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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision:- 18.10.2022

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RFA 397/2022
MIRIC BIOTECH LTD.

..... Appellant

Through: Mr.Himanshu Upadhyaya, Adv.
(through VC) and Ms.Riya Pandey,
Adv.

versus

ANIL KUMAR AGGARWAL

..... Respondent

Through: Mr.Subas Chandra Acharya,
Mr.Harsh Raj Singh, Ms.Arshita
Tanya and Ms.Sampriya Singh, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

CM APPL. 45117/2022

1. This is an application preferred by the appellant seeking recall of order dated 25.08.2022 vide which the appeal was disposed of by a consent order by granting time to the appellant to vacate the suit premises, subject to payment of *mesne profits* as also filing an undertaking in terms of the said order.
2. The appellant has, admittedly, not complied with the said order and has instead moved the present application on the ground that since the respondent tried to get his electricity connection disconnected, which connection was restored only pursuant to orders passed in a writ petition preferred by the appellant, he was not able to use the suit

premises and therefore, now seeks adjudication of the appeal on merits.

3. Learned counsel for appellant, therefore, prays that the order dated 25.08.2022 be recalled and the appeal be taken up for consideration on merits. Even though, learned counsel for respondent vehemently denies the averments made by the appellant, he has no objection to the appeal being taken up for consideration on merits. It may be noted that the respondent has also preferred an application being CM Appl. 43681/2022 seeking a direction to the appellant to immediately vacate the suit premises.
4. In the light of the aforesaid, even though this Court is unable to appreciate as to why the appellant did not file the undertaking and pay *mesne profits* in terms of the order dated 25.08.2022, since both parties seek adjudication of the appeal on merits, the application is allowed and the order dated 25.08.2022 is recalled. The appeal is, accordingly, with the consent of the parties, taken up for consideration today itself.

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5. The present regular first appeal under Section 96 of the Code of Civil Procedure (hereinafter referred to as 'CPC') seeks to assail the judgment and decree dated 08.04.2022 passed by learned Additional District Judge-03, Patiala House Courts in CS No.211/2018. Vide the impugned judgment, the learned Trial Court has decreed the suit of the respondent/plaintiff under Order XII Rule 6 by directing the appellant/defendant to hand over peaceful and vacant possession of the suit property being Office Flat No.105, 1st Floor, New Delhi, 27,

Barakhamba Road, New Delhi-110001 (hereinafter referred to as ‘the suit property’) to the respondent/plaintiff.

6. Before dealing with submissions of the learned counsel for the appellant, it would be appropriate to note the brief factual matrix. For the sake of convenience, the parties will be referred to as per their nomenclature before the learned Trial Court.
7. The suit property was initially let out by its erstwhile owners in favour of the defendant by way of a registered lease deed dated 30.03.2015 for a period of three years i.e., 01.05.2015 to 30.04.2018 at a monthly rent of Rs.1,60,000/-. A sum of Rs.4,80,000/-, which sum was equivalent to three months’ rent, was deposited by the defendant as interest free security deposit with the erstwhile owners, which amount was repayable upon handing over the physical and vacant possession of the suit property by the defendant.
8. The plaintiff, vide a letter dated 01.11.2017, intimated the defendant that he had purchased the suit property from the erstwhile owners and the terms of the lease dated 30.03.2015 executed between the defendant and the erstwhile owners would now be applicable to him. Accordingly, the monthly rent which was payable to the erstwhile owners would be payable to the plaintiff w.e.f. 01.11.2017. A similar letter was sent by the erstwhile owners to the defendant informing him about the sale of the property in favour of the plaintiff vide an agreement dated 08.11.2017.
9. It is the case of the plaintiff that despite being aware about the transfer of title in the suit property from the erstwhile owners to the plaintiff, the defendant failed to pay the monthly rent to him w.e.f. 01.11.2017,

for a consecutive period of three months, pursuant to which he decided to invoke clause 6 (b) of the lease deed, which is noted hereinbelow, and terminate the lease qua the suit property.

‘Clause 6 (b) empowers the lessor to forthwith terminate the lease and immediately re-enter upon and re-possess/re-occupy the suit property if the rent reserved or any part thereof remained unpaid for 50 days (two months) after becoming payable in addition to entitling the lessor to cumulated interest @ 24% on the unpaid rent.’

