajpat Nagar, Central Market, New Delhi. Noor Mobeen/defendant no.4 is working with “Bobby Textiles” as Salesman from April, 2012 till date. He relied on photocopy of his Driving Licence (OSR) Ex.D4/W3.”

7. In my opinion, the trial court has committed no error in decreeing the suit for possession and *mesne* profits by holding appellant & respondent no. 2-4 to be the tenants, because the execution of the registered Lease Deed by the appellant & respondent

no. 2-4 dated 01.07.2008 was admitted. Once the Lease Deed is admitted, the provisions of Sections 91 and 92 of the Evidence Act, 1872 come in and consequently the terms and conditions of the Lease Deed are final and will operate. Therefore there was a relationship of landlord and tenant between the parties, and the rate of rent of Rs. 13,950/- per month takes the premises outside the protection of the Delhi Rent Control Act, 1958. The service of the Legal Notice was also proved by the respondent no.1 along with postal receipts Ex.P-3 to P-17.

8. The case of the appellant that he had become owner of the suit property by virtue of the fact that suit shop was gifted in favour of appellant, has been rightly disbelieved and rejected by the trial court because a gift of an immovable property can only be by a registered Gift Deed under Section 123 of the Transfer of Property Act, 1882 and admittedly there is no registered Gift Deed in favour of the appellant. The trial court in my opinion has also committed no error in granting *mesne* profits at Rs. 15,000/- per month from 01.07.2011 to 31.12.2015 and Rs.16,000/- from 01.01.2016 till possession is handed over inasmuch as it has been held by this Court

in the judgment in the case of *M.C. Agrawal Huf v. M/s Sahara India & Ors. 2011 (183) DLT 105* that unless there is an evidence to the contrary Courts can always grant increase of rent by 10% ever year.

9. In view of the aforesaid discussion, I do not find any merit in the appeal and the same is hereby dismissed.

NOVEMBER 02, 2018

AK

VALMIKI J. MEHTA, J

