



2024:DHC:4924



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 05.04.2024
Judgment pronounced on: 03.07.2024

+ CM(M) 223/2022

PANCHAM LAL

..... Petitioner

Through: Mr. Jagdish Singh Rajput and Mr.
Pratyaksh Rajput, Advs.

versus

RAKESH KUMAR

..... Respondent

Through: Mr. Sunil Ojha, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition has been filed invoking the supervisory jurisdiction of this court under Article 227 of the Constitution of India challenging the order dated 18.12.2021 passed by the Learned Additional District Judge -03 (Central), Tis Hazari Court, Delhi ("Trial Court") in CS No. 1655/2018 titled as "*Pancham Lal vs Rakesh Kumar*" whereby the learned trial court disposed of the application moved by the petitioner herein under Order XV-A read with section 94(e) of Code of Civil Procedure, 1908 ("CPC") seeking directions to the respondent to deposit entire arrears of damages and mesne profit at Rs. 8,000 per month to the petitioner. However, the learned trial court directed the respondent to deposit rent in the bank account of petitioner w.e.f. 2019 to the extent of admitted rent only i.e. Rs. 147/-.



2. The brief background of the case is such that the suit property i.e. bearing MCD No. 5426-5427 & 5432-33, ad-measuring 49.32 square meters (approx.) situated at Laddu Ghati, Near Shora Kothi, Pahar Ganj, New Delhi, 110055 was owned by Late Shri Bhagirath Mal. After his death in 1972, Late Shri Bhagirath Mal left behind his wife Smt. Vidyawati and three sons namely Shri Kripa Narain, Shri Jai Narain and Shri Ravi Garg and three daughters namely Smt. Indrani Gupta, Smt. Lalita Gupta and Smt. Snehlata.

3. Following the unfortunate demise of Shri Bhagirath Mal, his 9 legal heirs emerged and of which 8 legal heirs executed a relinquishment deed dated 29.12.2010 in favor of the 9th legal heir namely Smt. Snehlata Aggarwal in respect of the suit property which came to be duly registered in the office of Sub Registrar, III, Delhi on 24.02.2011.

4. Thereafter, Smt. Snehlata executed a General Power of Attorney in favor of her husband Shri Vijay Aggarwal son of Shri R.N. Aggarwal in respect of the suit property, which was also registered before the aforesaid sub-registrar on 28.07.2011. Shri Vijay Aggarwal then sold the suit property to Smt. Meenu Goel vide sale deed dated 08.09.2011. The said deed was registered on 22.09.2011. Thereafter, the new purchaser Smt. Meenu Goel further sold the suit property to the petitioner vide sale deed dated 11.04.2013 registered on 17.04.2013.

5. It is the case of the petitioner that he has paid all pending dues of house-tax for years 2004-05 to 2013-2014 and the mutation of the suit property has been entered in the name of petitioner in the record of North Delhi Municipal Corporation on the basis of the sale deed dated 11.04.2013.

6. It is further the case of the petitioner that the premises bearing



municipal no. 5426 has been in unauthorized and illegal occupation by the respondent running a barber shop in the suit premises. The petitioner in this regard also sent a legal notice dated 05.06.2015 to which the respondent sent a reply dated 18.06.2015.

7. Subsequent thereto, the litigation between the parties ensued with the petitioner filing a suit on 19.05.2018 for possession of the suit property along with damages, mesne profit & permanent injunction, against the respondent. The respondent was served with the summons of the suit on 04.06.2018 and he filed his written statement on 31.08.2018.

8. During the course of proceedings in the suit, the petitioner filed replication and also an application under Order XV-A CPC read with section 94(e) of CPC. Respondent filed reply to the said application and the petitioner filed the rejoinder to the reply.

9. In the meanwhile, the mother of the respondent herein Smt. Saroj W/o Late Shri Shyam Sundar filed a D.R. application no. 294/2019 titled as "*Smt. Saroj Devi vs Shri Pancham Lal*" for deposit of rent w.e.f. August, 2014 to December, 2019 at Rs. 147 per month, total sum of Rs. 9,555 before the learned ARC-1, Central District, Tis Hazari Court, Delhi. The learned ARC, vide order dated 09.11.2021 allowed the aforesaid application with a liberty to the respondent to withdraw the rent deposited in this case without prejudice to his rights. However, it is stated that the petitioner did not withdraw the said rent.

