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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 20.07.2022

+ RFA 42/2021

B.S DANGWAL

..... Appellant

Through: Mr.Ashok K Mishra with Mr.Manoj
K Dubey, Adv.

versus

ASHOK TANWAR

..... Respondent

Through: Mr.S.C.Singhal with Ms.Poonam
Taneja, Adv.

+ RFA 297/2020

B.S. DANGWAL

..... Appellant

Through: Mr.Ashok K Mishra with Mr.Manoj
K Dubey, Adv.

versus

ASHOK TANWAR

..... Respondent

Through: Mr.S.C.Singhal with Ms.Poonam
Taneja, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

CM APPL. 2531/2021 –Condonation of delay

1. This is an application filed by the appellant seeking condonation of 40 days delay in re-filing the appeal.



2. For the reasons stated in the application, the same is allowed and the delay of 40 days in re-filing the appeal - RFA 42/2021 is condoned.

3. The application stands disposed of.

RFA 42/2021 & CM APPL. 2532/2021
RFA 297/2020 & CM APPL. 31775/2020

4. This common judgment disposes of two appeals being RFA 42/2021 and RFA 297/2020 both preferred by the defendant under Section 96 of the Code of Civil Procedure before the Learned Trial Court. Vide RFA No. 297/2020, the appellant seeks to assail the judgment and decree dated 18.08.2020 passed by the learned ADJ-3, South-West, Dwarka Courts, Delhi in CS No.16660/2016 whereby the suit of the respondent/plaintiff for possession of property bearing no. WZ-1673, Nangal Raya, New Delhi, for payment of Rs.2,63,520/- (Two Lac Sixty Three Thousand Five Hundred and Twenty only), towards arrears of rent along with interest @ 9% per annum for the period between 01.03.2010 to 28.02.2013 and mesne profits, has been decreed. RFA 42/2021 assails the judgment and decree dated 18.08.2020 passed by the learned ADJ-3, South-West, Dwarka Courts, Delhi whereby the Counter Claim No. 16722/2016 preferred by the appellant, has been rejected.

5. On the last date, the matters were adjourned to enable the learned counsel for the appellant to take instructions as to whether the appellant would be willing to seek time to vacate the subject premises. Today, he submits that the appellant wants his appeals to be decided on merits and, since both the appeals arise out of common facts, the same are being taken up for disposal and decided vide this common judgment.

6. The common case of the parties is that the subject property which was



given on lease to the late father of the appellant, was thereafter being occupied by the appellant as a tenant. While it is the appellant's case that the monthly rent of the said property was only Rs.500/-, the respondent/plaintiff has claimed that the monthly rent as on 07.02.2009 was Rs.7,320/-.

7. It is the respondent's case that as the appellant failed to pay rent after 07.02.2009, a notice dated 18.02.2013 was issued to him terminating the tenancy and calling upon him to pay the arrears of rent of Rs. 2,63,520/- (Two Lac Sixty Three Thousand Five Hundred and Twenty only) for the last three years i.e., from 01.03.2010 to 28.03.2013. Upon the appellant's failure to comply with the said notice, a suit for ejectment being CS No. 16660/2016 and arrears of rent, damages and mesne profits was preferred by the respondent/plaintiff therein. The appellant filed a written statement alleging therein that the rent of the property was only Rs. 500/- per month and therefore, the suit for possession under Section 106 Transfer of Property Act, 1882 ('TPA') was not maintainable and the remedy, if any, available to the respondents was to initiate proceedings under the Delhi Rent Control Act. Simultaneously, the appellant also filed a counter-claim for a recovery of Rs. 1,07,320/- (One Lac Seven Thousand Three Hundred and Twenty only) which he claimed had been paid to the respondent for construction of another floor over the tenanted shop as also the advance rent for the said floor.

8. After completion of pleadings, the parties led their respective evidence before the learned Trial Court. The appellant besides examining himself produced 4 official witnesses namely (i) W/Ct. Santosh, PS Maya Puri; (ii) Shri Charan Singh, Public Health Inspector, SDMC, Rajouri Garden, New Delhi; (iii) Shri Sudama Lal Piplia, Deputy Branch Manager,



Syndicate Bank, Nangal Raya, New Delhi and (iv) Shri Ravi, Assistant Ahalmad from the Court of Pankaj Arora, Ld. MM-03 (West), Tis Hazari Courts, Delhi. On the other hand, the respondent examined himself and one official witness namely Shri Charan Singh, Health Inspector, SDMC, Rajouri Garden, New Delhi, who had also been examined by the appellant as DW-3.

