



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

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Reserved on: 10th July, 2023

Pronounced on: 27th July, 2023

+ **RFA 529/2023**

SH. SHOKEEN KHAN

..... Appellant

Through: Mr. Ajay Kumar, Mr. Shubham Gupta, Mr. Akash Aggarwal and Mr. Ajay Singh, Advs.

versus

SH. JAI SINGH

..... Respondent

Through: Mr. Sunil Dalal, Sr. Adv. with Mr. Mahabir Singh, Mr. Nikhil Beniwal, Mr. Nitin Chowdhary, Mr. Tarun Verma, Mr. Navish Bhati and Ms. Manisha Saroha, Advs.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. This appeal has been filed under Section 96 of the Civil Procedure Code against the impugned judgment, order and decree dated 23rd May, 2023 passed by the Ld. ADJ-02, Shahdara, Karkardooma Courts, Delhi in Suit No.73/2022 titled as "*Jai Singh v. Shokeen Khan*". The said suit was filed for possession, permanent and mandatory injunction, damages and *mesne* profits by the respondent-plaintiff who claimed to be the absolute owner of the property bearing No. D-34, Main Road, Kanti Nagar, Delhi-110051. The appellant-defendant was a tenant in half portion of the basement of the property but when the plaintiff came to know about the



misuse of the property for commercial purposes, as well as stoppage of the payment of monthly rent of Rs.30,000/- per month, he served a legal notice on 04th December, 2021 for vacating the suit property. Since the respondent-plaintiff refused to vacate, said suit was filed. The suit was decreed by the Ld. Trial Court by allowing the application under Order VIII Rule 10 read with Section 151 CPC filed by the respondent-plaintiff.

The Suit

2. As noted above, the plaintiff claimed to be the owner of said suit property by virtue of a relinquishment deed dated 20th May, 2010. The rent agreement on the basis of which the defendant was given possession was dated 01st October, 2020, with the possession being given on 29th September, 2020 on monthly rent of Rs.30,000/- per month. When the plaintiff came to know about the misuse of the suit property for commercial purposes he requested the defendant to vacate the property. The defendant had also ceased paying the monthly rent since April, 2021. The defendant was challaned by the MCD for violating environmental laws which the plaintiff came to know about in the month of December, 2021. Yet again the plaintiff requested him to handover the vacant and peaceful possession of the suit property. He also came to know that the defendant had damaged the suit property and was causing nuisance to the neighbours by depositing e-waste in the passage which led to an adjacent temple. The defendant extended threats to the plaintiff that he would get the property sealed.

3. Legal notice was served on 04th December, 2021. A reply was sent by the defendant dated 09th December, 2021. The defendant filed a suit bearing No.1271/2021 which is pending in the Court of the Ld. Civil Judge, Shahdara District, Karkardooma Courts. An application under



Order VIII Rule 10 CPC was filed by the plaintiff on the basis that the defendant had been duly served on 31st March, 2022 but did not file his written statement till 18th October, 2022. There was a delay of 143 days.

The Impugned Judgment

4. The Ld. Trial Court allowed the application under Order VIII Rule 10 CPC filed by the plaintiff not finding any merit in the application for condonation of delay for 143 days, as sought by the defendant for filing the written statement. The Ld. Trial Court observed that the defendant was served on 31st March, 2022, but did not turn up till 03rd September, 2022, when he was given an opportunity to file defence within two weeks. The defendant did not avail the opportunity nor deposited costs, and instead moved an application under Order VIII Rule 1 CPC and sought an extension. Noting that the provision under Order VIII Rule 1 CPC was directory and not mandatory, per various decisions of the Hon'ble Supreme Court, the Ld. Trial Court, however, noted that the defendant would have to show that the delay was not on account of his negligence and inaction and was *bona fide*.

5. Traversing the law for Order VIII Rule 10 CPC, it was highlighted that in the event even when a fact stated in the plaint is treated to be admitted, a judgment can possibly be passed in favour of the plaintiff without requiring him to prove any facts. The Court can be satisfied that there was no fact which needed to be proved on account of the deemed admission. However, if the plaint itself indicated that there were disputes in question and it would not be safe for a Court to pass a judgment in reliance of provisions of Order VIII Rule 10 CPC.



