

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CITY CIVIL COURT APPEAL No.387 of 2018

JUDGMENT:

This City Civil Court Appeal, under Section 96 of the Code of Civil Procedure, 1908, is filed by the appellant/defendant, challenging the judgment and decree dated 05.09.2018, passed in O.S.No.434 of 2017, by the IV Senior Civil Judge, City Civil Court, Hyderabad, whereby, the suit filed by the respondent herein/ plaintiff against the appellant herein/defendant, for eviction and mesne profits was decreed with costs, directing the defendant to vacate and deliver vacant possession of the suit schedule premises to the plaintiff within two months from the date of the said decree and further directing the defendant to pay arrears of rent @ Rs.62,500/- per month from July, 2018 onwards to plaintiff by deducting the earnest amount of Rs.1,20,000/- paid by defendant to the plaintiff and also directing the defendant to pay future rents at the same rate from the date of said decree till the date of delivery of possession.

2) Heard Sri Srinivas Polavarapu, learned counsel for the appellant/defendant, Sri A.Sudershan Reddy, learned Senior Counsel representing Sri G.Madhusudhan Reddy, learned counsel for the respondent/plaintiff and perused the record.

3) Learned counsel for the appellant/defendant would contend that the subject suit is not maintainable against the appellant/ defendant, who is the Managing Director of the Helios Fitness Services (Pvt.) Limited company. The suit ought to have been

filed against the said company, who is the actual lessee and is in occupation of the suit schedule premises. There was no tenancy in between the plaintiff and the defendant. This aspect was not considered by the Court below and erroneously decreed the subject suit. It is further contended that Ex.A.1-legal notice dated 29.07.2016 is invalid as it was issued through General Power of Attorney holder by name Gangavalli Venkata Ranga Rao. In fact, there was no GPA on that day. Ex.A.4-copy of GPA, does not reveal the date and it was introduced at a later stage. There is non-compliance of Section 106 of Transfer of Property Act, 1882 (for short "T.P.Act"). On these scores, the impugned judgment and decree is liable to be set aside. There is ample evidence on record to establish that the Helios Fitness Services (Pvt.) Limited, had paid the rents to the respondent/plaintiff/landlady. I.A.No.3 of 2019 filed to receive the documents such as cheques, vouchers, receipts, is required to be allowed as those documents are necessary for determination of the subject *lis*. The findings recorded by the Court below are contrary to the material on record and ultimately prayed to set aside the impugned judgment and decree dated 05.09.2018 and allow the appeal as prayed for. In support of his contention, learned counsel relied upon the following decisions:

- i) *Tata Engineering and Locomotive Co. Ltd vs. The State of Bihar and others*¹
- ii) *V.Rajaraman Liquidator of Globe United Engineering and Foundry Co. Ltd vs. M/s. Hindustan Brown Boveri Ltd.*²

¹ AIR 1965 Supreme Court 40

² AIR 1974 Delhi 200

- iii) *M/s. Ariane Orgachem Pvt. Ltd. vs. Wyeth Employees Union and others*³
- iv) *Union of India vs. K.V.Lakshman and others*⁴.

4) On the other hand, Sri A. Sudershan Reddy, learned Senior Counsel appearing for the respondent/plaintiff would contend that the appellant/defendant, who was examined as DW.1 had admitted in his cross-examination with regard to the lease in between him and the respondent/plaintiff. Ex.A.4-copy of GPA reflects the power of attorney given to Sri G. Venkata Ranga Rao, to issue legal notice for eviction under Section 106 of T.P.Act, through an Advocate. Ex.A.1-office copy of legal notice demonstrates the same. Furthermore, the contention of the appellant/defendant that GPA is introduced subsequently, is without any substance. The suit schedule property was taken on lease by the appellant/defendant. There are documents to substantiate the same. Lease in between the parties to the suit was extended from time to time. There is valid termination of tenancy of the appellant/defendant under Ex.A.1-legal notice. All the contentions raised by the appellant/ defendant before this Court, are unsustainable. The findings recorded by the Court below in the impugned judgment and decree are based on oral and documentary evidence on record and ultimately prayed to dismiss the appeal sustaining the impugned judgment and decree passed by the Court below.

