

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 25.07.2019

+

RFA 253/2018

COMPACT ENTERPRISES INDIA (P) LTD Appellant

Through: Mr.Rajesh Banati with Mr.Vikram
Pratap, Adv.

versus

BEANT SINGH

..... Respondent

Through: Mr.Harpreet Singh Uppal with
Mr.Mohit Dewan & Mr.Yash Prakash
Sharan, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

REV. PET. 177/2019 CM No.18546/2019 (for stay)

1. The present review petition filed under Order XLVII Rule 1 read with Section 114 of the Code of Civil Procedure filed by the tenant/appellant seeks review of judgment dated 14.02.2019 passed by HMJ Valmiki J Mehta, whereunder this Court had passed a common consent order disposing of the cross appeals filed by the landlord as also by the tenant. The tenant/appellant had preferred the appeal seeking reduction in mesne profits while the landlord had preferred the appeal seeking enhancement of mesne profits.

2. The appeals were disposed of by recording that the tenant will hand over to the landlord actual vacant possession of the suit property comprising of 5472 sq. ft. in the premises B-60, Ground Floor, G.T. Karnal Road Industrial Area, Delhi-33. It was further directed that the

tenant-appellant would pay to the landlord mesne profits at the rate of Rs.1 lakh per month w.e.f. 01.10.2008, which figure of Rs.1 lakh would be increased by 10% after every 12 months i.e. from 01.10.2009, 01.10.2011, etc.

3. In support of the review petition, Mr.Rajesh Banati, learned counsel for the appellant/tenant has raised three principal submissions in support of his contention that the consent order dated 14.02.2019 suffers from an error apparent on the face of the record. The first and the foremost being that even though this Court had granted an enhancement of 10% in the awarded mesne profits every alternate year which according to him is evident from the reference to 01.10.2009, 01.10.2011, the order erroneously records that the mesne profits will be enhanced by 10% every 12 months, which it is contended is an error apparent on the face of the record, warranting review of the order.

4. The second submission of Mr.Banati is that the order erroneously records that the tenant will hand over actual vacant possession of the suit property comprising of 5472 sq. ft. even though the documents on record including the lease deed clearly show that the appellant/tenant had taken only an area of 2200 sq. ft. on lease and could, therefore, hand over possession of any area more than the leased area. He, therefore, submits that the direction that the appellant would hand over possession of 5472 sq. ft. is also an error apparent on the face of the record. He further submits that this Court while directing that the tenant will hand over possession of the suit premises to the respondent, has overlooked the fact that the tenant had already

handed over possession of the tenanted premises to the respondent in July, 2015 itself. He thus contends that this in itself shows that the order suffers from errors apparent on the face of the record.

5. Mr.Banati finally submits that this Court while passing the aforesaid order has also overlooked the fact that Shri Ajay Gosain, who is now in possession of the suit property claims to have entered into an Agreement to Sell with the respondent and, therefore, the appellant no longer has any connection with the suit premises. He further submits that Shri.Ajay Gosain has vide order dated 18.07.2013 passed in the suit being CS(OS) 1590/2011 filed by him before this Court been granted interim protection qua his possession. An application moved by the respondent/landlord seeking vacation of the said order also stands rejected by this Court on 23.10.2018. He thus contends that this vital fact, which has been ignored while passing the order dated 14.02.2019, is also in itself sufficient to review the order.

6. Per contra, Mr.Uppal, learned counsel for the respondent while vehemently opposing the review petition, submits that bare perusal of the order passed by this Court shows that the parties were *ad idem* that the possession of an area of 5472 sq. ft. was to be handed over to the respondent by the appellant. He drawing my attention to this Court's order dated 12.11.2014, wherein a decree for possession in respect of the suit property was passed by this Court against the appellant with a specific direction that the possession of the entire area of 5472 sq. ft. would be handed over to the respondent. He submits that the appellant had challenged this Court's order dated 12.11.2014 before the Supreme Court by way of an SLP No.7531/2015, wherein he had

