



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:-20.05.2022.

+

RFA 183/2022 & CM APPL. 20823/2022(Stay), CM APPL. 20825/2022 (Court Fees), CM APPL. 23205/2022 (Addl.doc)

SH PRAVEEN KUMAR

..... Appellant

Through: Mr.P.K.Rawal with Mr.Charanjeet Bhalla

Mr.Parveen Kumar, Advs. Petitioner in person.

versus

SH GURNAIL SINGH GILL AND ANR.

..... Respondents

Through: Mr. Arvind Kumar Gupta with Mr.Abhishek Goyal, Advs. for R-1.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J(ORAL)

1. The present appeal under section 96 of the Civil Procedure Code has been preferred by the defendant no.1 in suit no. 8812/2016 (new) assailing the judgment dated 17.01.2022 passed by the learned ADJ-06, Tis Hazari Court, Delhi. Under the impugned judgment, the learned Trial Court has decreed the suit filed by the respondent no.1/plaintiff for possession of the property bearing House no.330, Vikaspuri, New Delhi, along with arrears of rent of Rs. 2,24,000/- payable with interest @ 12% per annum and has also directed the appellant to pay mesne profits @ Rs.20,000/- per month w.e.f. 01.09.2013.



2. The brief facts emerging from the record are that the respondent no.1/Plaintiff inherited the suit property through a will dated 23.05.1979 from his father Mr. Sohan Singh Gill. In the year 2010, the respondent no.1 appointed his uncle, Mr. Sardar Piara Singh as his Special Power of Attorney (hereinafter referred to as SPA) in respect of the suit property. On 22.06.2011, the respondent no.1 through his SPA entered into a lease agreement for a period of eleven months qua the suit property with the appellant, as per the terms of this lease agreement the monthly rent of this premises was fixed at Rs. 12,500/- per month. It is the respondent no.1's case that as the appellant stopped paying rent w.e.f. May, 2012, the lease in accordance with clause 16 of the agreement stood automatically terminated after 30 days. As the appellant despite failing to pay the rent still did not vacate the premises, the respondent no.1 through his SPA issued a legal notice dated 27.07.2013 terminating the tenancy w.e.f. 30.08.2013 and thereafter instituted the suit for possession, arrears of rent and mesne profits which has been decreed by the learned trial Court vide the impugned judgment.

3. Based on the pleadings of the parties, the learned trial Court framed the following issues on 11.05.2017:

“i. ISSUE No.1 - Whether the plaintiff is entitled for the possession of the property bearing no. H-330, Vikaspuri, New Delhi-110018? OPP

ii, ISSUE No.2 - Whether the plaintiff is entitled for damages/mesne profit, if so, to what rate? OPP

iii. ISSUE No.3 - Whether the plaintiff is entitled for interest on the amount of damages/mesne profit, if so, at what rate and for



which period? OPP

iv. ISSUE No.4 - Whether the plaintiff is entitled for an amount of Rs.2,24,000/- towards arrears of rent from defendant No.1 Sh. Praveen Kumar? OPP

v. ISSUE No.5 - Whether the rent agreement dated 22.06.2011 is a forged and fabricated document? OPD

vi. ISSUE No.6 - Whether the suit is barred by Sec. 50 of the DRC Act? OPD

vii. ISSUE No.7 – RELIEF”

4. In his written statement the appellant besides claiming that the lease agreement was a forged document, took the plea that the monthly rent of the premises was only Rs. 2,500/- and not Rs.12,500/-, the suit was barred as his tenancy was protected under the Delhi Rent Control Act, 1958. The appellant did not lead any evidence and that too despite having been granted another opportunity by this Court on 01.10.2019 in CM (M) 1449/2019 filed by him. The respondent no.1 however, examined six witnesses in support of his claim and therefore the learned trial Court while observing that the appellant had been delaying the matter ever since the inception of the suit, decreed the same by taking into account the evidence led by the respondent no.1. The relevant findings of the learned trial Court read as under:

“20. The onus to prove this issue was on the defendants particularly the defendant No.1 who asserted that the monthly rent was Rs.2,500/-. The plaintiff had the prime onus to prove its whole Case and asserted that the monthly rent was Rs.12,000/- for which the plaintiff adduced the 'unregistered' Lease Deed dated Lease Deed dated 22.06.2011. On the monthly rent of Rs.12,000/- (Ex.PW-117) vide which Sh. Piara Singh (attorney of the plaintiff-



herein) had inducted the defendant No.1 (Sh. Praveen Kumar) as the tenant in the premises

26. The best proof of the monthly rent is the "rent receipt" and the onus to produce such a receipt was upon the defendant No.1 which has not been adduced. The DRC Act is a beneficial legislation and its benefit can be availed by the tenant only on strict compliance on part of the tenant defendant no.1 with the provisions of the said act.

39. Apart from the aspect of non-applicability of the DRC Act (reliance on the judgments aforementioned), the plaintiff also succeeds on the test reasonableness of rent. It is now clearly established that the monthly rent was much more than Rs.2,500/- (as contended by the defendant no.1) and even more than the cap as provided under the DRC Act.