6. The Ld. Trial Court came to a conclusion that the defendant was admittedly tenant of the plaintiff through the rent agreement which expired by efflux of time and was served a notice but chose not to vacate the premises. Reference was made to the reply to the legal notice where he was a tenant at the tenanted premises for more than five years as per an oral agreement for Rs.12,000/- per month. Relying on the Section 91 of the Evidence Act, the Ld. Trial Court disregarded the defense taken by the defendant. On this basis, the Ld. Trial Court concluded that the facts as stated in the plaint would stand admitted and a decree was accordingly passed.

Submissions of the Appellant

7. The learned counsel for the appellant contends that the rent agreement filed by the respondent-plaintiff was a forged agreement and not registered. Further, the tenanted premises was a godown, and not for residential purposes and the other floors of the premises were already let out for commercial purposes. There was an oral agreement between the parties for a period of five years to carry out commercial work in the said premises, and a commercial electricity meter had been installed and the rate of rent was fixed at Rs.12,000/- per month.

8. The appellant had filed a suit for permanent and mandatory injunction against the respondent CS No.1271/2021 before the Ld. Civil Judge when an *ex parte* decree had been passed and the appellant had deposited rent to the tune of Rs.84,000/- for a period of seven months through a cheque.



9. It has been further submitted by the appellant that they are ready to vacate the tenanted premises but seek indulgence of this Court to grant six months time to search for another premises for the appellant's work. Further, he has stated that the rate of rent was a triable issue as to whether it was Rs.30,000/- per month or Rs.10,000/- per month.

Submissions of the Respondent

10. The learned counsel for the Respondent/Petitioner has submitted that the Ld. Trial Court was justified in following the procedure laid down in Order VIII Rule 10 since the tenancy had not been disputed by the Appellant/Defendant before the Ld. Trial Court and even before this Court. There was an admission by the appellant that the tenancy was on a monthly basis. Therefore, the reliance of the Ld. Trial Court on provisions of Section 91 and Section 92 of the Indian Evidence Act, 1872 in relation to the documents filed by the plaintiff was correct. The appellant's defence that there was an oral agreement finds no substantiation whatsoever.

11. It was also brought to attention that despite there being no application for condonation of delay or extension of time, the appellant was still permitted to file his written statement within two weeks from the date of the order dated 03rd September, 2022, but did not comply. It was submitted that the application under Order VII Rule 11(d) CPC was filed by the appellant for rejection of plaint when the case was reserved for orders on 23rd May, 2023 and that cannot be countenanced on the basis of various decisions *inter alia Atcom Technologies Ltd. v. Y.A. Chunawala and Co. & Ors.*, (2018) 6 SCC 639; *M/S SCG Contracts India Pvt. Ltd. v.*



KS Chamankar Infrastructure Pvt. Ltd., Civil Appeal No, 1638 of 2019 of Hon'ble Supreme Court.

Analysis

12. It is quite clear even from the submissions filed by the learned counsel for the appellant that they are merely a tenant in the said property. Whether it was through the rent agreement propounded by the plaintiff dated 23rd May, 2023 or the oral agreement alleged by the defendant for five years, is to be considered. Whatever the case might be, the appellant has finally accepted that they shall vacate the premises, however, they need a few months time to do so. Moreover, the rent agreement propounded by the plaintiff being not registered, would, at best, make the tenancy of the appellant on a month to month basis. If that be so, the question of claiming a right to continue for an indefinite time as a tenant despite having been served legal notice for vacation, cannot accrue to the defendant-appellant.

13. It is quite clear from various decisions of this Court that in an unregistered rent agreement or even in an oral tenancy, the tenancy can at best be considered on a month to month basis, and on serving of legal notice, the said tenancy can be terminated and premises ought to be vacated by the tenant.

14. The reference in this regard may be made to decisions of this Court in ***Sanjay Gupta v. Krishna Hospitality***, 2018 SCC OnLine Del 8942. It was argued by the defendant that they were entitled to remain in the premises till mutually agreed between the parties. In this regard, this Court held as under:

“9. I have enquired from the counsel for the defendants that the defendants having admitted the relationship of landlord and tenant between the parties and the rent to be in excess



of Rs. 3,500/- per month and having also admitted non-existence of any registered Lease Deed whereunder the defendants can have any right to continue in the premises, what purpose will be served in giving opportunity to the defendants to lead evidence to prove the plea of 'understanding between the parties' when such plea has no basis in law.

