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

+ **RSA 233/2017 & CM APPL. 34656/2017**

S K BHALLA

..... Appellant

Through: Appellant in person

versus

PARVEEN JAIN

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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31.10.2022

1. This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908 (CPC), emanates from the judgment and decree dated 15th July 2016, passed by the learned Additional Civil Judge (the learned ACJ) in Suit 6803/2003 and judgment dated 6th April 2017, passed by the learned Additional District Judge (the learned ADJ) in RCA 187/2016, whereby the appeal preferred by the appellant against the former order has been dismissed.

The plaint

2. The appellant, in the suit instituted by him, claimed to be the landlord of the respondent/defendant in respect of a shop located on the ground floor of No. IX/16, Kailash Nagar, Delhi (hereinafter “the tenanted premises”). It was averred that the shop had been let out to the respondent on 1st December 2009 for commercial purposes on a monthly rent of ₹ 3,500/- which had, subsequently, been enhanced to ₹

4,500/-. The respondent was alleged to be in default of rent w.e.f. 1st January 2015.

3. The plaint averred that, on 16th November 2015, the appellant served a demand notice on the respondent, to which the respondent replied on 26th November 2015. The reply, it is averred in the plaint, admitted the relationship of landlord and tenant between the appellant and the respondent.

4. The plaint further alleged that the respondent was carrying on unlawful activities in the tenanted premises, as a result of which the premises were sealed by the officers of the erstwhile East Delhi Municipal Corporation (EDMC) on 25th August 2014. The respondent, allegedly, applied on 30th September 2014, to the EDMC, seeking de-sealing of the tenanted premises and also filed an affidavit in support of the application. A copy of the application was also filed with the plaint. These facts, alleged the plaint, were disclosed by the respondent to the appellant only in December 2014. The application submitted by the respondent with the EDMC (now the MCD), for de-sealing of the tenanted premises, asserted the plaint, was still pending disposal.

5. In these circumstances, the plaint alleged that the respondent was liable to pay, to the appellant, the arrears of rent @ ₹ 4500/- which remained outstanding in respect of the tenanted premises, along with interest thereon.

6. Predicated on these allegations, the suit sought a decree against the respondent and in favor of the appellant, calling upon the respondent to pay, to the appellant, a sum of ₹ 63,720/- with interest and costs.

Written Statement

7. The respondent filed a written statement, by way of response to the plaint of the appellant. It was alleged, in the written statement, that the respondent had surrendered his tenancy and vacated the tenanted premises on 22nd December 2014. The written statement further alleged that the suit of the appellant was liable to be dismissed under Order VII Rule 11(a) of the CPC for want of any sustainable cause of action.

8. It was further asserted, in the written statement, that on 1st December 2019, a rent deed had been executed between the appellant and the respondent for a period of 11 months, @ ₹ 3,500/- per month on the expiry of which period the tenancy had been orally extended @ ₹ 4,500/- per month. The respondent denied being in default of any rent payable to the appellant as, according to the written statement, the respondent was no longer in occupation of the tenanted premises after 22nd December 2014, and rent stood paid till 31st December 2014.

9. The written statement further alleged that the sealing of the shop, by the EDMC, was owing to defaults on the part of the appellant, and not on the part of the respondent, especially in respect of payment of charges and tax due to the EDMC. After the shop was

sealed, according to the written statement, the appellant undertook to deposit all arrears payable to the EDMC and requested the respondent to move an application for de-sealing of the shop, in deference to which request the respondent applied to the EDMC on 30th September 2014. It was further asserted, in the written statement, that the appellant called upon the respondent to pay rent only till December 2014, and that, on 22nd December 2014, the respondent surrendered the tenancy. As such, it was asserted that no relationship of the landlord and tenant subsisted between the appellant and the respondent after 22nd December 2014.

10. In the circumstances, the written statement asserted that the appellant was not entitled to the reliefs claimed in the suit.

Further proceedings

11. The appellant and the respondent admitted the documents filed by each other. The appellant placed, on record, the notice dated 16th November 2015 issued to the respondent and the reply of the respondent thereto, which were, therefore, exhibited as Ex. P-1 and P-2. The respondent placed on record rent agreement dated 1st December 2009, rent receipt dated 22nd December 2014 and 31st May 2014 and the affidavit submitted by the appellant to the EDMC on 15th December 2014 exhibited as Ex. D-1, D-2, D-3 and D-4.

