

(2011) 03 DEL CK 0065
In the Delhi High Court
Case No : CS (OS) No. 880 of 2010

Ajit Pal Singh

APPELLANT

Vs

B.K. Jewellery House Marketing Pvt. Ltd.

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 10

Citation : (2011) 03 DEL CK 0065

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Raman Kapur and Dhiraj Sachdeva, for the Appellant; Rajnish Singh, for the Respondent

Judgement

J.R. Midha, J.—The Plaintiff has filed this suit for recovery of possession of basement of property bearing No. WZ-16, Ugarsen Market/Bindra Market, Santpura, Tilak Nagar, New Delhi-110018. The Plaintiff is also claiming arrears of rent from February, 2009 to October, 2009 and mesne profits with effect from 1st November, 2009.

2. The Plaintiff is the owner and landlord of the suit property which was let out to the Defendant vide registered lease deed dated 21st May, 2008 for a period of three years with effect from 1st March, 2008 to 28th February, 2011 at a monthly rent of Rs. 70,000/- per month. The Plaintiff paid the rent for the month of February, 2009 by means of cheque No. 843441 dated 7th February, 2009 which was dishonoured upon presentation. No rent was paid thereafter. As such, the Plaintiff has not received any amount towards rent of the suit property. Vide notice dated 31st July, 2009, the Plaintiff terminated the lease under Clause 11 of the lease deed dated 21st May, 2008 on account of the default of the Defendant in payment of rent. The lease stood terminated on the expiry of 90 days from the notice in terms of the lease deed.

3. The summons in the suit were served on the Defendants who entered the appearance before this Court on 17th September, 2010 and four weeks time was

granted to them to file the written statement along with all original documents.

4. The time for filing the written statement expired on 17th October, 2010 and more than four months have passed since then.

5. The learned Counsel for the Defendant seeks further time to file the written statement which is declined.

6. The learned Counsel for the Plaintiff submits that the decree be passed in favour of the Plaintiff and against the Defendant under Order VIII Rule 10 of the CPC for their failure to file the written statement. Learned Counsel for the Plaintiff further submits that he restricts his claim for relief of mesne profits in prayers (c) and (d) to the agreed rent and gives up prayer (e) of the plaint.

7. The learned Counsel for the Defendant submits that under Order VIII Rule 10 of the Code of Civil Procedure, it is mandatory for the Plaintiff to lead the evidence and the Court has no jurisdiction to pass the decree without recording the evidence.

8. The law with respect to Order VIII Rule 10 of the CPC is well settled. Order VIII Rule 10 of the CPC gives discretion to the Court either to pronounce judgment or make such order in relation to the suit as it thinks fit. Though this Rule provides that the Court "shall" pronounce judgment against the Defendant, it is not mandatory for the Court to pass a decree in favour of the Plaintiff straightway because a written statement is not filed. It is the duty of the Court to analyse the pleadings so as to find out if it is safe to rely on the pleadings itself or to require proof of the content thereof.

9. In the facts and circumstances of this case, this Court is of the view that this is a fit case for exercise of discretion under Order VIII Rule 10 of the CPC and it is safe to rely on the pleadings without requiring further proof. In that view of the matter, the Plaintiff's suit is decreed as under:

(i) The decree for possession in favour of the Plaintiff and against the Defendant in respect of the basement of property bearing No. WZ-16, Ugarsen Market/ Bindra Market, Santpura, Tilak Nagar, New Delhi-110018 marked in red colour in the site plan attached to the plaint.

(ii) The decree for recovery of rent from 1st February, 2009 till 31st October, 2009 @ Rs. 70,000/- per month.

(iii) The decree for mesne profits for the period 1st November, 2009 till the date of receipt of possession @ Rs. 70,000/- per month.

(iv) The Plaintiff shall be entitled to pendente-lite and future interest @ 9% per annum from the date the rent/mesne profits were due till the recovery.

(v) The Plaintiff shall also be entitled to the costs of this suit.