74. In the present case the defendant No.1 has miserably failed to adduce evidence in support of any of his contentions. The plaintiff has discharged its onus to prove that the rent remained unpaid @ Rs.12,500/- from May, 2012 till Aug.2013}. The plaintiff is also justified in levying interest@12% per annum on the arrears of rent. Therefore, the plaintiff is found entitled to the amount Rs.2,24,000/- (Rupees Two Lakh & Twenty Four Thousand only) along with the interest @ 12% per annum w.e.f the dated filing of this suit i.e:05.09.2013 till its realization."

5. Learned counsel for the appellant submits that while passing the impugned judgment not only has the learned trial Court failed to appreciate that the suit filed by the respondent no.1 was premised on a forged lease agreement but even otherwise there were substantial contradictions in the testimonies of the plaintiff's witnesses. He contends that the FSL report dated 28.06.2019 obtained pursuant to the FIR lodged by the appellant



clearly shows that the lease agreement dated 22.06.2011 was a forged document.

6. Moreover, the respondent no.1 had failed to produce any rent receipt in support of his plea that the monthly rent of the premises was Rs. 12,500/-. He contends that the learned trial Court ought to have accepted the appellant's plea that he was paying a monthly rent of Rs.2,500/- and therefore, the suit for possession was not maintainable as the only remedy available to the respondent no.1 was to file an eviction petition before the learned Rent Controller.

7. On the other hand, learned counsel for the respondent no.1, who appears on advance notice, vehemently opposes the appeal. He denies that there was either any contradiction in the testimony of the respondent's witnesses or that the lease deed was found to be forged as per the report given by the FSL. He submits that the appellant having failed to lead any evidence cannot now contend that the evidence led by respondent no.1 was insufficient or that the monthly rent of the premises was Rs.2, 500/- and not Rs.12, 500/-.

8. He further submits that the dishonest conduct of the appellant, as recorded in the impugned judgment as well, is evident from the fact that even though vide order dated 01.10.2019 passed by this Court in CM(M) 1449/2019, he was granted yet another opportunity to lead evidence, he had failed to do so. He therefore, prays that the appeal be dismissed with costs.

9. Having considered the submissions of the learned counsel for the parties and perused the record, I find absolutely no merit in the present appeal. The appellant clearly appears to be a dishonest tenant, who while not denying that he had entered into possession of the premises being House



no.330, Vikaspuri, New Delhi as a tenant, is trying to claim that the lease agreement dated 22.06.2011, according to which the monthly rent was fixed at Rs.12,500/- was a forged document. In the absence of any evidence led by him, the appellant's bald plea that the rent was only Rs.2, 500/- per month has been rightly rejected by the learned trial Court. Even otherwise this Court can take judicial notice of the fact that the subject premises is an independent three bedroom house in Vikaspuri, New Delhi, and the monthly rent of such premises even in the year 2011, was much higher than Rs.2,500/-. In any event, once the appellant failed to even step into the witness box or lead any evidence at all, and that too despite a specific opportunity being granted by this Court on 01.10.2019, it is evident that no reliance can be placed on this bald plea of the appellant.

10. Insofar as the appellant's contention qua the contradictions in the statements of PW 1 and PW 2 regarding the number of persons who had signed the lease agreement is concerned, the same is noted only to be rejected. Having carefully perused the statements of PW 1 and 2, I find that the only difference that can be found between the two statements is that while PW 1 has stated that the lease agreement was signed by 5 witnesses, PW 2 had stated that the same was signed by 4 witnesses. In my considered opinion, once neither PW 1 nor PW 2 had named the signatories of the lease agreement, this minor variation in the number of signatories of the lease agreement as per the recollection of the two witnesses, after a passage of six years cannot be treated as any contradiction whatsoever. In fact, the same only lends credence to the testimony of these witnesses, who appear to be untutored witnesses.



11. I have also perused the FSL report dated 28.06.2019 on which heavy reliance has been placed by the appellant but find that the same also does not support the appellant's plea that the lease agreement was forged. In fact, the said report only records on account of a different model being used in the two sets of signatures; it was not possible to express any opinion on the questioned signatures on the lease agreement in comparison to the specimen signatures. In fact it is also undisputed that on the basis of this FSL report, the police have already filed a final report under section 173 of the Cr.P.C.

12. It is thus evident that the appellant is merely trying to somehow continue to stay in the property and that too without paying any rent or mesne profits whatsoever to the owner.

13. The respondent no.1, who even as per the appellant is the owner of the subject premises has been waiting patiently for almost 10 years to get possession of his property from a tenant like the appellant who is not even paying any rent since May, 2012. In my view, any interference with the impugned judgment at the behest of a dishonest tenant will be against the interest of justice.

14. I, therefore, find absolutely no reason to interfere with the well-reasoned judgment of the learned trial Court. The appeal, along with all pending applications stands dismissed with no order as to costs.

REKHA PALLI, J

MAY 20, 2022/sr