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

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Judgment delivered on: 06.02.2023

+ RSA 18/2023, CM APPL. 2615/2023 & CM APPL. 2616/2023

MOHD SHAHDAB

..... Appellant

versus

DINESH DHAWAN

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Anurag Bindal and Mr. Anil Kumar Singh, Advocates.

For the Respondent : None.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. This is a second appeal filed by the appellant/ tenant against the order passed by the learned First Appellate Court in RCA DJ 55/2020 titled as "*Mohd. Shahdab vs. Dinesh Dhawan*" dated 28.09.2022, whereby the appeal under Section 96 of the Civil Procedure Code, 1908 was dismissed confirming the judgment and the decree dated 14.02.2020 passed by the learned Trial Court.

A. FACTS AS NOTED BY FIRST APPELLATE COURT

- (i) The plaintiff (respondent herein) being the lawful owner of property bearing no.C-355, Chinnot Basti, Multani Dhanda, Nabi Karim, Paharganj, New Delhi-110055 (hereinafter referred to as “suit property”) rented out one room (shop no. 3) for carrying the work of *kabadi* at the ground floor (area measuring 8x10 sq.ft.) in the suit property to the defendant (appellant herein) at the monthly rent of Rs. 11,600/- per month exclusive of other charges in according with the Rent Agreement dated 27.07.2016 signed by the defendant for 11 months.
- (ii) It is further averred that the defendant has taken over the physical possession of the tenanted premises from the landlord on 01.07.2016. Therefore, the tenancy will be deemed to reckon from 01.07.2016 till 31.05.2017.
- (iii) It is further averred that since 01.11.2016 the defendant has not paid the rent to the plaintiff even after making repeated requests by the plaintiff. Feeling aggrieved, the plaintiff got sent a legal notice dated 21.01.2017 through speed post to the defendant stating therein to pay the arrears of rent and termination of the tenancy thereafter, however, the defendant through his reply dated 26.04.2017 has chosen to give absolutely false, wrong and baseless reply.

The plaintiff made the following prayers:

“(i) Pass a decree of possession with consequential relief may kindly be passed in favour of the plaintiff and against the defendant to restore and handover physical vacant and peaceful possession of a room (shop no. 3) at ground floor (area measuring 8x10 sq. ft.) in property bearing no. C-355, Chinnot Basti, Multani Dhanda, Nabi Karim,

Paharganj, New Delhi-110055 as shown in site plan in Red attached with the plaint. The defendant, his servants, agents may kindly be ordered to handover the possession of the said one room to the plaintiff immediately.

(ii) Pass a decree of recovery of Rs.81,200/- in favour of the plaintiff and against the defendant, thereby directing the defendant to pay a sum of Rs. 81,200/- @ Rs.11,600/- p.m. w.e.f 01.11.2016 to 01.05.2017 as arrears of rent to the plaintiff along with interest @18% p.a. from the date of filing the suit till the realization of the decretal amount.

(iii) Pass a decree of recovery of future damages, if occurs after May, 2017 @ Rs.12,000/- p.m. onwards in favour of the plaintiff and against the defendant directing the defendant to pay the future damages and pendent-lite, if any, to the plaintiff.

(iv) Cost of the suit may also be awarded to the plaintiff and against the defendant.”

B. WRITTEN STATEMENT:

On the other hand, the defendant (Appellant herein) defended the instant suit by filing Written Statement, wherein it is *inter alia* contended that the plaintiff has no *locus standi* to file the present suit because there is no cause of action in favour of the plaintiff. The plaintiff is neither the owner nor the landlord of the suit property and there is no relationship between the plaintiff and the defendant as landlord and tenant. It is further stated that father of the defendant is the tenant of the plaintiff. The rent agreement dated 27.07.2016 relied upon by the plaintiff is a false and fabricated document, therefore, the suit of the plaintiff deserves to be dismissed.

C. After filing replication by the plaintiff, the following issues were framed by Ld. Trial Court vide its order on 08.08.2018:-

- i. *Whether there is a relationship of landlord and tenant between the parties ?OPP*
- ii. *Whether the plaintiff is entitled for the relief of recovery of possession of the suit property, as prayed for ?OPP*
- iii. *Whether the plaintiff is entitled for the recovery of arrears of rent, as prayed for ?OPP*
- iv. *Whether the plaintiff is entitled for mesne profits/damages from the defendant ?OPP*
- v. *Whether the rent agreement dated 27.07.2016 relied upon by the plaintiff is a false/fabricated document ?OPP*
- vi. *Whether the plaintiff has no concern with the suit property and therefore, no locus standi to file the present suit ? OPP*
- vii. *Relief.*

D. In support of his case, plaintiff examined two witnesses in all.

The plaintiff examined himself as PW-1, by tendering his evidence by way of affidavit (Ex.PW1/1) and relied upon the following documents :-

- i. Site plan of the suit property as Ex. PW1/1;
- ii. Copy of the rent agreement dated 27.07.2016 as Ex.PW1/2 (OSR);

- iii. Copy of the legal notice dated 21.04.2017 as Ex.PW1/3 (OSR);
- iv. Copy of the postal receipt of the legal notice dated 21.04.2017 as Ex.PW1/4 (OSR);
- v. Copy of the reply dated 26.04.2017 to the aforesaid legal notice dated 21.04.2017 as Ex. PW1/5 (OSR).