10. Thereafter, the impugned order was passed on the application of the petitioner under Order XV-A read with section 94(e) of CPC and the respondent was directed to deposit the rent directly in the bank account of the petitioner, to the extent admitted rent only i.e. Rs. 147/- per month.



Aggrieved by the passing of the impugned order, the petitioner has approached this court vide the present petition.

11. It is submitted by Mr. Jagdish Singh Rajput, the learned counsel for the petitioner that the learned trial court overlooked the fact that after filing of the present suit on 19.05.2018 and an application under Order XV-A read with section 94(e) of CPC on 18.02.2019 by the petitioner, Smt. Saroj had rushed before the Rent Controller on 11.11.2019 for deposit of rent w.e.f. August, 2014 to December, 2019 at Rs. 147/- per month. However, after the death of Shyam Sunder, the respondent and his mother Smt. Saroj Devi has not paid any rent to the then owner of the suit property upto April, 2013.

12. The learned counsel submitted that the petitioner is a retired government servant and is aged at 66 years and spent all his savings to purchase the property but has not been able to reap the fruits of it.

13. Learned counsel submitted that the respondent is running a barber shop and is making a handsome amount of money and the prevalent market rate of rent is around Rs. 15,000/- per month as the suit premises is in a commercial area i.e. Pahar Ganj, New Delhi.

14. The learned counsel also submitted that the learned trial court erred in not considering the settled law that Order XV-A CPC does not contemplate only payment of admitted rent but the Court can also direct deposit of damage / occupation charges upon termination of tenancy based on the prevalent market rent. Reliance was placed on the judgments in **Raj Kumar Rajora & Ors vs Ajay Dhingra & Anr.**, 2020 SCC OnLine Del 81 and **Raghubir Rai vs. Prem Lata & Anr.**, 2014 SCC OnLine Del 3045.

15. Mr. Sunil Ojha, the learned counsel for the respondent refuted the submissions and contended that the present petition is not maintainable and



is liable to be dismissed keeping in view that the respondent is occupying the suit premises as a tenant and not as an unauthorized occupant along with his mother. The electricity and water connections are in the name of respondent's grandfather Sh. Banarsi Dass since 1981. Thus, the application under Order XV-A is not applicable as the suit is barred by Section 50 of the Delhi Rent Control Act, 1958. Further, the appropriate remedy for the petitioner is to approach the competent court under provisions of Delhi Rent Control Act for eviction of respondent/tenant and not by instituting a civil suit.

16. Learned counsel submitted that the respondent has been depositing rent before the Learned ARC before the purchase of the suit property by the petitioner in 2013, even rent till December, 2019 has been paid vide order dated 09.11.2021 passed by the learned ARC and the respondent has been regularly depositing rent as per the directions of the court, hence, there is no ground for eviction of the respondent from the suit premises.

17. This Court has heard the submissions addressed on behalf of the parties and perused the record.

18. Order XV-A CPC has been titled "striking of defence in a suit by a lessor". The provision was introduced in CPC as applicable to Delhi vide notification published in Delhi Gazette dated 14th November, 2008. The provision intends to benefit the landlord; the object is to mitigate the hardships suffered by the landlord on the account of the long pendency of a civil suit, during which the landlord should not be deprived of the rent payable by the tenant or mesne profits that might accrue. Order XV-A CPC empowers the Court to direct the erstwhile tenant to deposit rent during the pendency of suit at such rate on the basis of material placed on record. Such



amount as may appear to be reasonable, to safeguard the rights of the owner of the property and to ensure that such owner is compensated at least for the time taken in adjudication of a false defence taken by the tenant in an unauthorized occupation.

19. In the present case, the petitioner became the owner of the suit property vide registered sale deed dated 11.04.2013. The petitioner has contended that respondent has been using his premises for long and is not paying the rent regularly, hence, the respondent is an unauthorized and illegal occupant of the suit premises and is thus, liable to pay damages at the rate of Rs. 8,000/- per month for occupying the suit premises illegally.