9. After considering the evidence on record, the learned Trial Court decreed the suit for possession preferred by the respondent/plaintiff. The relevant findings of the Learned Trial Court read as under-

“11.10 Official witness in his testimony as DW-3 has deposed on same lines by stating that copy of rent receipt dated 07.02.2009 at page No. 22C of the noting sheet was filed along with documents demanded by the Department for renewal of the license. DW-3 has also deposed that copy of rent receipt was duly signed along with other documents which were required to be attested for verifying their authenticity and denied the suggestion that forged and fabricated rent receipt has been inserted after issuance of trade license.

11.11 It is relevant to note that defendant has neither stated about payment in cash to plaintiff in his written statement nor filed copy of reply dated 04.03.2013 despite averment in para 5 of written statement that true and correct facts have been mentioned in reply dated 04.03.2013. Defendant's contention about payment of Rs.1,07,320/- in cash to the plaintiff which included Rs.1,00,000/- for raising construction of upper floor and Rs.7,320/- as advance rent of the upper floor in para 4 of affidavit Ex DW1/A therefore assumes significance.

11.12 No evidence of payment of Rs.1,00,000/- in cash to plaintiff has been led in the main suit and counter-claim and testimony of DW-4 Shri Sudama Lal Piplia, Deputy Branch



Manager, Syndicate Bank, Nangal Raya who has proved statement of account and covering letter verifying encashment of cheque No.739113 for Rs.1,00,000/- given to Shri Yashpal Verma does not prove alleged payment in cash to the plaintiff. It is preposterous that a tenant who has neither paid nor deposited rent of the shop for almost four years before filing of suit in 2013 would pay advance rent of proposed structure on the upper floor of tenanted shop.

11.13 Since plaintiff's suit has been contested by disputing jurisdiction of Civil Court so onus to prove monthly rent of Rs.500/- has to be discharged by defendant who has stated about payment of Rs.7,320/- as advance rent of proposed first floor in his affidavit tendered in evidence and disputed duly signed copy of rent receipt Ex PW2/1 submitted along with application for obtaining Health Trade License.

11.14 Original rent receipt dated 07.02.2009 for Rs.7,320/- has been proved by plaintiff as Ex PW1/5 whereas duly signed copy of receipt submitted along with application for Health Trade License has been proved by PW Shri. Charan Singh as Ex PW2/1. PW-2 in his cross examination has also referred to RTI application and Reply mentioning photocopy of rent receipt and deposition of official witness has remained consistent in his testimony as DW-3 wherein he has stated that duly signed rent receipt was submitted along with other documents”.

10. The learned Trial Court also rejected the appellant's counter-claim by holding as under -

10.4 It is pertinent to note that plaintiff Shri Ashok Tanwar has filed original rent receipt dated 07.02.2009 showing monthly rent of Rs.7,320/- whereas official witness Shri Charan Singh, Public Health Inspector, SDMC, New Delhi examined as PW-2 and DW-3 in the main suit has brought official record pertaining to Trade License of M/s Kalyan Bakeri and referred



to duly signed copy of rent receipt Ex PW2/1 submitted along with documents at the time of applying for Health Trade License for sale of Bakery Items.

10.5. *Testimony of PW-2 Shri Charan Singh remained consistent during his cross-examination recorded on 05.04.2018 and official witness has deposed on same lines in his testimony as DW-3 by stating that duly signed copy of rent receipt dated 07.02.2009 was filed along with documents demanded by the Department for renewal of the license.*

10.6 *Encashment of cheque No.739114 dated 17.09.2007 for Rs.1,00,000/- is verified by statement of account Ex DW4/A and covering letter of Senior Branch Manager, Syndicate Bank Ex DW4/B whereas statements of Shri Yashpal and Shri Ashok Tanwar filed along with Status Report of SI Ramgopal, PS Mayapuri, New Delhi have been referred as Ex DW5/1 to Ex DW5/3.*

