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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 24th October, 2019

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CM (M) 834/2014 & CM APPL. 4918/2016

U. P. CO-OPERATIVE FEDERATION LTD. Petitioner

Through: Mr. Rajat Mathur, Mr. Sarthak Nayar
and Mr. Mohit Gulati, Advocates. (M:
9811556470)

Versus

GURPREET SINGH OBEROI Respondent

Through: Mr. A. S. Chandiok, Senior Advocate
with Ms. Avi Singh, Ms. Purnima,
Ms. Neelam and Ms. Shruti,
Advocates. (M: 9899061438)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The Petitioner/Tenant – U.P. Co-operative Federation Ltd. (*hereinafter*, “*Tenant*”) has filed the present petition under Article 227 of the Constitution of India challenging the impugned judgment dated 23rd May, 2014 by which the appeal against the eviction order dated 7th June, 2013 was dismissed.

2. The brief background is that the Tenant had taken the second floor of property bearing No.F-13, South Extension, Part-II, New Delhi - 110049 (*hereinafter*, “*suit property*”) on rent from its erstwhile owner - Ms. Shaukat Bano. The suit property was, thereafter, purchased by the Respondent/Landlord – Mr. G. S. Oberoi (*hereinafter*, “*Landlord*”) vide a registered sale deed dated 20th September, 1991. The ownership of Mr. Oberoi is not in dispute. On 21st August, 2010, the petition for eviction was

preferred under Section 14(1)(d) of the Delhi Rent Control Act, 1958 (*hereinafter*, “DRC”). The Rent Controller, vide order dated 7th June, 2013, allowed the petition and granted the eviction in the following terms:

“43. In the result, the petition is allowed. An eviction order is hereby passed in respect of premises No.F-13 (Second Floor), South Extension, Part-II, New Delhi-110049 and described as such in the site plan. The respondent is directed to handover vacant possession of demised premises to landlord in two months from today.”

3. The appeal against the said order was preferred by the Tenant and was dismissed by the impugned order dated 23rd May, 2014. Thereafter, the present petition was filed and notice was issued on 10th September, 2014. The order dated 10th September, 2014 records an oral statement by the Id. counsel for the Landlord that the orders dated 23rd May, 2014 and 7th June, 2013 would not be executed. However, the said undertaking of the Id. counsel for the Landlord was vacated on 10th February, 2015. Reinstatement of the said statement was sought, which was rejected on 11th March, 2015. On 20th March, 2015, the Landlord took possession of the suit property in the execution proceedings.

4. The matter has been listed for final hearing today. Mr. Rajat Mathur, Id. counsel for the Tenant, has addressed submissions on behalf of the Tenant. His submissions are two-fold. The first submission is that the finding of the Trial Court, that there was no usage of the suit property during the period prior to the filing of the petition, is incorrect. He relies upon the entries made in the Visitor’s Register, specifically from February, 2010 onwards to show that the suit property was being used as a guest house by employees of the Tenant. These employees had visited the premises on

various dates, including on 19th February 2010, 27th February 2010, 2nd March, 2010, 9th March, 2010, 21st July 2010, 23rd July 2010 and 6th August, 2010. He submits that the Rent Controller's finding, that the suit property was not being used as the electricity consumption does not establish the same, is an incorrect inference that has been drawn. He submits that the Visitor's Register, which was placed on record, clearly establishes that the suit property was being continuously used as a guest house by the Tenant and the findings of the Trial Court, as contained in paragraph 39 onwards, are thus, untenable.

5. He submits that the Trial Court's approach, in trying to connect the Visitors Register with the consumption of electricity was not permissible, inasmuch as the electricity consumption was only one basis for establishing use and occupation of the suit property. The Visitors Register could not have been overlooked as the same was completely genuine and established that various officials of the Tenant visited the suit property on various dates. He further submits that the manner in which the electricity bill has been analysed by the Rent Controller is also not tenable, inasmuch as it is not always necessary that the electricity consumption tallies with the occupancy of the guest house. The Landlord's case having been that there was no usage at all by the Tenant, until and unless the same was established without any doubt, eviction could not have been directed. He further submits that the Landlord had taken on the onus upon himself to show that there was no occupation or use of the suit property six months prior to the filing of the petition on 21st August, 2010. The Visitors Register was irrefutable proof that the suit property was being used by the Tenant.

6. On the other hand, Mr. Chandiok, Id. Sr. Counsel for the Landlord,

submits that as per the order dated 19th December, 2002 of the Tenant, the suit property was not to be used as a guest house as per the Tenant's own internal order and the Tenant had continued to remain in possession of the suit property to only use it as the residence of its Regional Manager.