20. The respondent has not denied being a tenant in the suit premises, but has disputed that he is an unauthorised occupant in the suit premises. According to the respondent, his predecessor in interest had been a tenant in the premises since 1942. After the demise of his grandfather, the original tenant in the suit premises, the respondent along with his mother became a tenant in succession in the suit premises and the present rent is Rs.147/- only, therefore, the suit is covered under Delhi Rent Control Act and the civil suit is not maintainable.

21. It is not disputed that the petitioner has sent a legal notice dated 05.06.2015 which was duly served on the respondent and he had filed a reply to the same. However, the respondent did not vacate the suit premises even after service of the notice. Nonetheless, the respondent submits that after receipt of legal notice from the petitioner, the respondent had asked for the property papers from the petitioner, which were never supplied to him, on the basis of which, the respondent deposited the rent in the Court w.e.f. 01.01.2012 till December, 2019.



22. It is noted from the record that the respondent did not tender the rent to the landlord at the relevant period. The last rent receipt which is relied upon by the respondent is dated 06.04.2010 for having tendered the rent up to September, 2009 which is in the name of Sh. Shyam Sunder, father of the respondent. According to the petitioner, Sh. Shyam Sunder had not paid any amount of rent from 01.10.2009 till his death on 29.01.2012 to the then owner of the suit property. Thereafter, no rent was paid up to April, 2013 and the petitioner became the owner of the suit property vide Sale Deed dated 11.04.2013.

23. Subsequently, the respondent is said to have deposited rent with effect from August 2014 to December 2019 in the court after filing of the suit by the petitioner on 19.05.2018 in the name of Smt. Shakuntala Devi who had relinquished her rights in favour of Smt. Snehlata Aggarwal in the suit property.

24. Needless to say, though the respondent claims himself to be a tenant in occupation of suit property since long but his conduct exhibits that he had not been diligently tendering rent at the relevant time to the rightful owner of the suit property and he deposited the rent in the Court, after he came to know that the present suit has been filed by the petitioner and that too in the name of Shakuntala Devi, who had nothing to do with the suit property at the time of the deposit of the rent. Moreso, the suit property undoubtedly is situated in a commercial area in Pahar Ganj, Delhi.

25. In **Raj Kumar Rajora and Ors vs. Ajay Dhingra and Anr. (Supra)**, while dealing with the provision under Order XV-A CPC, on facts akin to the present case, the Co-ordinate Bench of this Court directed the tenant to deposit the rent at an enhanced rate and not the admitted rent and



has held as under:-

*“11. Under these circumstances, it would not be right for the Trial Court to hold that no amount would be payable except the admitted rent. It was this very issue which was determined by this Court in **Raghubir Rai (supra)** both by the ld. Single Judge and by the ld. Division Bench. The ld. Division Bench judgment clearly holds that the Court under these circumstances while considering an application under Order XV-A CPC ought to direct the deposit of the damages/occupation charges upon termination of the tenancy based on the prevalent market rent.*

“24. We are of the view that the Court, in exercise of powers under Order XV-A of the CPC is empowered to direct deposit at such rate as the erstwhile tenant / defendant may on the basis of material on record be found to have agreed to pay to the landlord for the said period even if the tenant before the Court may not have admitted the same or disputed / controverted the same. Similarly, in a suit between the owner of immovable property and an unauthorized occupant, Order XV-A empowers the Court to direct the defendant who though may not be liable to be ejected / dispossessed immediately without trial but who, on preponderance of probabilities may not be found to have a right to continue in possession of the property, to deposit during the pendency of the suit such amount as may appear to be reasonable, to safeguard the right of the owner of the property and to ensure that such owner is compensated at least for the time taken in adjudication of a false defence taken up by the defendant in unauthorized occupation. This, in our view is necessary to avoid the process of the Court being abused by unscrupulous litigants and to curb the growing tendency of using the process of litigation as a tool of oppression.