10.7 *None of the statements support defendant's averment as plaintiff Shri Ashok Tanwar has denied receiving Rs.1,00,000/- from defendant for raising construction of upper floor over the tenanted shop whereas Shri Yashpal has stated about payment of Rs.1,00,000/- through cheque as earnest money for purchasing his shop.*

10.8. *Defendant Shri B. S. Dangwal having examined Bank-official to prove encashment of self cheque given to Shri Yashpal has neither filed any receipt verifying payment of Rs.1,00,000/- to the plaintiff nor examined any witness to prove his contention of payment of Rs.1,00,000/- in cash.*

11. Being aggrieved by the decree of possession and mesne profits passed against him as also the rejection of his counter-claim for a refund of a sum of Rs. 1,07,320/- with interest, the appellant has preferred the present appeals.



12. Learned counsel for the appellant, first submits that the impugned judgment is liable to be set aside as despite the suit property being situated in West District, Delhi, the suit was preferred and tried by the Court of the Ld. ADJ at Dwarka, which did not have the necessary territorial jurisdiction to entertain the suit. In response, learned counsel for the respondent submits that all suits pertaining to properties in West District are filed before the Ld District Judge, Dwarka and are tried by the Court of Ld. ADJ, Dwarka. He, therefore, contends that the plea of the appellant that the suit has been decided by a Court not having the necessary territorial jurisdiction, is wholly misconceived. The appellant, being aware of this position, never raised any objection of territorial jurisdiction either in its written statement or during arguments before the learned Trial Court. In the light of the aforesaid, once the appellant did not raise any objection to this effect before the learned Trial Court, the appellant's bald plea that the learned Trial Court did not have the necessary territorial jurisdiction to try the suit need to be rejected.

13. Mr. Mishra, learned counsel for the appellant then submits that the learned Trial Court has failed to appreciate that the rent of the suit property was initially Rs.350/- per month which was then increased to Rs. 500/- per month and it was only on account of interpolations carried out by the respondent in the receipt, that the same was made to appear as a receipt for a monthly rent of Rs. 5,000/-. He thus contends that the monthly rent of the suit property, which was only Rs. 500/- in 1997 as per the receipt, could not have been enhanced to Rs. 7320/- in such a short time, which aspect has also been overlooked by the learned Trial Court. His plea, thus, is that once the monthly rent of the suit property was less than Rs. 3500/-, the suit for possession under Section 106 of the TPA was not maintainable and the



learned Trial Court ought to have directed the respondent to approach the competent authority under the Delhi Rent Control Act, 1958.

14. He finally submits that once the appellant, had by leading evidence succeeded in proving the encashment of a self-cheque of Rs. 1,00,000/- by him, the learned Trial Court ought to have accepted his plea of having paid Rs. 1,00,000/- in cash to the respondent towards construction of the first floor on the suit property. He, therefore, prays that the impugned judgment be set aside.

15. Per Contra, learned counsel for the respondent opposes the appeal by contending that as held by the learned Trial Court, the last paid monthly rent of the property was indeed Rs.7320/- besides water and electricity charges. He submits that once the receipt for a monthly rent of Rs. 7320/- had been submitted by the appellant himself to the Municipal Corporation for the issuance of a license to run his shop in the suit premises, he cannot now be permitted to urge to the contrary. The appellant's plea that he had paid a sum of Rs. 1,00,000/- to the respondent has also been rightly rejected by the learned Trial Court as the appellant had failed to lead any evidence whatsoever in support of this bald plea. He, therefore, prays that the appeals be dismissed with costs as the appellant has been illegally occupying the suit property without paying any rent whatsoever to the respondent for the last many years.

16. Having considered the submissions of learned counsel for the parties and perused the record, I am of the considered view that there is no infirmity in the impugned judgements. Insofar as the appellant's plea that the monthly rent of the suit property was Rs.7,320/- as claimed by the respondent is concerned, what emerges from the record is that in support of



his plea that the rent of the suit property was only Rs.500/- per month, the appellant had stepped into the witness box but when cross examined regarding the rent of the suit property, the appellant merely stated that he was not aware of the actual rent that was being paid and it was only his Chartered Accountant, who would have information in this regard. It would, therefore, be apposite to refer to the relevant extract of the appellant's cross examination which reads as under-

“Question: Do you show rent of the shop in question and adjacent shop let out to me by Shri Yaspal?”