5) In view of the submissions made by both sides, the following points that arise for determination in this appeal:

³ AIR 2016 Supreme Court 1761

⁴ 2016(5) ALD 38 (SC)

- 1) *Whether there was a lease in between the appellant/ defendant and the respondent/plaintiff or between the Helios Fitness Services (Pvt.) Ltd company and the respondent/ plaintiff?*
- 2) *Whether there was a valid General Power of Attorney to issue notice of eviction under Section 106 of T.P.Act?*
- 3) *Whether Ex.A.1-legal notice dated 29.07.2016 and Ex.A.4-General Power of Attorney dated 10.06.2016, suffer from any material deficiencies?*
- 4) *Whether the judgment and decree dated 05.09.2018 passed in O.S.No.434 of 2017, by the IV Senior Civil Judge, City Civil Court, Hyderabad, is liable to be set aside?*
- 6) POINT No.1: The subject suit in O.S.No.434 of 2017 is filed by the respondent/plaintiff seeking eviction of the appellant/ defendant from the suit schedule premises and to grant mesne profits. The respondent/plaintiff had deposed as PW.1. She stated with regard to subsisting lease in between the parties to the litigation and getting it extended from time to time. Through her, Ex.A.1-office copy of legal notice dated 29.07.2016 along with receipt, Ex.A.2-reply notice dated 17.10.2016 issued by the defendant in response to notice dated 29.07.2016, Ex.A.3-certified copy of plaint in O.S.No.118 of 2016 on the file of XI Additional Chief Judge, City Civil Court, Hyderabad, filed by the defendant against the plaintiff and Ex.A.4-General Power of Attorney (GPA) dated 10.06.2016 executed by the plaintiff in favour of her brother i.e, G.V.Ranga Rao, were marked.

7) As seen from the record, Ex.A.3-certified copy of plaint in O.S.No.118 of 2016, shows that the appellant/defendant had filed a suit for perpetual injunction against the respondent/plaintiff and another, admitting the ownership of the respondent/plaintiff over the suit schedule property and also the jural relationship in between him and the respondent/plaintiff as tenant and landlady. Further, there is a specific mention in Ex.A.3 that the suit schedule property was let out to the appellant/defendant on 03.07.2003 under a lease agreement and thereafter, the appellant/defendant started running Gymnasium and Fitness Centre under the name and style "Helios Fitness Centre" in the suit schedule property and paid rents regularly to the respondent/plaintiff. In Ex.A.2-reply notice dated 17.10.2006 issued by the appellant/defendant in response to Ex.A.1-legal notice, there is no denial of tenancy by the appellant/defendant and there is no contention that Helios Fitness Centre was/is the tenant of the suit schedule premises. As per the evidence and the averments in Ex.A.1-legal notice, the tenancy was finally extended till 02.01.2016 and thereafter there was no extension. Though the lease agreement dated 03.02.2015 is not filed, the existence of said lease agreement is admitted by the appellant/defendant in his evidence. The appellant/defendant (DW.1) admitted in his evidence about filing of the suit in O.S.No.118 of 2016 on the file of XI Additional Chief Judge, City Civil Court, Hyderabad. Though the defendant contended that the premises was taken on lease by the Helios Fitness Services (Pvt.) Limited, there is no single document to substantiate the same. On the

other hand, it is the contention and evidence of the respondent/plaintiff that the appellant/defendant took the suit schedule premises on lease, extended his business and established the Helios Fitness Centre therein. Merely because the cheques and correspondence is made between the landlady and the so-called company, it would not make out a case that there was subsisting lease in between the so-called company and the landlady. So there is ample oral and documentary evidence on record to substantiate the lease in between the appellant/defendant and the respondent/plaintiff. Therefore, this Court is inclined to dismiss the I.A.No.3 of 2019 filed by the appellant under Order XLI Rule 27 of CPC, vide separate order, by assigning reasons. In the said I.A.No.3 of 2019, the appellant/defendant wanted to get the documents i.e, certified copy of certificate of incorporation dated 05.08.2003, I.T Returns acknowledgments, original telephone bill receipt, authenticated copies of account maintained in the ICICI Bank, letter dated 24.02.2005 addressed by the respondent/plaintiff to the company and letter dated 05.04.2005 addressed by the Company to the respondent/plaintiff, on record to substantiate the payments and correspondence made in between the respondent/plaintiff and the Helios Fitness Services (Pvt.) Ltd. company. These documents do not prove any lease in between the parties as contended by the appellant/defendant and those documents do not merit consideration.