10. The counsel for the defendants states that the 'due process of law' has to be followed.

11. The due process of law does not entitle a litigant to force the Court to blindly put all suits through the process of trial when the defendants in their pleading have been unable to disclose any defence. A suit in which the defendants in the written statement have not disclosed any defence or raised any substantial question of law or fact which if decided in favour of the defendants, can defeat the suit claim, does not require any issues to be framed and the suit has to be decreed forthwith. In the name of 'opportunity', 'compliance of provisions of CPC' and 'observing due process of law', the time of the Court is not to be wasted.

.....

13. Per Section 107 of the Transfer of Property Act, 1882, a lease of immovable property for any term exceeding one year can be made only by a registered instrument and all other leases may be made either by registered instrument executed by the lessor and lessee or by oral agreement accompanied with delivery of possession. The defendants in their written statement have pleaded lease agreement dated 23rd November, 2015, for a period of three years, executed by plaintiff and defendants and whereunder claim to be entitled to occupy premises till 31st October, 2018. The same is not registered and is admitted to be not registered. The same thus, under Section 49 of Registration Act 1908, cannot be received in evidence of any transaction effecting such property. Per Section 106 of Transfer of Property Act, in the absence of registered lease deed, a lease of immovable property for any purpose other than agricultural



or marketing, is deemed to be a lease from month to month, terminable by a fifteen days' notice. Supreme Court in Nopany Investments (P) Ltd. v. Santokh Singh, (2008) 2 SCC 728 held that filing of an eviction suit under general law itself is notice to quit upon tenant. The said dicta was followed by Division Bench of this Court in Shri Ram Pistons and Rings Ltd. v. C.B. Agarwal HUF, ILR (2009) III Delhi 249. Thus, even if suit for ejectment is filed without notice determining lease, after the same has remained pending for over fifteen days, it cannot be defeated on ground of non service of notice. Moreover, the defendants herein have in their written statement admitted service of notice of determination of tenancy. Upon amendment of Section 106 of Transfer of Property Act with effect from 31st December, 2002, a notice of determination of tenancy shall not be invalid merely because the period mentioned falls short of period specified thereunder, as long as the suit has been filed after specified period."

(emphasis supplied)

15. Reference may also be made to the observations of this Court in **Ashok Kumar Bagga v. Rajvinder Kaur**, 2021 SCC OnLine Del 2785 where it has been stated, in regard to a suit for possession and recovery of arrears of rent where the defendant contended that the lease had been extended orally, as under:

27. Learned counsel for the Respondent has rightly argued, as an alternate submission and without prejudice to his earlier submissions, that even if one was to go by the plea of the Appellant that there was an oral agreement extending the tenancy upto October, 2019, it is high time that the Appellant vacated the premises as two years have gone past even the said period, in the year 2021. In this regard, I may refer to the observations of the Supreme Court in Indian Council for Enviro and Legal Action v. Union of India, (2011) 8 SCC 161 where the Court held that it is the bounden duty an obligation of a Court to neutralise any unjust and undeserved gain by a party and a person in wrongful possession should not only be removed as early as possible but be compelled to pay for the wrongful use of the premises by fine, penalty as well as cost. Relevant para from the judgment is as follows:—



“149. It is settled principle of law that no one can take advantage of his own wrong. Unless courts disgorge all benefits that a party availed by obstruction or delays or non-compliance, there will always be incentive for non-compliance, and parties are ingenious enough to come up with all kinds of pleas and other tactics to achieve their end because they know that in the end the benefit will remain with them.”

(emphasis supplied)

16. As regards the approach of the Ld. Trial Court in allowing the application under Order VIII Rule 10 CPC, at best, a lenient view could have been taken by the Ld. Trial Court considering that the time limit is not mandatory as held by the Hon’ble Supreme Court in ***Kailash v. Nankhu***, (2005) 4 SCC 480. Even in that decision, the Hon’ble Supreme Court stated that extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and to be placed on record in writing, and such circumstances which may be considered by the Court have to be exceptional, occasioned by reasons beyond the control of the defendant.

