

(1999) 09 DEL CK 0099

In the Delhi High Court

Case No : IA No. 3637 in S.No. 2346 of 1994

Amar Agencies

APPELLANT

Vs

A. P. State Handloom Weavers Co-operative Society Ltd.

RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

Citation : (2000) 1 AD 197 : (1999) 82 DLT 76

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. R.P. Sharma, for the Appellant; Mr. C.L. Naisimhan, for the Respondent

Judgement

Manmohan Sarin, J.—This is an application under Order XII, Rule 6, CPC for passing a decree of possession on admissions. The plaintiff's case is that by a license deed dated 28.9.1979, the defendant was permitted to use an area admeasuring 2600 sq. ft. in premises No. 2212, ground floor, Gurudwara Road, Karol Bagh, New Delhi, for the business of sale of clothes. The license terms was for 10 years extendable on terms and conditions to be mutually agreed. As per the terms of the license deed, the plaintiff was to receive 2% commission on retail sales and 1.5% commission on wholesale sales and for export sales. Besides, the minimum commission was fixed at Rs. 12,000 /- per month and the maximum commission was fixed at Rs. 21,000/- per month.

2. Learned Counsel for the plaintiff replying on the license deed and correspondence with the defendant and in particular letters written by the defendant to the MCD with regard to the Municipal assessment, urges that these conclusively show that the nature of the transaction was of a license and not that of a lease of or tenancy.

3. Learned Counsel for the defendant argues to the contrary and submits that in the instant case, the real intention of the parties was to create a relationship of landlord-tenant and this is borne out by the conduct of the parties in the

defendant paying Rs. 12,000/- per month to the plaintiff from October, 1979 all through the 10 years term i.e. till 1989 and even thereafter till 1994. This was accepted by the plaintiff without any reservation or protest. Learned Counsel submits that this clearly demonstrates that the agreement with regard to the premises being licensed on commission on sales was never acted upon and the defendant continued to pay the monthly rent. Commission was neither paid to not claimed by the plaintiff. Even the plaintiff's claim in the plaint for damages of Rs. 1 lakh is based on market rent and not on the basis of any commission on sales. The defendant, it is urged, continued to be in actual exclusive physical possession all through.

4. As regards the legal position, the same is fairly well settled by a catena of judicial decision that whether the agreements between the parties create the relationship of landlord- tenant or merely that of a licensor and licensee, the decisive consideration is the intention the parties. Exclusive possession is, of course, an important consideration but not conclusive. The decision also turns upon the interpretation and construction of the terms and conditions of the agreements. The transaction is a lease if it grants an interest in the premises and it is a license if it gives only a personal privilege. As noted above, the intention of the parties as reflected and gathered from the agreement terms and the attendant circumstances is the crucial test as to whether it was a lease or licence. Reference in this connection is invited to *Associated Hotels of India Ltd. Vs. R.N. Kapoor*, ; *Vayallakath Muhammodkutty Vs. Illikkal Moosakutty*, and *Rajdhani Chit Fund (P) Ltd. Vs. Mukesh Maheshwari*, .

5. Applying the above legal principles to the facts and circumstances of the case, as noted earlier, it would be seen that the present case is not one where a decree for possession could be passed on admissions under Order XII, Rule 6, CPC. The factum of monthly payment of Rs. 12,000/- for the period of 10 years and beyond and its acceptance by the plaintiff without reservation or protest lends support to the plea of the defendant that the licence deed based on commission was never acted upon. The defendant's plea of the real nature of the transaction being that of tenancy deserves to be considered. This coupled with non-denial of factum of defendant's exclusive possession gives rise to triable issue. The application under Order XII, Rule 6, CPC is, accordingly, dismissed.

6. The observations made or opinion expressed in this order are on a prima facie view of the matter and shall not have any effect or bearing of the outcome of the suit.

7. Application dismissed.