



2024:DHC:5114



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

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Judgment reserved on: 09.04.2024
Judgment pronounced on: 11.07.2024

+ CM(M) 1217/2023

MUKESH MARWAHA & ANR.

..... Petitioners

Through: Mr. Kapil Sankhla, Mr. Akhilesh Aggarwal, Mr. Gopesh Jindal, Ms. Fagun Sharma and Mr. Hanish Phogat, Advs.

versus

RAJIV BHAKRI & ORS.

..... Respondents

Through: Mr. Shekhar Nanavaty, Advocate

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The issue involved in the present petition pertains to dismissal of the application of the petitioners filed under Order XV-A of Code of Civil Procedure, 1908 (in short "CPC") vide which the petitioners sought payment of rent from the respondents during the pendency of the suit before the learned Trial Court. However, the learned Trial Court dismissed the application vide impugned order dated 06.03.2023 holding that the petitioners failed to establish landlord-tenant relationship between the parties.

2. It is apropos to recite the factual matrix of the present case originating with the father of the petitioners namely Late Manmohan Lal Marwaha purchasing the property bearing no. WZ 256 (Old No. WZ 255A), Ground Floor, Nangal Raya, New Delhi, 110046 (in short 'suit property') while



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executing GPA dated 30.07.1982 from one Ganga Bishan and subsequently, father of the petitioners also executed a GPA dated 16.04.1992 in petitioners' favor. The suit property was sold to the petitioners by their father through Power of Attorney on 09.01.2014. While the suit property was changing hands, it is an admitted fact that in the year 1983-84, Late Manmohan Lal Marwaha being the Karta of Manmohan Lal Marwaha & Sons (HUF) had let out the suit property to Ashok Bhakri at a monthly rent of Rs. 5,000/- for commercial purposes on the basis of an oral agreement and the rent receipts for the same were issued in the name of Pee Pee Traders and A.A Traders, which were owned by Ashok Bhakri.

3. Being the legal heirs of Late Ashok Bhakri, the respondent no. 2 & 3 continued holding the possession of the suit property after the demise of their father. It is the case of the petitioners that both the respondents have failed to tender the rent amount of Rs. 5,000/- per month to the petitioners because of which the father of the petitioners before his demise sent a legal notice dated 28.09.2015 under Section 106 of the Transfer of Property Act (in short "TPA") whereby the tenancy of the respondent no. 2 & 3 was terminated and they were called upon, to hand over the peaceful possession of the suit property to the petitioners within 15 days from the date of receipt of the legal notice.

4. The petitioners have alleged that instead of handing over the possession of the suit property, the respondent no 3 / defendant no. 2 sent a reply dated 11.10.2015 whereby, he denied the landlord-tenant relationship between them and further denied the title of the petitioners in respect of the suit property. Moreover, the respondent no. 3 simultaneously, raised a plea that the suit property was taken on rent in the year 1981-82 for the monthly



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rent of Rs. 500/- per month and the tenancy was terminated and thereafter, the tenancy was renewed in the name of his grandmother and therefore, all legal heirs of his grandmother are in possession of the suit property.

5. The present chain of events led to the filing of the suit bearing CS SCJ No. 1210/2017 titled as "*Mukesh Marwah & Anr. V. Ms. Bhakri & Ors.*" for possession, recovery of arrears of rent, mesne profits and injunction with respect to the property bearing No. WZ. 256 (Old No. WZ 255A), Ground Floor, Left Portion, Nangal Raya, New Delhi - 110046 before Civil Judge-01, Patiala House Court, New Delhi.

6. In the abovementioned civil suit pending adjudication before the learned Trial Court, only respondent no. 1/defendant no. 3 is contesting the suit and has filed written statement.

Submissions by the Petitioners:

7. Learned counsel for the petitioners submitted that respondent no. 1 has not been able to state the correct number of suit property whether it is 'WZ-255, Nangal Raya' or 'WZ-256, Nangal Raya'. The petitioners have intentionally manufactured and fabricated the documents by mentioning different municipal numbers in the title documents. Moreover, perusal of the title documents would also show that petitioners have made changes on the documents by striking off and writing the municipal numbers in their own handwriting. Petitioners have failed to annex any Title Deed pertaining to property bearing no. WZ-225A. Learned counsel for the petitioners further submitted that respondent no. 1 is enjoying the possession of the suit property without paying a single penny as rent to the petitioners, who are absolute owners of the premises and the respondent nos. 2 and 3 have also admitted about the landlord/tenant relationship in the reply dated 11.10.2015



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to the notice dated 29.09.2015 Moreover, the ratio of judgment in case of ***Raghubir Rai vs. Prem Lata & Anr.***, 2014 SCC OnLine Del 3045 was ignored by the learned Trial Court in passing the impugned order.