Answer. This is job of my CA.

I do not know whether payment of rent is shown in the accounts book or not by my CA. My all accounts books are with my CA Shri Ankush His office is at Tilak Nagar. Shri Ankush himself is writing my account books. I do not know from where Shri Ankush gets information for writing the books. I myself supply all vouchers, memos, invoices, bank account statement to Shri Ankush who comes to my shop every month. I never told Shri Ankush about amount of rent paid to Shri. Ashok Tanwar or Shri Yashpal. In fact, I do not remain on the shop and my brother Shri Sunil Dangwal manages the shop. I do not conduct the business in the shop which has been in total control and management of Shri Sunil Dangwal, my brother and I remain at home. I do not know even what are the earnings or sale of the shop in question. I do not know amount of rent paid to Yashpal for his shop periodically. Vol. My brother is paying hence he must be knowing.

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I am not paying rent since 2009. I did not deposit rent anywhere after 2009 on account of filing of present suit by Shri Ashok Tanwar titled Ashok Tanwar Vs. B.S. Dangwal bearing CS No. 16660/16.

I do not know about the market rent of the shop in



question. It is wrong to suggest that the market rent of the shop in question on the date of filing of the suit was Rs.30,000/- per month. It is wrong to suggest that last paid rent was Rs.7,320/- per month. It is wrong to suggest that I myself filed the photocopy of Ex.PW-2/1 on municipal record for obtaining Municipal License.

In 2013 when theft took place in my shop, the books of accounts were with my CA and those are available as on today itself. The CA is given only business transaction documents and not the rent receipts which are being kept in separate bag in the shop. The bag which was stolen was having rent receipt of the whole year but I have no idea about the year. Vol. The receipts were of before 2009. It is wrong to suggest that xerox copy of Ex.PW-1/1 was handed over by me to the municipal authority which bears my signatures on the revenue receipts. It is wrong to suggest that the said receipt was given for shop to be constructed on the first floor. I am paying rent to Shri Yashpal regularly. I have cordial relations with Shri Yashpal. It is wrong to suggest that I have deposed falsely.

17. A bare perusal of this cross examination of the appellant makes it evident that the appellant, who was well aware that there was nothing to show that the monthly rent was Rs. 500/-, was trying to give evasive answers regarding the amount of rent. The plea of the appellant that the rent of the suit property was Rs. 500/- was, therefore, rightly not relied upon by the learned Trial Court especially in the light of the rent receipt produced by the respondent having obtained the same under the Right to Information Act, 2005, from the Municipal Corporation to whom, the appellant himself had submitted the same. This receipt clearly showed that the rent of the suit property was Rs. 7320/- per month. At this stage, it may also be appropriate to note the contents of the RTI application submitted by the respondent to the SDMC as also the reply dated 02.09.2014 received by him. The same



read as under-

*“PIO
AC West Zone
Rajouri Garden*

Respected Sir,

I requesting you to please provide photocopy for following details with us for Kalyan Kakery "whose Proprietor is Mr. B.S. Dangwal S/o G.S. Dangwal located at WZ-1673, Nangal Raya, Jail Road, New Delhi-110046

- a. Whether "BAKERY" shop located at address: WZ 1673, Nangal Raya, Jail Road, New Delhi-46 is having valid licence (MCD) for running a Bakery Shop from M.C.D.*
- b. When the First licence for Bakery shop was issued in the name of "Kalyan Bakery" to proprietor- Mr. B.S. Dangwal, WZ-1673, Nangal Raya, Jail Road, New Delhi-110046.*
- c. Please provide the licence Number issued for year 2005-2006.*
- d. Provide whether original /photocopy receipt of Rs. 5000/- p.m. rent is submitted as proof of tenancy for issue of MCD licence in year 2005-2006 alongwith application.*
- e. Provide the MCD license number issued for year 2009-2010.*
- f. Provide whether original/photocopy receipt of Rs. 7320/- p.m. rent is submitted as proof of tenancy for issue of MCD license I year 2009-2010 alongwith application.*
- g. Provide the name of landlord and rent per month from proof of tenancy submitted for Bakery shop located at WZ-1673, Nangalroya Jail Road, New Delhi-110046 at present.*
- h. Provide the MCD license number issued for latest year.*
- i. Kindly provide all above document photocopy. We will ready to pay photocopy amount as MCD will inform.*