12. No issues were framed. No oral evidence was recorded. In a manner which, in the opinion of this Court, is completely foreign to

law, the learned ACJ proceeded, on 15th July 2016, to dismiss the appellant's suit as devoid of any cause of action.

13. The sole ground on which the learned ACJ proceeded is that the appellant-plaintiff did not specifically traverse the assertion, by the respondent-defendant, that it was the appellant who had applied to the EDMC for de-sealing of the tenanted premises. Additionally, the learned ADJ noticed that the appellant admitted having filed an affidavit before the EDMC which was exhibited as Ex. D-4.

14. This fact, according to the learned ACJ, was sufficient to support the stand of the respondent that he was no longer the tenant of the appellant, in respect of the tenanted premises, after 22nd December 2014. Support has been sought to be derived, for this conclusion, from the fact that it was only on 16th November 2015 that the appellant demanded arrears of the rent from the respondent.

15. Paras 7 to 10 of the order dated 15th July 2016, passed by the learned ACJ, read thus:

“7. The crux of the matter is, the plaintiff alleges the defendant to be his tenant in the suit property whereas the defendant denies the said allegation and pleads that his tenancy determined by way of surrender on 22.12.14.

8. The plaintiff did not reply the fact pleaded by the defendant that the plaintiff had applied for de-sealing of the suit property because after surrender of the lease, the plaintiff assumed to himself the responsibility of moving the EDMC for the de-sealing of the suit property. During the first hearing of parties and the proceedings for admission/denial of documents, the plaintiff admitted that he had applied for de-sealing of the suit property and also admitted the fact that he had filed an affidavit before the EDMC and the **Ex. D4** is

copy of the same.

8.1 From the said fact, it is proved that it was the plaintiff who in the month of December applied for de-sealing of the suit property and necessary corollary of the said fact is that the plaintiff wanted the EDMC to de-seal the suit property and deliver possession thereof to him and not to the defendant. Such an action by the plaintiff is sufficient evidence in proof of the fact that the plaintiff did not recognize possessory title of any other person - defendant/tenant in the present case - over the suit property. The said Inference as to the animus of the plaintiff is corroborated and lent assurance to by the fact that the plaintiff had accepted the occupation charges/rent, from the defendant, last on 22.12.14 for the period ending 31.12.14 and no demand of rent was made till 16.11.15. The defendant lays no claim to the suit property, the suit property continues to be sealed, the defendant is not in possession thereof and the plaintiff has represented the EDMC that he wants the suit property be de-sealed and delivered to him, all the said facts prove the defence of the defendant and establish that the present suit is without cause of action and an attempt to harass the defendant by abusing the process of law.

9. The malfeasance of the plaintiff is manifest in the contradictory pleadings. Mere reproduction of the pleadings would suffice to appreciate the said fact without any opinion thereon.

9.1 Para 1 of the amended plaint presented on 30.01.2016 reads as follows:

“1. That the defendant, above named, was inducted as a tenant in a single room shop forming part of property bearing municipal no. IX/16, Kailash Nagar, Delhi, on ground floor, on 01.12.2009 for commercial purposes.....”

9.2 Para 1 of the replication presented on 13.07.2016 reads as follows:

“It is also incorrect and denied that there was any occasion for the purpose of assuring the defendant that

the shop in question is meant for commercial purposes”

10. The plaint is rejected.”

16. Aggrieved by the aforesaid order dated 15th July 2016 of the learned ACJ, the appellant appealed to the learned ADJ under Section 96 of the CPC *vide* RCA 187/2016. It was specifically contended, by the appellant, before the learned ADJ, that the learned ACJ could not have dismissed the suit in the manner in which he had. In doing so, the appellant contended that the learned ACJ had ignored several of the pleas advanced in the plaint.

17. An order dismissing the suit, without trial, it was submitted, could only be passed under Order VII Rule 11¹, in which case the averments in the plaint alone could be taken into account, and not the defence of the respondent in the written statement.

18. Having noted these contentions of the appellant, the learned

¹ 11. **Rejection of plaint.**— The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

ADJ has – unfortunately, it must be said – proceeded to reproduce, verbatim, the operative paragraphs of the order of the learned ACJ, merely replacing with the “plaintiff” with “appellant” and “defendant” with “respondent”.