The plaintiff examined Sh. Kashmiri Lal as PW2 who identified his signatures at point A on rent agreement Ex.PW1/2 (OSR).

On the other hand, the defendant examined five witnesses in all.

The defendant examined Sh. Manoj Kumar, Legal Metrology Officer, Central Zone, Weight and Measurement Department, Government of NCT of Delhi as DW1. He proved certified copy of letter dated 24.04.2015 as Ex.DW1/1, certified copy of circular dated 12.12.2005 as Ex.DW1/2, certified copies of noting pages as Ex.DW1/3-colly, forwarding letter as Ex.DW1/4, original certificate of verification bearing no. 8537/002 dated 20.06.2005 as Ex.DW1/S (OSR).

DW2 Sh. Jagdish Prasad, who brought bill book no.12, serial no.567 dated 20.01.2017 in the name of Md. Iqbal in respect of the suit property as Ex.DW2/1 (OSR).

DW3 Sh.Rajpal, Judicial Assistant from Record Room (Civil) THC, Delhi proved certified copy of summoned record pertaining to civil suit no.781/2017, Mohd. Iqbal vs Dinesh Dhawan as Ex.DW3/1 (Colly).

DW4 Sh. Ramesh Chand identified his signatures at point X on photocopy of summoned bill bearing no. 2257 dated 04.01.2012 in favour of Mohd. Iqbal in respect of suit property as Mark A.

The defendant examined himself as DW5 who tendered his evidence by way of affidavit Ex.DW5/A.

E. Upon completion of trial, the suit of the plaintiff was decreed by granting the following reliefs:-

“(i) A decree of possession with consequential relief is passed in favour of the plaintiff and against the defendant to restore and handover physical vacant and peaceful possession of a room (shop no.3) at ground floor (area measuring 8x10 sq. ft.) in property bearing no. C-355, Chinnot Basti, Multani Dhanda, Nabi Karim, Paharganj, New Delhi-110055 as shown in site plan in Red attached with the plaint. The defendant, his servants, agents are ordered to handover the possession of the said one room to the plaintiff immediately.

(ii) A decree of recovery of Rs.81,200/- is also passed in favour of the plaintiff and against the defendant with direction to the defendant to pay a sum of Rs.81,000/- @ Rs.11,600/- p.m. w.e.f. 01.11.2016 to 01.05.2017 as arrears of rent to the plaintiff along with interest @18% p.a. from the date of filing of suit till the realization of the decretal amount.

(iii) A decree of recovery of future damages is also passed after May, 2017. @Rs.11,600/- p.m. onwards in favour of the plaintiff and against the defendant with directions to the defendant to pay the future damages and pendente-lite, if any, to the plaintiff.

(iv) Cost of the suit is also awarded in favour of the plaintiff.”

CONTENTIONS OF APPELLANT

2. Mr. Anurag Bindal, learned counsel appearing for the appellant submits that the learned Trial Court had committed a grave illegality amounting to a perversity of the findings on the following grounds:-

(a) Mr. Bindal, learned counsel submits that the rent agreement which was stated to have been executed on 01.07.2016 was purportedly entered between the appellant and the respondent, after the statement of the respondent landlord was recorded in a Lok Adalat proceedings arising from the suit filed by the Md. Iqbal, father of the appellant, who, as per the learned counsel, was the tenant in the subject suit property and not the appellant. On that basis, learned counsel submits that the appellant/ defendant was never in possession of the suit property and it was only Md. Iqbal, father of the appellant who was in possession and the said rent agreement was a sham document.

(b) Mr. Bindal also submits that the said rent agreement suffered from in-admissibility on the basis that it was not properly stamped, therefore, consideration of such an inadmissible document itself would vitiate the judgment and the decree passed by the learned Trial Court and as upheld by the First Appellate Court.

(c) Mr. Bindal, learned counsel also took this Court through the cross-examination of PW-1 to submit that there are specific admissions made by the respondent as a witness admitting the fact

that Md. Iqbal, father of the appellant was the tenant in the suit property. Learned counsel also pointed out to the admission whereby, the respondent/ plaintiff admitted the statement made by him before the Lok Adalat that he would not vacate Md. Iqbal from the suit property, except in accordance with law.

(d) Learned counsel also submits that insofar as issue No.1 is concerned, the learned Trial Court came to a perverse conclusion that there was a relationship of the landlord and tenant existing between the appellant and the respondent/ plaintiff.