10. As the defendant failed to either pay the rent or vacate the premises, it was served with a legal notice dated 01.02.2018 seeking vacant possession of the suit property with the arrears of rent with cumulative interest. However, since the defendant still failed to pay the arrears of rent and vacate the suit property, the plaintiff filed a suit for possession, recovery of arrears of rent and *mesne profits*.
11. The suit was defended by the defendant by filing a written statement wherein it was urged that the suit for possession was not maintainable as there was no relationship of landlord and tenant between the plaintiff and defendant company. The lease deed dated 30.03.2015 was executed between the defendant and the erstwhile owners of the suit property and, therefore, there was privity of contract between the plaintiff and the defendant. It was further averred that the defendant had issued debit notes dated 02.08.2015 and 03.08.2015 containing an arbitration clause, which notes were issued for carrying out repairs by the defendant in suit premises and therefore, it was in fact the defendant who was entitled to recover money from the erstwhile owners.

12. Based on the pleadings exchanged by the parties, the learned Trial Court, vide the impugned judgment has decreed the suit for possession by allowing the plaintiff's application under Order XII Rule 6 CPC by holding that once the defendant had acknowledged the factum of transfer of ownership of the suit property in favour of the plaintiff, the plaintiff was entitled to a decree for possession. The learned Trial Court has, however, adjourned the suit for determination of arrears of rent and *mesne profits*.

13. At this stage it may be appropriate to note the relevant findings of the learned Trial Court, which read as under:

5) In a suit for possession of Immovable property by the landlord against the tenant, following facts are required to be proved by the landlord/plaintiff:-

A. Existence of relationship of landlord and tenant.

B. Rate of rent being more than Rs- 3,500/- (to exclude the protection of statutory law i.e. Delhi Rent Control Act, 1958).

C. Termination of tenancy by serving a notice u/s 106 of the TP Act or by efflux of time.

A. Existence of relationship of landlord and tenant.

6). The defendant company which is a tenant in the suit premises obtained the suit premises on lease vide registered lease deed dated 30.03.2015 from Dr. BM Gupta, Dr. Meera Gupta, Ms. Deepali Gupta and Sh. Abhishek Gupta who are stated to be the erstwhile owners of the premises in question. The ownership of Dr. BM Gupta and others in the suit premises is not disputed by the defendant in the written statement or during the arguments.

7) The defendant has taken the plea in the WS that the

plaintiff is not the owner of the suit premises as the purported agreement to sell dated 08.11.2017 does not confer any right upon the plaintiff over the suit premises and it is not a valid indenture to transfer any right in an Immovable property. It is stated that since the defendant company Incurred expenses in the repair of the suit premises and issued debit notes dated 02.08.2015 and 03.08.2015 and the said amount is recoverable from Dr. BM Gupta and others and hence, the defendant company is not liable to vacate the premises in question.

8). Ld counsel for the defendant also relied upon the judgment of Hon'ble Supreme Court of India in Vidya Drolia & Ors Vs. Durga Trading Corporation, Civil Appeal No. 2402/2019 decided on 14.12.2020 and he submits that the Court u/s 8 and 11 of the Arbitration and Conciliation Act has to refer a matter to arbitration unless a party has established a prima-facie case of non existence of valid arbitration agreement. Ld counsel submits that since the debit notes issued by the defendant mentioned the arbitration clause, hence, the dispute is to be referred to Arbitrator and the suit filed by the plaintiff herein is not maintainable.

9). In the present matter, the defendant company has not disputed that it is a tenant in the suit premises and that the suit premises in question was taken on rent vide registered lease deed dated 30.03.2015 and the term of the said lease deed has come to an end by efflux of time on 30.04.2018. The defendant has also not disputed that the owners of the suit premises have executed a registered agreement to sell dated 08.11.2017 in favour of Sh. Anil Kumar Agarwal (plaintiff herein) for the consideration of Rs. 1.42 crores. What is alleged by the defendant is that the said agreement to sell does not confer ownership right upon the plaintiff herein and that there is no privity of contract between the plaintiff and the defendant.

10). Section 116 of Indian Evidence Act estops the defendant/tenant to challenge the title of the owner of the tenanted premises. Section 116 of Indian Evidence Act operates to reject any attempt by the defendant to challenge the transfer of suit premises through admitted registered agreement to sell dated 08.11.2017. The defendant was indeed the tenant of Dr. BM Gupta and others who are stated to be the erstwhile owners of the property in question and the defendant cannot challenge their title by virtue of section 116 of Indian Evidence Act. It follows as a necessary corollary that the defendant cannot challenge any transfer of the suit premises either. If ownership of the landlord cannot be challenged by the tenant, it would be a perverse construction of law for the defendant to assert that he can still challenge the transfer of the property by the owner. Whether the transfer of a property by a registered agreement to sell for consideration is permissible or proper may be a matter of dispute between the erstwhile owners and the plaintiff herein and the admitted tenant i.e., the defendant would be a non party to the determination of said issue.