8) In view of the unimpeachable evidence on record, it can be safely concluded that the appellant/defendant is the tenant of the

respondent/plaintiff in respect of the suit schedule property. Furthermore, the so-called Helios Fitness Services (Pvt.) Ltd, is not impleaded either in the suit or in the appeal to establish that the suit schedule premises was taken on lease by it. Moreover, it is the contention of the learned counsel for the appellant/defendant that the subject suit is not maintainable against the appellant/defendant, who is the Managing Director of Helios Fitness Services (Pvt.) Ltd. and the suit ought to have been filed against the said company, who is the actual lessee and is in occupation of the suit schedule premises. This defence setup by the appellant/defendant appears to be false one. It is invented only to defeat the claim of the respondent/plaintiff. Having conceded the subsistence of lease in between him and the respondent/plaintiff in O.S.No.118 of 2016 on the file of XI Additional Chief Judge, City Civil Court, Hyderabad, the appellant/defendant has no locus standi to take such a defence, he being the Director of the Helios Fitness Services (Pvt.) Ltd. company.

9) In *Tata Engineering and Locomotive Co. Ltd's* case (1 supra), cited by the learned counsel for the appellant, the Hon'ble Apex Court held as follows:

"Para 24: The true legal position in regard to the character of a corporation or a company which owes its incorporation to a statutory authority, is not in doubt or dispute. The corporation in law is equal to a natural person and has a legal entity of its own. The entity of the corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; its creditors

cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly, the creditors of the members have no right to the assets of the corporation. This position has been well-established ever since the decision in the case of Salomon v. Salomon & Co. (1897) A.C. 22, H.L. was pronounced in 1897; and indeed, it has always been the well-recognised principle of common law. However, in the course of time, the doctrine that the corporation or a company has a legal and separate entity of its own has been subjected to certain exceptions by the application of the fiction that the veil of the corporation can be lifted and its face examined in substance. The doctrine of the lifting of the veil thus marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognised exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirements of different economic problems, the theory about the personality of the corporation may be confined more and more."

10) In *V.Rajaraman Liquidator of Globe United Engineering and Foundry Co. Ltd's* case (2 supra), the High Court of Delhi, held as follows:

"Para 29: The form of the suit is not correct. A company in liquidation retains its corporate powers including the power to sue, although such powers must be exercised through the liquidator. The suit on behalf of the company in liquidation ought to be instituted in the name and on behalf of the company and not in the name of the liquidator."

11) In *Ariane Orgachem Pvt. Ltd.'s* case (3 supra), the Hon'ble Apex Court held as follows:

"Para 29: The Appellant-Company has also contended that the Respondent-Union has also raised the legal question regarding the competency of the Deputy Labour Commissioner in passing the order of reference for the first time before this Court and the same was not raised before the High Court, therefore, the same shall not be permitted to be raised in these proceedings and this

Court need not go into this aspect of the matter which is wholly untenable in law. This contention raised by the learned senior Counsel for the Appellant is rejected as the said contention is contrary to the issues/principles laid down by the Privy Council and this Court in the following judgments:

In Connecticut Fire Insurance Co. v. Kavanagh (1892) A.C. 473, 480 (PC), Lord Watson has observed as under:

When a question of law is raised for the first time in a court of last resort, upon the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent but expedient, in the interests of justice, to entertain the plea.

The aforementioned view of the Court of Appeal have been relied upon by this Court in Gurcharan Singh v. Kamla Singh MANU/SC/0402/1975 : (1976) 2 SCC 152. Therefore, with regard to the above mentioned aspect regarding the plea of the competency of the Deputy Labour Commissioner to pass an order of refusal to make a reference, although is being raised before this Court for the first time, is based on admitted facts. Hence, in accordance with the view taken by the Court of Appeal in Connecticut Fire Insurance Company case (supra) and this Court in Gurcharan Singh case (supra), the argument advanced by the first Respondent-Union deserves to be considered by this Court. Similar view has also been taken by this Court in the cases of VLS Finance Limited v. Union of India (MANU/SC/0495/2013 : (2013) 6 SCC 278) and Greater Mohali Area Development Authority v. Manju Jain (MANU/SC/0627/2010: (2010) 9 SCC 157), wherein it has been held that pure question of law can be raised at any stage of litigation. In National Textile Corporation v. Naresh Kumar Jagad (MANU/SC/1028/2011: (2011) 12 SCC 695), it has been held by this Court that a new ground raising pure legal issue for which no inquiry or proof is required, can be raised at any stage. Further, in the case of Port Trust v. Hymanshu International (MANU/SC/0046/1979 : (1979) 4 SCC 176), this Court has held thus:

2...The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and

just to the citizens. of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable....