Thanks and regards

*Rohit Tanwar (Nephew of Ashok Tanwar)
Phone - 9971765282, 9899371679
Address: WZ-1673, First Floor Nangal Raya, New Delhi-46*



**SOUTH DELHI MUNICIPAL CORPORATION
HEALTH DEPARTMENT WEST ZONE**

No. /HD/WZ/2014

Dated:xxxx

With reference to RTI filed by Sh. Rohit Tanwar received in this office vide No. 3462/HD/WZ dated 04.8.14. In this connection point wise reply is as under:

- a. Kalyan Bakery shop at WZ-1673, Nangal Raya, Jail Road running with having health trade license.*
- b. As per record adhoc registration certificate was done on 01.02.2007 as per policy which were revoked in all parts of Delhi.*
- c. Health trade license No. is HLLCWZOS001596.*
- d. No such type of rent receipt (Rs. 5000/-) is available in this office.*
- e. As mention in point 3.*
- f. Photocopy of rent receipt for Rs. 7320/- is enclosed herewith.*
- g. Sh. B.S. Dangwal.*
- h. As mention in point 3.*

APHI/Bhupinder Singh”

18. From the aforesaid reply received by the respondent from the SDMC, there remains no iota of doubt that the rent of the suit property was in fact Rs. 7320/- per month and not Rs. 500/-, as is sought to be contended by the appellant. In my view, once the appellant had himself furnished a copy of the rent receipt to the Municipal Authorities and was well aware of the actual amount of rent that was payable, the appellant's stand in the cross-examination that he was not aware of the amount of rent that was payable, in itself shows that he was trying to mislead the Court. The learned Trial Court,



in my view, was thus, justified in decreeing the respondent's suit for possession, arrears of rent and mesne profits.

19. I may now deal with the appellant's plea that he had paid a sum of Rs.1,07,320/- (One Lac Seven Thousand Three Hundred and Twenty only) in cash to the respondent, which amount included Rs. 1,00,000/- (One Lac) for carrying out construction on the first floor, above the subject shop and Rs. 7,320/- (Seven Thousand Three Hundred and Twenty) as payment towards the advance rent of the said floor. The respondent denies having received any such amount from the appellant. Since the payment of this amount is claimed to have been made in cash by the appellant, it may be useful to refer to his cross examination on this aspect, the relevant extract whereof reads as under-

"Regarding construction of shop on the first floor, I talked to Shri Ashok Tanwar and Shri Yashpal. I do not remember the day, month and year when such talk took place. Again said: It is in 2009. have not made entry of the payments of Rs.1,00,000/- each i.e. to Shri Ashok Tanwar and Shri Yashpal mentioned in para 4 of my affidavit in evidence as they did not proceed to construct the shop. I did not write any letter or issue any notice to both of them for retaining the amount of Rs.1,00,000/- each and not performing the work as agreed. Vol. Both of them are like my elder brother and on account of faith and trust between us I did not write any letter nor got issued any notice."

20. From a perusal of the aforesaid, it is evident that not only was the appellant trying to give evasive answers regarding the rate of rent in his cross examination but had also clearly stated that there was no entry regarding the purported payment of Rs. 1,07,320/- (One Lac Seven Thousand Three Hundred and Twenty only) in his account books, which



amount he claims to have paid to the respondent. Learned counsel for the appellant has also failed to give any justification for the appellant's failure to disclose this alleged payment of Rs. 1,00,000/- in cash to the respondent in his books of accounts. I, am, therefore inclined to agree with the respondent that in case the appellant had infact paid the said amount, the same would have been duly reflected in his income tax returns and account books.

21. In light of the aforesaid, I have no hesitation in holding that the learned Trial Court, was justified in rejecting the appellants' counter claim for refund of Rs. 1,07,320/- (One Lac Seven Thousand Three Hundred and Twenty only) as well.

22. The appeals are therefore, devoid of merit and are accordingly dismissed without any orders as to costs.

(REKHA PALLI)
JUDGE

JULY 20, 2022

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