11). Interestingly, in the present suit the alleged erstwhile owners of the suit premises have also written a letter to the defendant company Informing it about the sale of the suit premises to the plaintiff herein with a request to pay the further rent w.e.f. November 2017 to him. The aforesaid letter has not been disputed by the defendant. It is also mentioned in the aforesaid letter that even the interest free refundable security deposit to the tune of Rs. 4,80,000/ received from the tenant/defendant has also been transferred to the plaintiff herein.

12). Therefore, even the admitted landlords of the defendant clearly informed the defendant about the sale of the premises and requested to pay the further rent to the plaintiff Anil Kumar Agarwal despite that the defendant neither vacated the premises despite expiry of lease deed by

efflux of time and despite service of legal notice to vacate the premises nor paid any rent to the plaintiff herein and the defendant is asserting its right in the suit premises by challenging the title documents of the plaintiff herein which is not permissible in view of section 116 of Indian Evidence Act.”

14. Being aggrieved, the defendant has preferred the present appeal. In support of the appeal, Mr. Himanshu Upadhyaya, learned counsel for the appellant/defendant has raised only two submissions. His first plea being that the defendant had no privity of contract with the plaintiff as he had entered into a lease deed only with the erstwhile owners of the property from whom the respondent/plaintiff claims to have purchased the property and, therefore, the suit was not maintainable without the erstwhile owners being impleaded as a party. He submits that this vital aspect has been overlooked by the learned Trial Court and, therefore, contends that on this ground alone the impugned judgment is liable to be set aside.

15. He then contends that the learned Trial Court has also failed to appreciate that the plaintiff had deliberately not correctly described the area of the suit property. He submits that while the suit property measures 1183 sq. feet, the plaintiff has described the same as being 1483 sq. feet. He, therefore, contends that the plaintiff had not approached the Court with clean hands, compelling the defendant to move an application under Section 340 of the Code of Criminal Procedure which is pending adjudication. His plea, thus, is that till the said application is decided by the learned Trial Court, the impugned order directing the defendant to hand over the vacant possession of

the suit property to the plaintiff, ought not to have been passed.

16. Having considered the submissions of learned counsel for the defendant and perused the record, I find absolutely no merit in the present appeal. In my view, once the defendant had categorically admitted that he had entered into the suit property vide a registered lease deed dated 30.03.2015 as also the fact that the erstwhile owners of the suit property had sold the said property to the plaintiff, he cannot be permitted to urge that the suit was not maintainable. Once, as noted by the learned Trial Court, the erstwhile landlords/owners of the suit property had clearly informed the defendant about the sale of the premises and requested the defendant to pay the further rent to the plaintiff, there is absolutely no merit in the defendant's plea that the suit was not maintainable without impleadment of the erstwhile owners. In my view, once there is neither any dispute qua the plaintiff being the owner of suit property nor any claim by the erstwhile owners, who have on the other hand, categorically requested the defendant to pay the rent to the plaintiff, there was absolutely no requirement of impleading the erstwhile owners in the suit when they had no surviving interest in the suit property.

17. Now coming to the second plea of the defendant that the plaintiff had approached the Court with unclean hands, having described the suit property as measuring 1483 sq. feet as against the defendant's claim that the suit property measures 1183 sq. feet, I am unable to find any merit even in this submission of the defendant. Learned counsel for the plaintiff has contended that the suit property was described as being 1483 sq. feet only because of the description available in the

agreement to sell entered into between the plaintiff and the erstwhile owners. In my view, even if the defendant's plea that the suit property in fact measures 1183 sq. feet is accepted, the fact remains that both parties were always *ad idem* on the extent of the tenanted premises. This inadvertent error, if any, in describing the suit property as being 1483 sq. feet as against 1183 sq. feet can, by no stretch of imagination, said to be any concealment on the part of the plaintiff. I, therefore, do not find any merit in the defendant's plea that the plaintiff had approached the learned Trial Court with unclean hands.

18. The defendant has been occupying the premises without paying any rent whatsoever to the plaintiff since November, 2017 and in fact had persuaded this Court to pass a consent order on 25.08.2022 and having failed to abide by the terms thereof, has now sought adjudication of the appeal on merits, which being meritless, is dismissed with costs of Rs. 50,000/-.

19. In the light of the aforesaid, nothing further survives for the adjudication in CM No.43681/2022 preferred by the respondent, which is accordingly, disposed of as having been rendered infructuous. Needless to state, it will be open for the respondent to seek execution of the impugned judgment and decree as per law.

(REKHA PALLI)
JUDGE

OCTOBER 18, 2022/tp