

\$~47(Appellate)

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

+ **CM(M) 835/2022 & CM APPL.36406/2022**

SARDAR NARINDER SINGH GUJRAL Petitioner
Through: Mr.Manish Pratap Singh,
Mr.Sumeet Kaul and Ms.Niharika Tanwar,
Adv.

versus

RAKESH KUMAR LAL Respondent
Through: Mr.Rajidner Kumar and
Mr.K.K. Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

% **17.11.2022**

1. The order dated 21st July 2022, passed by the learned Additional District Judge (“the learned ADJ” hereinafter) in CS DJ 7326/16 (*Rakesh Kumar Lal v. Sardar Narender Singh Gujral*), which forms subject matter of challenge in the present petition instituted under Article 227 of the Constitution of India, rejects an application filed by the petitioner-defendant before the learned ADJ under Section 75(e)¹, read with Order XXVI Rule 10A² of the Code of Civil Procedure, 1908 (CPC), to refer certain documents to the Forensic Science Laboratory (FSL).

2. The learned ADJ has rejected the application solely on the

¹ **75. Power of court to issue commissions** – Subject to such conditions and limitations as may be prescribed, the court may issue a commission –

(e) to hold a scientific, technical, or expert investigation;

² **10A Commission for scientific investigations** –

(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed

ground that an earlier application, filed by the petitioner for the same relief, was dismissed by the learned ADJ on 19th October 2015, and that the said order had attained finality.

3. The petitioner-defendant sought to contend that, after the passing of the said order, the respondent-plaintiff had, during cross examination, stated that he had no objection if the documents in question were sent for forensic investigation.

4. The learned ADJ, in the impugned order, holds that the said statement made by the plaintiff during cross examination could not override the judicial order dated 19th August 2015, which had attained finality.

5. Mr. Rajinder Kumar, learned Counsel who appears for the respondent, too, seeks to contend, likewise, that an identical application filed by the petitioner having been dismissed on 19th October 2015, and the said order having attained finality, the petitioner could not have instituted a fresh application for the same relief. He, therefore, submits that no exception can be taken to the decision, of the learned ADJ, to dismiss the application.

6. In my considered opinion, the learned ADJ was not correct in his approach, either factually or legally.

7. Before providing my reasons in that regard, one may advert to some bare facts.

8. CS DJ 7326/16 was instituted by the respondent against the petitioner claiming, from the petitioner, a sum of ₹ 6,90,000/- along

under rule 9.

CM(M) 835/2022

Page 2 of 6

with *pendente lite* and future interest with effect from 14th December 2012, apart from other reliefs. The respondent-plaintiff claimed to have taken, on lease, the ground floor of property bearing No. W-23, Greater Kailash Part I, New Delhi-110048 (“the suit property” hereinafter) from the petitioners and other defendants *vide* lease agreement dated 15th March 2011. The respondent claimed to have handed over, to the petitioner, at the time of execution of the lease deed, a cheque dated 15th March 2011 for a sum of ₹ 3,75,000/- as refundable interest free security deposit. The plaint avers that, on 16th October 2012, the respondent gave notice to the petitioner that he would be vacating the suit property on or before 14th December 2012. It is further claimed that, on the body of the said notice, which was duly received by the petitioner, the petitioner entered an endorsement to the effect that the suit property was well maintained. The respondent claims, thereafter, to have handed over the keys of the suit property to the petitioner on 14th December 2012.

9. In these circumstances, asserts the plaint, the respondent, *vide* letter dated 20th February 2013, called upon the petitioner to refund the interest free security deposit of ₹ 3,75,000/- paid by the respondent. The said communication, as also a subsequent legal notice dated 1st April 2013 sent by the respondent are alleged, in the plaint, to have been returned undelivered. Subsequently, however, the plaint asserts that a reply dated 26th April 2013 was received from the petitioner, seeking to contest the claims of the respondent.

10. It was in these circumstances that the respondent instituted the aforesaid CS DJ 7326/16 against the petitioner, seeking relief as noted in para 8 *supra*.

11. During the course of proceedings in the suit before the learned ADJ, the petitioner-defendant moved an application under Section 75(e) read with Order XXVI Rule 10A and Section 151 of the CPC, seeking reference of certain rent receipts tendered in advance by the respondent to the Forensic Science Laboratory, as the rent receipts contain certain interpolations, the genuineness of which the petitioner was disputing. It was sought to be contended that, by inserting the interpolations, the respondent had sought to inflate the claim in the suit against the petitioner.

12. By order dated 19th October 2015, the learned ADJ dismissed the aforesaid application filed by the respondent under Section 75(e) read with Order XXVI Rule 10A and Section 151 of the CPC. The sole ground on which the application was rejected was that copies of the said receipts had been filed with the suit and also sent to the petitioner along with the legal notice issued by the respondent. Had the rent receipts contain any forgery, the then learned ADJ was of the view that the petitioner would invariably have file a claim against the respondent. No such complaint having been filed, the learned ADJ was of the view that the request for referring the documents to the FSL was without merit.

13. It is this order dated 19th October 2015 which has occasioned the passing of the impugned order dated 21st July 2022. As has already been observed towards the commencement of this judgment, the learned ADJ, in the impugned order, proceeded on the premise that the order dated 19th October 2015, which adjudicated a similar application and dismissed it, having subsequently become final as no challenge was raised against the said order, the petitioner could not

file a fresh application for the same purpose.

14. In so holding, the learned ADJ has not accorded due importance to the evidence of the respondent PW-1 during cross examination on 24th December 2019, during which the respondent agreed, in so many words, that he had “no objection if the receipts Ex PW-1/1 to Ex PW-1/22 are sent for forensic examination”.

15. It was in these circumstances that the petitioner moved a fresh application, seeking reference of the receipts Ex PW-1/1 to Ex PW-1/22 for forensic examination.

16. In view of the statement made by the respondent as PW-1 during cross examination on 24th December 2019, the application was effectively required to be treated as uncontested, even if the respondent were to oppose the application in the court. The petitioner disputed the interpolations contained in the aforesaid Ex PW-1/1 to Ex PW-1/22 and, for that reason, sought reference of the said receipts to the FSL. Once the respondent, in cross examination, agreed to the suggestion that the exhibits could be referred for forensic examination, there was no justifiable reason for the learned ADJ to have refused the request.

17. The reliance, by the learned ADJ, on the earlier order dated 19th October 2015 was, in my opinion, misplaced. After the said order had been passed, once the respondent, on solemn affirmation, agreed to the reference of the receipts to the FSL, the application of the petitioner had necessarily to be allowed, as the request thereby became a request *ad idem*, without consent.

18. In that view of the matter, the impugned order cannot, in my view, sustain on facts or in law. It is accordingly set aside.

19. The application filed by the petitioner under Section 75(e), read with Order XXVI Rule 10A of the CPC is allowed. The petitioner would be entitled to have exhibits Ex PW-1/1 to Ex PW-1/22 sent to the FSL for verification.

20. The protocol for the said purpose, and the terms of reference to the FSL, would be decided by the learned ADJ on 15th December 2022, when the matter is stated to be next listed before the learned ADJ.

21. This petition stands allowed in the aforesaid terms with no orders as to costs. Miscellaneous application stands disposed of.

C.HARI SHANKAR, J

NOVEMBER 17, 2022/kr