19. The following passages from the impugned order dated 6th April 2017 of the learned ADJ makes this fact apparent:

“Appellant/ plaintiff did not reply the fact pleaded by the respondent/defendant that the appellant/plaintiff had applied for de-sealing of the suit property because after surrender of the lease, the appellant/plaintiff assumed himself of the responsibility of moving the EDMC for the de-sealing of the suit property. The said fact has been admitted by the appellant/plaintiff that he had applied for de-sealing of the suit property and also admitted the fact that he had filed an affidavit before the EDMC. Ld. Trial Court has rightly observed that it was the appellant/plaintiff who in the month of December applied for de-sealing of the suit property and necessary corollary of the said fact is that the appellant/plaintiff wanted the EDMC to de-seal the suit property and deliver possession thereof to him and not to the respondent/ defendant. Such an action by the appellant/ plaintiff is sufficient evidence in proof of the fact that the appellant/ plaintiff did not recognize possessory title of any other person- respondent/defendant in the present case-over the suit property. The said inference as to the animus of the appellant/plaintiff is corroborated and lent assurance to by the fact that the appellant/plaintiff had accepted the occupation charges/rent, from the respondent/defendant, last on 22.12.14 for the period ending 31.12.14 and no demand of rent was made till 16.11.15. The respondent/defendant lays no claim to the suit property, the suit property-continues to be sealed, the respondent/defendant is not in possession thereof and the appellant/plaintiff has represented the EDMC that he wants the suit properly be de-sealed and delivered to him, all the said facts prove the defence of the respondent/defendant and establish that the present suit is without cause of action and an attempt to harass the respondent/ defendant by abusing the process of law.

6. Learned Trial Court rightly observed that the malfeasance of the appellant/plaintiff is manifest in the contradictory pleadings and mere reproduction of the pleadings would suffice to appreciate the said fact without any opinion thereon:

Para 1 of the amended plaint presented on 30.01.2016 reads as follows:-

"1. That the defendant, above named, was inducted as a tenant in a- single room shop forming part of property bearing municipal no. IX/16, Kailash Nagar. Delhi, on ground floor, on 01.12.2009 for commercial purpose...."

Para 1 of the replication presented on 13.07.2016 reads as follows:-

"1. It is also incorrect and denied that there was any occasion for the purpose of assuring the defendant that the shop in question is meant for commercial purposes."

As such, plaint does not disclose any cause of action, hence, learned trial court has rightly rejected the plaint."

20. Aggrieved by the said order, the present second appeal under Section 100 of the CPC has been filed.

Substantial Questions of Law

21. The following substantial questions of law arise for consideration in the present case:

(i) Whether the learned ACJ could have, *vide* the order dated 15th July 2016, proceeded to dismiss the appellant's suit,

without trial?

(ii) Whether the learned ADJ, similarly, could have rejected the appellant's appeal as he has chosen to do, *vide* the impugned order dated 6th April 2017?

(iii) Whether the appellant's suit could have been dismissed on the ground of want of any cause of action?

Analysis

22. Having perused the order dated 15th July 2016, of the learned ACJ and the order dated 6th April 2017 of the learned ADJ, it is obvious that neither of these orders can sustain in law. The reasons are many.

23. The learned ACJ has, in the order dated 15th July 2016, proceeded on the premise that the plaint instituted by the appellant did not disclose any cause of action. No application under Order VII Rule 11 of the CPC had been filed by the respondent. After the exercise of admission/denial of documents took place, the learned ACJ, without framing issues, or recording evidence, proceeded, by the order dated 15th July 2016, to dismiss the appellant's suit on the ground that it was not based on any sustainable cause of action.

24. In the considered opinion of this Court, such an exercise is not permissible under the CPC. A suit may, no doubt, be dismissed without trial, under Order VII Rule 11 or may be returned under order

VII Rule 10² in case it has been instituted before a wrong forum. If the parties are not at issue, the Court may also pronounce judgement at the first hearing itself, under Order XV Rule 1³.

25. If, however, a Court is to proceed under Order VII Rule 11, it has to proceed solely on the basis of the averments in the plaint.⁴ In case the Court is to take into account the averments in the written statement, the matter has to proceed to trial and both sides have to be permitted to lead evidence in support of their respective stand.