25. We should however not be interpreted as laying down that Order XV-A empowers the Court to, without evidence assess mesne profits or to merely by taking judicial notice and without any material on record,



*arbitrarily direct the defendant to deposit a much higher amount than what he had been paying or had agreed to pay. Reference in this regard can be made to the judgment of the Division Bench of this Court in **National Radio & Electronic Co. Ltd. Vs. Motion Pictures Association** 122 (2005) DLT 629 laying down that mesne profit have to be proved by reliable and cogent evidence in accordance with law. Of course, if the erstwhile tenant / defendant is found to have agreed to periodically increase the rent / user charges, even if such contract may have come to an end, in exercise of powers under Order XV-A of the CPC direction for deposit with such increases can be made unless strong grounds exist for such increases being not due.*

...

28. We are prima facie unable to believe that a valuable commercial property, as the subject property is, would have been let out at a rent below Rs.3,500/- per month, allowing the letting to fall within the ambit of the Rent Act, whereunder the eviction of a tenant is not only difficult but virtually impossible. Both the parties obviously have been indulging in transactions in cash, perhaps to avoid taxes. We in the circumstances are of the opinion that there is no reason to interfere with the order of the learned Single Judge.”

*12. Thus, the test to determine unauthorised occupant, is one to be adjudged on the ‘preponderance of probabilities’. Recently in **Rajesh Anand v. Rahul Wadhwani and Anr.**, [CM(M) 1375/2018, decided on 5th December, 2019] this Court had held as under:*

“14. In the judgment of Raghubir Rai (supra), the ld. Division Bench of this Court has clearly held that if , on the basis of the pre-ponderance of probabilities the tenant may not be found to have a right to continue in possession of the property , some amount ought to be directed to be paid for the said period. ...”



13. *The sons of the deceased tenant are conducting their own business and were not dependants of the father and they did not even tender rent after the demise of the father. While the neighbouring property could be a standard which could be adopted, considering the fact that the property is not similarly constructed in the manner as has been argued by the tenants, the same could only be a measure which the Court could keep in mind while fixing the damages to be paid for occupation of the tenanted premises. The ld. Trial Court has clearly erred in holding that only the admitted rent can be paid. The purpose of Order XV-A CPC would be completely defeated if only the admitted rent is directed to be paid. The provisions of Order XV-A CPC are specifically enacted for the purpose of giving benefit to landlords and the judgment of the Division Bench in **Raghubar Rai (supra)** is clearly binding in the present case.*

14. *Under these circumstances, keeping in mind the distinction between the neighbouring premises and the current premises and the fact that the tenants have been in occupation of the suit property for several years, it is deemed appropriate to direct deposit of Rs.1 lakh per month from 2016 i.e. the date of the filing of the suit till date. The arrears from 2016 till date shall be deposited within a period of three months, however, the monthly occupation charges with effect from January, 2020 shall be deposited on or before the tenth of every subsequent month before the ld. Trial Court."*

26. Notably, the petitioner has also placed on the record, the order dated 30.03.2022 passed by the learned Trial Court wherein, it decided the application under Order XV-A read with Section 94(e) CPC filed by the petitioner herein against another tenant in the same suit property in a separate suit, and on similar objections raised by the defendant/tenant therein. Vide the aforesaid order, the learned Trial Court granted the claim of mesne profit for three years prior to filing of the suit @ Rs. 6,000/- per month and also awarded simple interest @ 7% p.a. from the date of the order



till actual realisation in favour of the petitioner.

27. Pertinently, vide the impugned order, the learned Trial Court has already observed, to frame along with other issues, the issue regarding the jurisdiction of the civil court to try the suit, which may be treated as a preliminary issue, if required.

28. Having considered the above, the respondent is directed to deposit rent @ Rs.6,000/- per month from the date of filing of the suit till date before the learned Trial Court, after adjusting Rs. 9,555/- already deposited by the respondent, before the court of learned ARC and shall continue to deposit monthly occupation charges @ Rs. 6,000/- per month with effect from July, 2024 on or before the 10th of every month. The arrears from date of filing of the suit shall be deposited within a period of four months to be kept in FDR in auto-renewal mode by the learned Trial Court.

29. Needless to say, the aforesaid deposits shall be made without prejudice to the rights and claims of the parties. Further, the observations made hereinabove shall not tantamount to be an expression on the merits of the case.

30. Consequently, with the above observations, the petition stands disposed of.

SHALINDER KAUR, J.

JULY 03, 2024 / SU