7. It is further submitted by Mr. Chandiok that the cross-examination of the witness shows that the suit property was never used as the residence of the Regional Manager, PCF. Thus, from the year 2002, the factual position has been that the guest house was shut and no one was occupying the suit property. In any event, Id. counsel submits that the findings of the Rent Controller, as also the Id. ADJ, are clear and categorical that there was no usage of the suit property. The Landlord was thus entitled to the decree of eviction under Section 14(1)(d) of the DRC Act.

8. This Court has heard the submissions and has perused the relevant portion of the trial court record. The first glaring fact is the order dated 19th December, 2002 passed by the Tenant. The said order reads as under:

“A meeting of PCF Administrative Committee was held on 03.12.2002 and in the meeting, the decision which was taken on 04.10.2002 regarding the Guest House was reconsidered and it was decided by the PCF Administrative Committee to close the Guest House immediately situated in Delhi. The committee decided that the vacant premises may be used for residence of Regional Manager, PCF New Delhi and no admissible House Rent Allowance may be released to the Regional Manager PCF to whom allotment has been given and the allowance may be adjusted as rent and the employees working there may be transferred somewhere else. Accordingly, the Guest House which is situated in New Delhi is closed with immediately effect.”

9. The above order being an undisputed document and an established fact before the Trial Court, there cannot be any doubt that the only purpose for which the suit property could have been used after 2002, is for the residence of the Regional Manager, PCF. The cross-examination recorded before the Trial Court clearly shows that one Mr. Vishwa Bandhu, who appeared as RW-1, admitted that the suit property has never been used as residence of the Regional Manager, PCF. The relevant portion of the cross-examination is extracted herein below:

“... I have the present charge of Regional Manager of respondent corporation in Delhi. Mr. Mohd. Afjal was the Regional Manager of the respondent corporation before me in Delhi. I can depose about the tenure of Mr. Mohd. Afjal as Regional Manager in Delhi only after seeing the official record. When Mr Mohd. Afjal was posted in Delhi he was residing at Sarita Vihar but I do not know his then exact address. It is correct that I have never resided in the suit premises. The respondent corporation is having two properties in Delhi, out of which suit property is on rent and the property at IODDA Complex, Udai Park, Khel Gaon, New Delhi is owned by the respondent corporation. The respondent corporation is not having any other property either as a owner or as tenant in Delhi. It is wrong to suggest that as and when employees/ staff of respondent corporation visit Delhi they used to stay at UP Bhawan Delhi. It is correct that since 2002 the premises in dispute have never been used as residence of Regional Manager of Respondent corporation. It is correct that one Mr. Praveer Kumar was the Managing Director of the respondent corporation in the year 2002. The witness is confronted with photocopy of the order dated 19.12.02 purportedly issued by Mr. Praveer Kumar in the capacity of Managing Director, the witness states that he is not aware of the said

order. The witness is shown the photocopy of the notice issued u/o 12 rule 8 CPC and the witness deposes that it has been received by the respondent corporation. The photocopy of the notice alongwith AD card and postal receipt is collectively exhibited as Ex.RW1/P1....”

10. Thus the admission that the Regional Manager never used the premises for his residence is clear and categorical. Even if there were some visitors, who were ingressing and egressing the suit property, the same cannot be said to justify continued use and occupation of the suit property and thus, no fault can be found with the decree on eviction that has been passed. Moreover, even insofar as the Visitor's Register is concerned, the said Register merely shows that some persons were visiting the suit property. However, the same does not, in any manner, establish that the said individuals were, in fact, staying in the suit property or were using it for the purposes of their official duties.

11. The said issue is a question of fact. The Rent Controller has arrived at a categorical finding that there was no proper usage of the suit property for the purpose for which it had been let out. Insofar as the Appellate Court is concerned, the Appellate Court has arrived at the finding that during the relevant period, there has been only one entry in the Visitors Register and, according to the Appellate Court, the said Register is not proof in accordance with law as the signatures have not been identified and there is a complete possibility of the same having been fabricated. The Register and the entries made therein are not corroborated by any independent evidence, as required under the Indian Evidence Act, 1872. This itself justifies the eviction order passed by the Trial Court.

12. On the above analysis of the order of the Rent Controller and of the Appellate Court, as also the evidence before the Court, this Court does not consider the present petition as one which warrants interference under Article 227 of the Constitution of India. Moreover, the indisputable fact that the order dated 19th December, 2002 required the shutting down of the guest house and only permitted the premises to be used as the residence of the Regional Manager is irrefutable and cannot be challenged in the present petition. The statement of the witness is also clear and categorical that the premises was never used as the residence of the Regional Manager.

13. Accordingly, the petition and all pending applications are dismissed. The trial court record be sent back to the Trial Court.

**PRATHIBA M. SINGH
JUDGE**

OCTOBER 24, 2019/dk

Corrected and released on 1st November, 2019