8. Learned counsel submitted that law has been well settled that Order XV-A CPC empowers the Court to direct deposit of a reasonable amount during the pendency of the suit to safeguard the rights of the owner of the property and to ensure that the owner is compensated atleast for the time taken in adjudication of a false defence taken by the defendant while being in unauthorised occupation. Reliance was also placed in ***Raj Kumar Rajora vs. Ajay Dhingra*** 2020 SCC OnLine Del 81

Submissions by the Respondents:

9. Learned counsel for the respondents has controverted the submissions of the petitioners by stating that petitioners have not placed on record any material to establish the market rent of the suit property. Moreover, the rent receipts filed by the petitioners suggesting that Rs. 5,000/- per month was the market rent shows the suit property as ground floor and first floor but does not mention a small hall and hence, the said rent receipt cannot be taken to be a valid document to determine the amount of rent for the suit property.

10. Learned counsel submitted that the petitioners have been posed with the material question with respect to the ownership of the suit property. The respondents have denied the relationship of landlord and tenant and hence, respondents cannot be directed to pay any amount in terms of Order XV-A CPC.

11. Learned counsel further submitted that at the very outset, Order XV-A CPC is not applicable in the present proceedings. That apart, the petitioners



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have not claimed that the respondent no. 1 is the tenant in the suit property and in fact Order XV-A CPC can only be invoked once the relationship between the parties to the suit has been admitted. Moreover, the petitioners as per their own pleadings had sent a notice under Section 106 TPA dated 28.09.2015, the same is not addressed to respondent no. 1 herein.

Reasons and conclusions

12. Having considered the submissions, I may proceed to deal with the provision under Order XV-A of CPC, which reads as follows:-

“STRIKING OFF DEFENCE IN A SUIT BY A LESSOR

1) In any suit by a owner/lessor for eviction of an unauthorized occupant/lessee or for the recovery of rent and future mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order (within such time as the court may fix) and thereafter continue to deposit in each succeeding month the rent claimed in the suit as the Court may direct. The defendant shall to deposit such amount till the decision of the suit unless otherwise directed.

In the event of any default in making the deposit as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.

... ..”

13. The said provision was examined by the learned Single Judge of this Court in the case of **Raghubir Rai** (Supra), the relevant paragraph is as under:-

“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



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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.”

14. In view of the findings of this court in the above case and reverting to the facts of the present case, learned Trial Court while dealing with the contentions raised by the parties before it, has merely relied upon the written statement filed by respondent no. 1 and came to the conclusion that there is no admission on behalf of the respondent no. 1 as to the existence of the landlord - tenant relationship. Further, learned Trial Court found that there is no admission of the rent of the suit property being more than Rs. 3,500/- thereby bringing it outside the purview of Delhi Rent Control Act. Learned Trial Court dismissed the application by observing that it is not clear that whether the alleged tenancy can be governed by the provisions of CPC including Order XV-A CPC.

15. Needless to say, the scope of passing directions under Order XV-A CPC is not dependent on mere admission by defendant but in any suit by owner/lessor for eviction of unauthorised occupant/lessee. Further, the court may direct to pay such amount as it may deem fit in facts and circumstances of a particular case. Thus, Order XV-A cannot be given a narrow interpretation than the one given by legislature under Order XV-A CPC. Further, as stated above, this Court has already taken a view which can be



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applied to the facts and circumstances of the present case. Looking at the facts of the present case from this angle, it appears that learned Trial Court has not considered the documents available on the record specifically reply dated 11.10.2015 by respondent no. 1 to the legal notice issued by the petitioners so as to examine whether there is denial of the landlord-tenant relationship at a stage when the proceedings were yet not instituted. Similarly there is an averment by respondent no. 2/defendant no. 2 about payment of rent at least till the year 1995. The learned Trial Court has also failed to consider that respondent nos. 1 and 2/defendant nos. 1 & 2 are ex-parte before learned Trial Court and thus, there was no denial of the averments made in the plaint on their behalf. More so, the learned Trial Court has also not considered the law laid down by this Court in the case of **Raghubir Rai** (supra) and therefore, failed to consider in such circumstances, if any use and occupation charges are required to be paid by the respondents.

16. In view of the above, the impugned order dated 06.03.2023 is set aside and the matter is remanded back to the learned Trial Court to consider the application under Order XV-A CPC afresh and dispose of the same within a period of four weeks from today.

17. Needless to say, this Court has not expressed any opinion on the merits of the case. The petition along with pending application, if any, stands disposed of.

SHALINDER KAUR, J.

JULY 11, 2024

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