(e) Learned counsel submits that once the respondent/ plaintiff admitted in his cross-examination, the statement made before the Lok Adalat that the respondent/ plaintiff would proceed in accordance with law against Md. Iqbal, the filing of the eviction petition against the present appellant is contrary to the statement made by the respondent/ plaintiff before the Lok Adalat. On that, Mr. Bansal submits that the statements made, prove the fact that the present appellant was never a tenant of the subject suit premises.

(f) Mr. Bindal also submits that there is no whisper of a subsisting rent agreement purportedly having been executed between the appellant and the respondent while making the statement before the Lok Adalat on 08.04.2017, which is deliberate concealment.

(g) Mr. Bindal submits that there was no such agreement existing and it was a created document.

(h) Mr. Bindal further submits that in pursuance of the statement given before the Lok Adalat, the respondent/ plaintiff without determining the first tenancy with the father of the appellant could not have proceeded against the present appellant and that would formulate a substantial question of law on a perverse finding.

3. This Court has given a thoughtful consideration to the arguments rendered by the learned counsel for the appellant and is unable to agree with the contentions raised therein.

4. So far as the contention regarding the validity or otherwise and admissibility or in-admissibility of the rent agreement is concerned, a perusal of the cross-examination of the respondent/ plaintiff brings to fore that Ex.PW-1/2, which is the rent agreement dated 27.07.2016, was marked and exhibited as such without any objection being raised by the appellant/ defendant as to its admissibility or otherwise or even of mode of production or relevancy of the said documents.

5. That apart, a perusal of the cross-examination makes it clear that even during the cross-examination, there is no such confrontation put across to the respondent/ plaintiff who appeared as a witness.

6. On the aforesaid, this Court is of the firm view that having failed in questioning the admissibility or in-admissibility, the mode or relevancy and failing to have cross-examined the witness on the truthfulness or veracity of the Ex. PW-1/2, the appellant in a second appeal is precluded from raising such factual issues which have been settled by the learned Trial Court as well as the First Appellate Court.

7. So far as the question of the appellant not being in possession of the subject suit premises is concerned, learned counsel submitted yet again on the basis of the statement made before the Lok Adalat by the respondent/ appellant that the respondent had admitted that it was Md. Iqbal, the father, who was in the possession of the subject suit premises, and, therefore, the fact that the appellant was never in possession of the suit property was not looked into nor considered by either the learned Trial Court or the First Appellate Court.

8. A perusal of the affidavit of evidence of the appellant marked as DW-5/A also brings to fore that the entire case of the appellant is based on the statement of the respondent/ appellant given before the Lok Adalat.

9. That apart, the appellant also submits in para 3, though denying being in possession of the suit property, that he used the address of his father, that is the suit property, as his correspondence address only.

10. The stand taken by the appellant appears to be unbelievable for the reason that the emphasis of the appellant in order to show that he was not in possession of the subject suit property was merely the statement given by the respondent/ plaintiff and no other witness on that aspect, was examined.

11. This Court has considered the aforesaid affidavits of evidence and is of the firm view that the best evidence available to deny the possession of the appellant/ tenant was his father, namely, Md. Iqbal. It is intriguing to note that the appellant/ tenant never produced the father Md. Iqbal in the witness box, who would have been the best evidence

available to him.

12. It is trite that when parties do not produce the best evidence available to them, adverse inference can and ought to be drawn by the Civil Courts against them.

13. Learned Trial Court and the First Appellate Court took this aforesaid aspect into consideration and came to the conclusion that no case was made out, so far as the appellant/ tenant is concerned and gave their verdicts which was challenged before this Court.

14. Yet another relevant aspect, raised by the learned counsel, was with respect to the proof of the statement made by the respondent/ plaintiff before the Lok Adalat. This was sought to be exhibited through the DW-3 Sh. Rajpal, Judicial Assistant, Record Room (Civil), Tis Hazari Courts, Delhi, when he was examined on 31.08.2019.

15. This Court has also considered the aforesaid submission made by the learned counsel on the basis of the record produced by DW-3. Suffice it to state that no doubt that the certified copies were produced and exhibited through DW-3/1. However, the witness being a summoned witness obviously could not have proved the contents or the truthfulness or veracity of the same.

16. Mr. Bindal submits that the documents produced on record by DW-3, were also sought to be proved by the appellant/ defendant by confronting the respondent/ plaintiff and submits that PW-1 has admitted the fact that a statement was made by him.

17. Be that as it may, the same issue would still not come within the ambit of Section 100 of the CPC, 1908, being factual.

18. In view of the aforesaid, this Court is of the considered opinion that minor contradictions or slight variations or non-consideration of minor aspects by the Trial Court or the First Appellate Court would not end up in a substantial question of law to be interfered by with this Court in second appeal under the provisions of Section 100 of the CPC, 1908.

19. In that view of the matter, the present appeal is dismissed with no order as to costs.

20. The pending applications are also stand disposed of.

FEBRUARY 6, 2023/nd

TUSHAR RAO GEDELA, J.