26. The learned ACJ did not deem it appropriate to follow this procedure. Immediately consequent on the exercise of admission/denial of documents, the learned ACJ, solely by perusing the documents filed by both sides and the averments in the plaint and the written statement, proceeded to reject the plaint as devoid of any cause of action. In law, in the opinion of this Court, he could not have done so.

27. Even on merits, the parties had joined issue on the question of

² **Return of plaint** — (1) Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation.— For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.

(2) Procedure on returning plaint. —On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

³ **Parties not at issue**—Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

⁴ Refer **Biswanath Banik v. Sulanga Bose**, 2022 SCC OnLine SC 314; **Frost International Ltd. v. Milan Developers & Builders (P) Ltd.**, 2022 SCC OnLine SC 394; **Frost International Ltd. v. Milan Developers & Builders (P) Ltd.**, 2022 SCC OnLine SC 394; **T. Arivandandam v. T.V. Satyapal**, (1977) 4 SCC 467

whether there was, or was not, surrender of tenancy by the respondent on 22nd December 2014. No evidence, to that effect, was led by the respondent. The learned ACJ proceeded to presume such a surrender to have taken place solely on the ground that the appellant had thereafter applied to the EMDC for de-sealing of the suit property and had sought arrears of rent only ten months thereafter. The finding that it was the appellant who had applied to the EDMC for de-sealing of the tenanted premises, for its part, was based solely on the affidavit Ex D-4. In the process, the specific averments, in the plaint, to the effect that the respondent had applied for de-sealing of the premises, and the admission, to that effect, in the written statement filed by the respondent – who claimed to have done so on the request of the appellant – were totally ignored.

28. Such findings could not have been returned in a summary fashion, where the parties were at issue and the question of whether there was, or was not, surrender of tenancy on 22nd December 2014 was a disputed issue of fact which had to be determined after evidence was led by both parties. This is especially so, as the respondent filed no document on record to indicate that any such surrender of tenancy had taken place.

29. Surrender of tenancy is a pure question of fact, which, if pleaded, has to be established by the person so pleading – in this case, by the defendant. As no issues were framed by the learned ACJ, the question of party on whom the onus, to prove the issues which arose, has also not been kept in mind. The respondent having pleaded

surrender of tenancy, by him, on 22nd December 2014, the onus to prove the assertion was on him. No evidence, whatsoever, to the said effect, was placed by the respondent on record. The reliance, by the learned ACJ, on the affidavit Ex D-4, submitted by the appellant to the EDMC, cannot discharge the respondent's onus. Even if it were to be assumed, *arguendo*, that the appellant had applied to the EDMC for de-sealing of the tenanted premises, surrender of tenancy by the respondent would not follow as an inexorable conclusion. The reliance, by the learned ACJ, on Ex D-4, as a sole ground to accept the contention, of the respondent, that he had surrendered tenancy on 22nd December 2014, is, therefore, manifestly perverse.

30. There is no consideration, whatsoever, by the learned ADJ, of these obviously glaring infirmities in the order of the learned ACJ. The learned ADJ has merely chosen to reproduce, verbatim, the findings of the learned ACJ.

31. The impugned order dated 6th April 2017 of the learned ADJ does not reflect any independent application of mind whatsoever, to the contentions advanced by the appellant.

32. It has been held by the Supreme Court in *Malluru Mallappa v. Kuruvathappa*,⁵, that any first appeal under Section 96 of the CPC has to be decided in accordance with the protocol envisaged by Order XLI Rule 31. Points which arise for determination are required to be delineated, the conclusions arrived at identified and reasons provided

⁵ (2020) 4 SCC 313

in that regard. This procedure has been completely jettisoned by the learned ADJ.

33. For all these reasons, I am of the opinion that the substantial questions which arise in the present case are all required to be answered in favour of the appellant and against the respondent.

34. Resultantly, the impugned judgment/orders dated 15th July 2016 of the learned ACJ and 6th April 2017 of the learned ADJ are quashed and set aside.

35. CS 6803/2003, instituted by the appellant, is restored to the file of the learned ACJ to be taken up and decided in accordance with law and after following the procedure envisaged by the CPC.

36. Given the age of the appellant and the fact that this is a remand proceeding, the learned ACJ is requested to proceed in the matter as expeditiously as possible.

37. The present appeal, therefore, stands allowed in the aforesaid terms with no order as to costs.

38. Pending miscellaneous applications also stand disposed of accordingly.

C. HARI SHANKAR, J.

OCTOBER 31, 2022

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