

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

% Judgment reserved on: 03rd November, 2020
Judgment delivered on: 05th January, 2021

+ CM(M) No. 37/2020

RAJAN BHANDARI & ANR

... Petitioners

versus

SHRINIWAS VERMA

..... Respondent

Advocates who appeared in this case:

For the Petitioners: Petitioner in person

For the Respondent: Mr. Karan Babuta, Advocate with Respondent in person

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner impugns judgement dated 30.09.2019 whereby decree of possession has been passed against the petitioner under order 12 rule 6 Code of Civil Procedure. Trial Court in the impugned order has held that in the Written Statement there are categorical admissions particularly in paragraphs 3(a) and (b) of the Written Statement.

2. Respondent has filed the subject Suit for Possession, Permanent Injunction and Damages against the Petitioners contending that

respondent is the owner of built-up property bearing number 367 – A – 368 village Pana Udyan, Narela, Delhi consisting of ground floor and first floor.

3. It is contended in the plaint that the Petitioners approached the Respondent in the month of July 2017 and requested for grant of short period tenancy for two months. Since, the first floor of the property was lying vacant and there was time of four – five months in the shifting of the respondent's son to the said property, Respondent agreed to give the portion of the suit property on the First Floor consisting of a two rooms set on rent for a short period of two months to the petitioner, with effect from August 2017 at the rate of Rs. 4,000/- per month excluding all charges.

4. It is contended that the petitioner shifted in the month of August 2017 on the first floor and started living therein. Respondent asked petitioner No. 1 to execute the Rent Agreement but the same was avoided by the petitioners and they assured that since they wanted the premises only for two to three months Respondent shouldn't worry.

5. It is contended that petitioners only paid rent for two months vide cheques both for the sum of Rs. 4,000/- each. Petitioners thereafter neither vacated the premises nor paid the rent and other charges for the rest of the months. A cheque was given in the month of December 2017 for Rs 8,000/- but the same was dishonoured.

6. It is contended that on account of non-payment of rent and electricity charges, electricity to the portion of the petitioner got disconnected.

7. It is contended that Petitioners would quarrel with the respondent and even caused injury to the respondent for which an MLC was recorded on 29.04.2018 and a case was registered against the petitioners.

8. It is contended that even though petitioners did not pay the amount towards electricity charges, the electricity was restored consequent to directions issued by this court.

9. It is contended that since petitioners have neither paid the rent nor other charges, respondent has been constrained to file the subject Suit for Possession, Recovery of rent/damages and Permanent Injunction.

10. Trial court in the impugned order has reproduced the admissions made in paragraphs 3(a) and (b) of the Written Statement. Paragraphs 3(a) and (b) of the written statement read as under:

“a) That the defendants are staying in the suit property along with children since 30.09.2018 as a tenants.

b) At the time when the defendants took the property on rent from the plaintiff, the defendant paid an advance rent

of Rs.4000/- through cheque dated 19.09.2018 and thereafter also paid a sum of Rs. 20,000/- as refundable security deposit in cash, however, despite time and again approaching the plaintiff to enter into a written lease agreement, the plaintiff kept dillydallying and has not executed an agreement in writing till date. In fact, the plaintiff had further received Rs. 4000/- (300/- cash and 3700/- by way of cheque) amounts from the defendant No. 1 in favour of Mr Binay Jodi for execute regd. Rent agreement, who is well-known of plaintiff. Copy of the passbook of the defendant no. 1 bearing customer ID No. 77854806 reflecting the payments made to the plaintiff and to Mr Binay Jogi, on account of plaintiff, is annexed herewith.”

11. In view of the above admissions made by the petitioners in the Written Statement in the impugned order, Trial Court has held that it is crystal clear that the Petitioners were tenants in respect of the Suit Property and since there is a clear and unambiguous admission on the part of the Petitioners with respect to the relationship of tenant and landlord in paragraph 3(a) and (b) of the written statement, Decree of Possession under order 12 rule 6 CPC, in respect of Suit Property was passed.

12. When this petition was listed before this court on 15.01.2020, this court issued notice to the respondent limited to the issue of grant of time to vacate the premises. Petitioners were directed to bring a sum of Rs. 15,000/- to pay to the respondent. Thereafter there was a

lockdown and the cases could not be taken up.

13. On 23.07.2020, it was contended by the respondent that as on 31.07.2020, the petitioners were in arrears of rent of about 21 months @ Rs. 4,000/- per month.

14. Counsel for the petitioner, under instructions from the petitioner, who was present in the office of the Counsel stated that petitioner would clear the entire arrears in four equal monthly instalments and would also continue to pay monthly use and occupation charges @ Rs. 4,000/- per month regularly.

15. On the above assurance, the case was adjourned and the question with regard to grant of some reasonable time to vacate the premises was deferred subject to petitioners complying with the assurance given to the court with regard to payment of arrears of use and occupation charges.

16. The Order directing the petitioners to clear the arrears of use and occupation charges was not complied with. On 07.10.2020, the advocate appearing on behalf of the petitioner sought discharge contending that he had been appointed as an Amicus Curie and since petitioners were not giving proper instructions he could not continue to represent the petitioners. Noting his contentions, said advocate was discharged. On the request of the Petitioner No. 1, case was thereafter

adjourned to 12.10.2020 and thereafter to 15.10.2020 when on the request of the petitioner another advocate was appointed to represent the petitioner by the court.