12) In Union of India vs. K.V. Lakshman's case (4 supra), the Hon'ble Apex Court held as follows:

"Para 37: Order 41 Rule 27 of the Code is a provision which enables the party to file additional evidence at the first and second appellate stage. If the party to appeal is able to satisfy the appellate Court that there is justifiable reason for not filing such evidence at the trial stage and that the additional evidence is relevant and material for deciding the rights of the parties which are the subject matter of the lis, the Court should allow the party to file such additional evidence. After all, the Court has to do substantial justice to the parties. Merely because the Court allowed one party to file additional evidence in appeal would not by itself mean that the Court has also decided the entire case in his favour and accepted such evidence. Indeed once the additional evidence is allowed to be taken on record, the appellate Court is under obligation to give opportunity to the other side to file additional evidence by way of rebuttal."

The factual aspect with regard to the letting of the suit schedule premises is adjudicated basing on the oral and documentary evidence placed on record. The aforementioned decisions are not based on similar facts and circumstances of the case on hand and they are distinguishable. Therefore, they are not helpful to the case of the appellant/defendant. In view of the clinching evidence on record, point No.1 is decided against the appellant/defendant and in favour of the respondent/plaintiff i.e, holding that the appellant/defendant was the tenant of the suit schedule premises as contended by the respondent/plaintiff.

13) POINT Nos.2 & 3: The objection taken by the appellant/defendant is that Ex.A.1-legal notice dated 29.07.2016 is invalid as it was issued through GPA holder by name Sri G.Venkata Ranga Rao and that there was no GPA as on the date of issuance of said legal notice. It may be noted that Ex.A.4-copy of GPA reveals that the respondent/plaintiff had given power of attorney to her brother i.e, Sri Gangavali Venkata Ranga Rao, to issue notice of eviction to the appellant/defendant under Section 106 of T.P.Act. Ex.A.1-office copy of legal notice dated 29.07.2016 demonstrates that on behalf of respondent/plaintiff, the GPA holder Sri G.Venkata Ranga Rao, got issued notice of eviction to the appellant/defendant, terminating the tenancy with effect from 31.10.2016 and there is clear-cut demand to vacate and deliver vacant possession of the suit schedule premises to the respondent/plaintiff by 01.11.2016. It is also contended by the appellant/defendant that Ex.A.4-copy of GPA does not bear the date and it was introduced as an afterthought. There is no substance in this contention as Ex.A.4-copy of GPA, clearly shows that it was executed on 10th June, 2016. Further, the respondent/plaintiff on oath has stated about execution of Ex.A.4-GPA in favour of Sri G.Venkata Ranga Rao, before issuing legal notice of eviction to the appellant/defendant. When there is a statement on oath with regard to the entrustment of power to the GPA holder to issue legal notice and pursuant to the power given, legal notice got issued by the GPA holder-G.Venkata Ranga Rao, cannot be faulted. Therefore, it is held that there was valid GPA to issue Ex.A.1-legal notice dated 29.07.2016. Furthermore,

pursuant to Ex.A.1-legal notice, the appellant/defendant had also issued Ex.A.2-reply notice dated 17.10.2016. Therefore, Ex.A.1-legal notice complies all the requirements under Section 106 of T.P.Act to seek eviction of the appellant/defendant as sought in the subject suit. For the aforementioned reasons, both the points are answered against the appellant/defendant and in favour of the respondent/plaintiff.

14) POINT No.4: In view of the facts and circumstances of the case, the Court below is justified in passing the impugned judgment and decree. The findings recorded by the Court below are based on oral and documentary evidence on record. There is nothing to take a different view. All the contentions raised on behalf of appellant/defendant are unsustainable. The appeal is devoid of merits and is liable to be dismissed.

15) In the result, the appeal is dismissed, confirming the judgment and decree dated 05.09.2018, passed in O.S.No.434 of 2017, by the IV Senior Civil Judge, City Civil Court, Hyderabad, with costs.

Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

Dr. SHAMEEM AKTHER,J

Date:07th February, 2020
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