raised the very same grounds, as are being sought to be urged today before this Court regarding the area in its possession being only 2200 sq. ft. The appellant's SLP was dismissed *in limine* on 16.03.2015, whereafter even the appellant's review petition was also rejected by the Supreme Court on 15.07.2015. He finally submits that Mr.Ajay Gosain, who is claimed to be in possession of the remaining area of 3272 sq. ft. of suit property is hand in glove with the appellant. He submits that the appellant has deliberately concealed from this Court, the fact that Shri.Ajay Gosain's wife and his brother are the directors of the appellant/company. He further submits that this Court had after considering the various decisions on the aspect of enhancement of mesne profits specifically directed that the mesne profits will be enhanced by 10% every 12 months. The appellant is with a malafide intention trying to take undue advantage of the examples quoted in the order, wherein it has been recorded "01.10.2009, 01.10.2011 etc etc". He submits that the appellant and Mr.Ajay Gosain are in collusion with each other, which is evident from the fact that they are being represented by the same counsel in all the proceedings not only before this Court, but even before the learned trial court. Mr.Uppal submits that this petition is an abuse of the process of law and, therefore, prays that the same be dismissed with costs.

7. I have carefully considered the submissions of the learned counsel for the review petitioner/appellant as also of learned counsel for the respondent, and am of the view that the present review petition is not only wholly misconceived but it is an attempt to overreach the Court. In fact, the pleas taken by the appellant clearly shows that an

attempt is being made to wriggle out of a consent order passed by this Court by raising all kinds of pleas, which are to say the least, wholly frivolous. Even otherwise, the power of review, to be exercised by the Court under Order XLVII Rule 1 of the Code of Civil Procedure, 1908, has a limited scope; only to be exercised in case of an error apparent on the face of the record. It is settled law that an error which is not self-evident, but has to be detected by a process of reasoning, cannot be termed as an error apparent on the face of the record justifying the exercise of the power of review. In the facts of the present case, none of the grounds raised by the appellant fall within the ambit of the scope of a review and on this ground alone the review petition is liable to be dismissed.

8. However, since the learned counsel for the review petitioner has argued his review petition at length and has insisted that this Court passes a speaking order on the submissions raised by him. I deem it appropriate to deal with these grounds also.

9. As noted hereinabove, the first submission of the learned counsel for the appellant/review petitioner is that there is an error in this Court's order directing that the mesne profits be enhanced by 10% after every 12 months. A bare perusal of the order dated 04.02.2019 leaves no manner of doubt that this Court while passing the order, was categorical in directing that the enhancement of 10% in mesne profits would be after every 12 months. This direction is also in line with the various decisions of this Court including the decision in *M.C. Agarwal HUF vs. Sahara India & Ors.* 183 (2011) *Delhi Law Times* 105, and in my opinion a mere reference to "01.10.2009,

01.10.2011 etc. etc.” cannot in any manner imply that the direction for 10% enhancement in mesne profits after every 12 months is erroneous in any manner.

10. The second submission of Mr.Banati that the appellant was only in possession of 2200 sq. ft. Area in the suit premises, is equally meritless. The documents placed on record in the connected appeal being RFA no.1063/2017, filed by the landlord show that when this Court had vide its order dated 12.11.2014 passed in CM(M) No.193/2013, decreed the respondent’s suit for possession qua the suit property, the appellant had tried to take the very same plea at that stage, which was specifically rejected by the Court by observing as under:-

“7. Learned counsel for the respondent/defendant argued that the tenancy was not with respect to the entire ground floor but was only with respect to 2200 sq ft and the other area of about 3272 sq. ft. was with other persons, however, who are the ‘other persons’ are not mentioned in the written statement and when we see the agreement entered into between the parties on 1.4.2006 the same shows that the same is with respect to the ground floor. Though what is the area on the ground floor is not specified in the agreement, however there is an admitted document on record being the letter dated 26.7.2010 sent by the GT Karnal Road Industrial Estate C.E.T.P. Society (Regd.) to the respondent/defendant and which specifically states that the area with the respondent/defendant is 608 sq yds. Therefore, the contention of the respondent/defendant/tenant is misconceived that the tenancy is for an area of 2200 sq ft and not for the total area of 5472 sq ft. In any case, as stated above, why should the respondent/defendant have any concern with respect to other area beyond 2200 sq ft of which no tenancy rights are claimed and if there are any rights in favour of any other

person in an area of 3272 sq ft of the tenanted premises, then such person will claim rights but since the respondent/defendant does not claim any right in the same, it will not be prejudiced if the decree is passed with respect to the ground floor portion of the property bearing no. B-60, G.T. Karnal Road, Industrial Area, Delhi-110033 and which is an area of 608 sq yds as stated in the letter dated 26.7.2010.