17. On the next date i.e. 03.11.2020 the second advocate appointed by the court also showed his inability to continue to represent the petitioner.

18. Petitioner No. 1 who was present in person thereafter made his submission on his petition and contended that the respondent by illegal means had sought to evict the petitioner and had assaulted him and his family and in the process had caused substantial loss of property to him of over Rs. 5 lakhs.

19. It was contended that the respondent has connived with the police officers to evict the petitioners and his family from the tenanted premises. It was contended that because the respondent has caused substantial monetary loss to the petitioner, respondent had filed the subject Suit as a counter blast. No submission was made on the merits of the Impugned order. Orders in the case were reserved and the Petitioner was given an opportunity to file a written note of his submissions.

20. Written Note of submissions has been filed by the petitioner, written in hand, which is in the Hindi vernacular. Though the index

states that there are annexures to the note but no annexures have been filed and only a 7 page handwritten note has been handed over to the court master. There is an endorsement on the index that “*All the documents, details, proofs, records etc. are available to produce in Hon’ble Court if required*”. The Note as filed is taken on record.

21. In the written note filed by the petitioner, petitioner has made several averments which are completely unrelated to the case at hand and are not relevant.

22. He has contended that in a scheme of political conspiracy, attempt to kill, illegal actions, Respondent has misled the court in connivance with the police. Respondent should compensate the Petitioner for loss of his property and damage caused to the tune of Rs. 5,61,000/-. Thereafter, he has given a description of his family; about himself and his mission in life i.e. to become the Prime Minister and President of India; his problems; history etc.

23. In view of the above, this court has once again examined the Complaint and the Written Statement filed by the petitioners in detail.

24. Respondent had filed the subject Suit *inter alia* for Possession contending that he is the owner of the property and had let out the tenanted premises to the Petitioners on a monthly rent of Rs. 4,000/-. There is no lease deed executed between the parties. The Petitioners

are in arrears of rent and other charges. Notice dated 20.08.2018 terminating the tenancy was served on the Petitioners.

25. In response to the contention of the respondent in the plaint, it is admitted by the petitioners that they are tenants in the subject property. It is also admitted that the rate of rent is Rs. 4,000/- per month.

26. In the Written Statement in the *Reply on Merits*, to the averments in the Plaint, it is stated by the petitioners that they had approached the plaintiff in the middle of September 2017 for taking the premises on rent @ Rs. 4,000/- per month and Rs. 20,000/- was paid as a refundable security. It is denied that notice dated 20.08.2018 was ever received.

27. In a Suit for Possession, a landlord has to show that there is a relationship of landlord and tenant between the parties; the tenancy is not a protected tenancy and that there is no subsisting term of lease.

28. It is admitted by the petitioners in the Written Statement that petitioners are tenants in the subject property @ rate of Rs. 4,000/- per month. It is also an admitted case that there is no lease deed executed between the parties thereby implying that there is no subsisting term of tenancy and the petitioners are tenants on a month-to-month basis.

29. It is also not denied by the petitioners that they have not paid

the arrears of rent. In the Written Statement apart from contending that they have paid rent in cash up till March 2018 and electricity bill up to February 2018 petitioners have neither contended nor shown that rent or electricity charges thereafter were paid by the petitioners

30. Respondent/landlord by way of the admissions of the petitioners has established the ingredients required to be proved for securing an order of eviction i.e. (i) relationship of landlord and tenant (ii) no subsisting term of tenancy. With regard to the service of the notice dated 20.08.2018, terminating the tenancy, it may be seen that since there is no lease deed, admittedly, executed between the parties, Petitioners were tenants from month to month. Though, the receipt of termination notice is denied, it is settled law that even filing of a Suit for Possession amounts to termination of tenancy.

31. The Trial Court has rightly relied upon the admissions made in the Written Statement and passed a Decree of Possession in favour of the respondents and against the petitioners under Order 12 Rule 6 CPC.

32. The contentions raised by the petitioner in his written note as noticed hereinabove are not relevant for the purposes of determining the present *lis* and do not go to further the case of the Petitioners.

33. I find no infirmity in the view taken by the Trial Court in

relying upon the admissions in the Written Statement and passing an order of eviction. No ground has been raised by the petitioners either in the petition; during his oral submissions or the written note to show that there is any infirmity in the view taken by the Trial Court in passing a Decree of Possession based on admissions.

34. In view of the above, I find no merit in the petition. The petition is accordingly dismissed. In view of the fact that petitioner has substantially delayed the execution of the order of eviction and has also failed to comply with the directions issued by this court on 15.01.2020, directing the petitioners to pay a sum of Rs. 15,000/- to the respondent and has also failed to honour the assurance given to this court on 23.07.2020, that he shall clear the entire arrears in four equal monthly instalments and thereafter continue to pay user and occupation charges @ Rs. 4,000 per month, this petition is dismissed with costs quantified at Rs. 25,000/-.

35. Copy of the judgment be uploaded on the High Court website and be also forwarded to learned counsels/parties through email by the Court Master.

SANJEEV SACHDEVA, J

JANUARY 05, 2021
HJ