17. The following extract from the decision of the Hon’ble Supreme Court is being extracted hereunder for convenient reference:

46. We sum up and briefly state our conclusions as under:

.....

“(iv) The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the court to extend the time. Though the language of the proviso to Rule 1 Order 8 CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The



provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 CPC is not completely taken away.

(v) Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case.”

(emphasis supplied)

18. This Court has had the occasion to peruse the Trial Court Record in this matter. It was noted in the order dated 03rd September, 2022 that the Appellant/Defendant was served on 31st March, 2022 and the written statement was sought to be placed on record without any application for condonation of delay or any application seeking extension of time. In the interest of justice, one opportunity was provided to the defendant to file the written statement within two weeks subject to cost of Rs.15,000/-. Thereafter on 19th December, 2022, the matter was referred to the Mediation at Karkardooma Courts and it was stated on 20th March, 2023



that the matter could not be settlement in the Mediation Cell. Later, applications were filed under Order VIII Rule 1 CPC by the defendant and under Order VIII Rule 10 CPC by the plaintiff. It was noted later in the impugned order that the defendant did not file his written statement until 18th October, 2022. It was noted in the impugned order that even after giving opportunity to file the defence within two weeks by order dated 03rd September, 2022 the defendant did not avail the said opportunity nor deposited the costs imposed by him and instead moved an application under Order VIII Rule 1 CPC. It transpires from the record, in particular from the application under Order VIII Rule 10 CPC that when the matter was listed on 06th February, 2023 the defendant did not file the written statement nor deposited the costs in terms of the order dated 03rd September, 2022, but since the Court had given a chance for the parties to mediate, the matter was adjourned to 20th March, 2023. On 20th March, 2023, the defendant neither filed their application nor deposited the costs and only after specific query the defendant handed over a cheque of Rs.15,000/-. The directions of 03rd September, 2022 having not been complied with the said application under Order VIII Rule 10 CPC had been moved.

19. Notwithstanding this issue of the delayed filing of the written statement, even a perusal of the written statement which is on record of the Court, would show that it is admitted by the defendant that the relationship between the parties is of landlord-tenant and that he had taken the suit property on tenancy. However, averment is made that “*in the year August, 2020*” an oral tenancy was agreed for a period of five years at the rate of Rs.12,000/- per month. The defendant admits that the plaintiff had been continuously asking him to vacate the property since August, 2020.



Besides these averments, there is nothing substantial in the written statement presenting any other fact and circumstance in support of defendant's averment regarding oral tenancy.

20. The fact that he was continuing to sit on the property despite many attempts of the Respondent/Plaintiff to ask him to vacate, is fairly evident even from the written statement. Therefore, notwithstanding the decree passed by the Ld. Trial Court, taking into account Order VIII Rule 10 CPC application filed by the plaintiff, even from the record, the defendant-appellant does not seem to have any case to support claim of continued possession of the property.

21. In the considered opinion of this Court even in the submissions filed by the appellant before this Court, there is nothing to suggest that there was a written agreement between the plaintiff and the defendant which would entitle him to continue as a tenant and nothing is suggested that was placed on record before the Ld. Trial Court that ought to have allowed a different conclusion had the suit been fully tried.

22. In fact the appellant submits that they will vacate the property but just want additional time. Considering that the legal notice to the applicant was served in December, 2021, he has had enough notice (now amounting to one and half years) to make arrangements for vacating the said property. In fact he has pushed the plaintiff-landlord to pursue his litigation in the Trial Court and tried to dilate by filing a delayed written statement, as also filing an Order VII Rule 11 CPC application seeking rejection of the plaint after the matter was reserved for orders by the Ld. Trial Court on 23rd May, 2023. Clearly, these were tactics in order to push the plaintiff to the limit, which cannot be countenanced by this Court. This Court has held in



various decisions (supra) that tenants cannot be allowed to take advantage of the landlord's property beyond what the law allows them under the arrangement.

Conclusion

23. In view of the same, this Court finds no merit in the appeal and the same is dismissed, however, without costs. The plaintiff-respondent will be at liberty to execute the decree before the Ld. Trial Court.

24. Judgment/Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

JULY 27, 2023/MK