*8. So far as the argument that Sh. Ajay Gosain has entered into an agreement to sell and therefore the suit for possession cannot be decreed against the respondent/defendant is concerned, this argument is wholly misconceived for various reasons. Firstly, such an argument can only be raised by Sh. Ajay Gosain and not the defendant company. Secondly, the agreement to sell in question being unregistered and consequently such an unregistered agreement to sell after 24.9.2001 when Section 53-A of the Act was amended by Act 48 of 2001, is not a document which at all can be referred to in law for the same to create any rights under Section 53-A of the Act in the nature of part performance. A mere agreement to sell cannot create an existing right to stay in the suit property once there is no protection under Section 53-A of the Act and that there is no tenancy for a fixed contractual period by a registered lease deed. Tenancy being a monthly tenancy, the same stood terminated in terms of notices dated 20.10.2008 and 23.12.2008 sent by the petitioner/plaintiff to the respondent/defendant, and in any case as stated above, service of notice is no longer material because summons of the suit when served, can be treated as a notice under Section 106 of the Act and in view of the ratio in the case of **M/s. Jeevan Diesels (supra)**.”*

11. The appellant had then assailed this aforesaid Court's order by way of a Special Leave Petition before the Hon'ble Supreme Court once again raising the plea that it was in possession of only 2200 sq. ft area, which SLP came to be dismissed on 16.03.2015. The

appellant's review petition before the Supreme Court also came to be rejected on 15.07.2015. It is, thus, evident that the appellant was well aware that its plea of being in possession of only 2200 sq. ft. already stood rejected and, only subsequent thereto a conscious statement was made by the appellant before this Court on 04.02.2019 that the vacant possession of the entire area of 5472 sq. ft. of the suit premises, would be handed over to the respondent.

12. I also do not find any merit in the third submission of Mr.Banati regarding the possession being with Mr.Ajay Gosain. In my opinion, the reliance placed by the appellant on the orders passed by this Court on 18.07.2013 and 23.10.2018 in the suit being CS(OS) 1590/2011 filed by Mr.Ajay Gosain to contend that this Court has protected his possession in the suit premises and, therefore, the appellant cannot give possession of the entire area of 5732 Sq. ft, is not only wholly misplaced, but is a blatant attempt to mislead this Court. The question as to whether Mr.Ajay Gosain was in possession of any portion of the ground floor of the suit property having been raised and rejected by this Court while passing the decree for possession on 12.11.2014, which order of this Court has attained finality. I fail to appreciate as to how the appellant can raise the said issue again and again.

13. Even otherwise, having perused the aforesaid two orders passed in CS (OS) No.1590/2011, I find that neither of the aforesaid two orders passed by this Court either hold or direct that the possession of the suit property is with Mr.Ajay Gosain. The only direction in the aforesaid two orders passed by this Court was to restrain the

respondent/landlord who was the defendant in the said suit from selling alienating, transferring, mortgaging or otherwise creating any third party right as regards, the title and possession of the suit property.

14. At this stage, I may note that despite a specific query made by this Court, the learned counsel for the appellant has not been able to give any explanation whatsoever, as to why if the appellant had already handed over possession of the property in July, 2015, as is now being claimed, a statement was made before this Court on 14.02.2019 that the appellant will hand over the vacant possession of the suit property to the respondent. In these circumstances, I have no doubt in my mind that this petition seeking review of a consent order has been filed in collusion with Mr.Ajay Gosain, who is none other than husband and brother of the directors of the appellant/company.

15. Before I conclude, I must express my anguish about how judicial time is being wasted in deciding such frivolous review petitions, wherein review of consent orders is sought, that too either when the author of the judgment stands retired or is unfortunately since deceased, as in the present case. In my view, the present review petition is merely a dishonest attempt on the part of the tenant to somehow continue residing in the tenanted property by trying to wriggle out of consent orders. Such tendency of dishonest litigants need to be nipped in the bud and dealt with a heavy hand and, therefore, it is a fit case where the review petition needs to be dismissed with exemplary costs.

16. The review petition being wholly meritless is dismissed with costs of Rs.1 lakh be paid to the respondent/landlord. The pending application also stands dismissed.

JULY 25, 2019/gm

REKHA PALLI, J

