
(2018) 01 DEL CK 0113

In the Delhi High Court

Case No : 991 of 2017

ASHOK KUMAR SINGHAL

APPELLANT

Vs

BIMLA DEVI

RESPONDENT

Date of Decision : 03-01-2018

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 12 Rule 6](#)

Citation : (2018) 01 DEL CK 0113

Hon'ble Judges : Valmiki J.Mehta

Bench : Single Bench

Judgement

C.M. No.86/2018 (exemption)

1. Exemption allowed subject to just exceptions. C.M. stands disposed of. Review Application No.5/2018 in RFA No.991/2017

2. It is unfortunate that dishonest litigants like the appellant, who appears in person, bring the system of advocacy in disrepute. This review application is filed against the order of this Court dated 27.11.2017 which is not a judgment on merits but which records that after arguing the appeal on merits the appeal was not pressed and time was granted to the appellant to vacate the suit premises on or before 30.6.2019 subject to the filing of an affidavit of undertaking in two weeks from 27.11.2017. Instead of filing the undertaking, now this application for review is filed.

3. Since the review application is not a long application, the same is reproduced as under:- "The applicant before the Hon'ble Court with folded hands state as follows:- 1. That the aforesaid RFA was decided by this Hon'ble Court on 27.11.2017. Copy of the order is annexed herewith as Annexure-A.

2. That my father Sh. Om Prakash Gupta was the owner of Shop No. Z-116 Naraina Loha Mandi, Delhi.

3. That my mother Smt. Bimla Devi and my brother Sh. Surender Kumar entered into a settlement on 1.11.2001. Shop No. Z-116, Naraina Loha Mandi, New Delhi was given to me with machinery and other Shop No. Z-241, Naraina Loha Mandi, New Delhi was given to my brother Sh. Surender Kumar. Copy of the settlement deed is annexed as Annexure-B.

4. That great injustice is done as I am unable to vacate the shop despite it has come to my share.

5. That I have already filed a partition suit which is pending in the Court of Ms. Charu Aggarwal, ADJ, Delhi and the same is at the stage of petitioner's evidence.

6. That my mother has stated that she has purchased the said shop in the year 2004 while she has already granted the said shop to me vide the settlement dated 1.11.2001.

7. That it is requested to the Hon''ble Court to reconsider/review the decision dated 27.11.2017.

8. That I am filing the application in person as the correct facts has not been bought before the Hon''ble Court.

PRAYER

It is, therefore, most respectfully prayed that this Hon''ble Court may kindly be pleased to:-

a) review the order dated 27.11.2017;

b) pass any other order or direction which this Hon''ble Court may deem fit and proper under the facts and circumstances of the case."

4. The appeal on merits was lacking in any substance whatsoever because the trial court which has decreed the suit of the mother/respondent/plaintiff by the impugned judgment dated 11.9.2017 duly recorded that in the earlier litigation between the parties the appellant admitted ownership of the mother/respondent/plaintiff. The relevant paras of the judgment of the trial court are paras 10 to 12 and these paras read as under:- "10. Plaintiff had also filed one suit for possession in respect of property bearing no. E-45-46, Arya Samaj Road, Uttam Nagar, Delhi against the defendant wherein also plaintiff filed an application under Order 12 Rule 6 CPC on the basis of testimony of the defendant recorded in his suit for injunction filed against the defendant herein. The trial court of the said matter allowed the application under Order 12 Rule 6 CPC and passed decree for possession. Aggrieved from the said findings defendant herein preferred an appeal bearing MCA No. 8/2009 which was dismissed vide. Order/judgment dt. 28.05.09 by the court of Additional District Judge, Delhi. Defendant herein preferred regular second appeal No. 83/2009 and decree for possession passed by the Ld Trial on the basis of said admission as has come in the cross examination of defendant as quoted in the application, was confirmed by the Hon''ble High Court. Proceedings conducted in respect of property No. E-45-46,

Arya Samaj Road, has not been disputed by Ld Counsel for defendant.

11. The testimony of the defendant was recorded in the said suit No. 242/2003 in the year 2004 that is after the alleged family settlement of 2001 and in the said testimony defendant admitted to be licensee in respect of the suit shop, which itself falsify the story of family settlement alleged by the defendant. Said testimony recorded in the suit for permanent injunction has been acted against the defendant in another proceedings and was upheld up to the Hon"ble High Court as noted above.

12. The admission was without any objection or any explanation and in fact was an unconditional admission. At no stage that admission made was sought to be withdrawn by alleging any or misconception. The law is well settled that admission made need not be proved and it is also not necessary that admission should be made expressly in the pleadings. The admission made don oath in the statement recorded in another case can also be considered and relied upon in subsequent case. When the defendant himself had admitted the ownership of the plaintiff in respect of the suit property as well as his own status as a license then there arises no necessity for the plaintiff to produce and prove the document of her ownership on the record. Merely because plaintiff has not placed on record proof of ownership is not relevant when defendant himself admitted the plaintiff to be owner of the property and his capacity as that of licensee."

5. In view of the aforesaid aspect, on 27.11.2017 the following order was passed and which is sought to be reviewed:- "1. After arguments, this appeal is disposed of as not pressed as it is agreed that the appellant will vacate the suit premises on or before 30.6.2019. Appellant will also clear all charges towards electricity, water etc as were payable with respect to the suit premises till the appellant is in possession of the suit premises.

2. Let the appellant file an affidavit of undertaking in this Court in terms of the present order within a period of two weeks from today and on the appellant filing the undertaking and complying with the terms of the same, the appellant will not be evicted from the suit premises on or before 30.6.2019. Of course, it is clarified that if in the meanwhile there is an order for payment of damages/ mesne profits the continuation in the suit premises will be subject to the appellant/defendant clearing the charges as payable towards the mesne profits/ damages.

3. At this stage, at the request of counsel for the appellant and noting that the dispute is between very close relations of a mother and a son, trial court is directed, if possible to bring about re-conciliation between the parties so far as mesne profits are concerned including by sending the matter to mediation.

4. The appeal is accordingly disposed of in terms of the aforesaid observations."

6. Obviously the review application filed is completely misconceived and is an abuse of process of law. There is no averment in the review application that the

Advocates who appeared for the appellant did not argue the case properly or that the Advocates were not given the necessary instructions by the appellant. Obviously the appellant thinks that he is above the law and can keep on harassing his mother/respondent/plaintiff. Neither there is any error apparent on the face of the record nor there is any sufficient reason for review or recall of the order dated 27.11.2017.

7. In fact the review petition being an endeavour to overreach the Court is therefore dismissed with costs of Rs.25,000/-, and which costs shall be deposited with the website www.bharatkeveer.gov.in within a period of four weeks from today, failing which the matter will be listed in the Court for taking appropriate action against the appellant.