

(1996) 07 DEL CK 0052

In the Delhi High Court

Case No : Civil Revision Appeal No. 399 of 1985

Dhan Prakash Gupta

APPELLANT

Vs

Jai Narain Goel

RESPONDENT

Date of Decision : 25-07-1996

Acts Referred:

Citation : (1996) 4 AD 36 : (1996) 64 DLT 106 : (1997) 115 PLR 14 : (1996) RLR 400

Hon'ble Judges : S.N. Kapoor, J

Bench : Single Bench

Advocate : A.K. Gupta, for the Appellant;

Judgement

S.N. Kapoor, J.

(1) This revision petition is directed against a judgment and decree dismissing the suit of the plaintiff filed for recovery of Rs. 660.00 including interest on security deposit of Rs. 6000.00 from the defendant/revision petitioner for the period from 1st May 1980 to February 1983.

(2) The relevant facts which have led to the plaintiff of this revision petition are as under:

ACCORDING to the defendant/revision petitioner, Jai Narain Goel, plaintiff/respondent was tenant on a monthly rent of Rs. 35.00 in respect of entire ground floor of Premises No. VII/339 (Old)/VII/927 (New), Anaj Mandi situated in Khasra No. 642 Mauza Chandrawali @ Shahdara, Delhi-32. plaintiff/respondent surrendered his tenancy rights in respect of the back godown portion and the defendant/petitioner agreed to let out the remaining portion on a lease of 99 years on monthly rent of Rs. 21.00 . Lease Deed (Ex. D-I) and Agreement (Mark "A") were executed on 27th November, 1974. Lease Deed was got registered. The defendant/petitioner accepted the execution of the two deeds. Lease deed was got registered but not the agreement. According to the revision petitioner/defendant, he had signed the agreement of security deposit of Rs. 6000.00 in

anticipation of payment in good faith, but the amount not paid. Thus the agreement was never acted upon . Thus, the plaintiff claimed that he had given an amount of Rs. 6000.00 on security deposit. The defendant/petitioner has denied the deposit of the security amount. He also denied to have agreed to pay interest thereof.

(3) The plaintiff filed the suit as aforesaid for recovery of Rs. 660.00 as the security deposit of Rs. 6000.00 .

(4) The learned Judge, Small Cause Court took the view that a sum of Rs. 6000 .00 was given as security deposit to the defendant/petitioner and it was to carry interest at the rate of 21% per annum. The aforesaid deposit did not create or extinguish any interest in the property and as such, it did not require registration u/s 17 of the Registration Act. The Lease Deed was separately registered. Trough the suit of the plaintiff for recovery of Rs. 660.00 was dismissed but it was held that the rent of the defendant had been adjusted towards the payment of interest.

(5) 5. Feeling aggrieved by the said judgment and decree, the present revision petition has been filed.

(6) I have heard the learned Counsel for the revision petitioner and have gone through the record: It was contended by the learned Counsel that the agreement relating to security deposit not being registered u/s 17 of the Registration Act could not have been admitted in evidence and acted upon by the learned Judge, Small Cause Court. It was further contended that there was misreading of the evidence by the learned Judge, Small Cause Court and that the Court below failed to consider the receipts Ex.D-2 to D-7 admitted by the plaintiff.

(7) Taking the second point first, learned Counsel has drawn my attention to receipts Ex. D-2 to D-7. The plain tiff Jai Narain Goel, in cross-examination admitted his signatures on the counter-foils of receipts Nos. 34, 35, 36, 40 and 41. These receipts have been exhibited as Ex. D-2 to D-7. Ex. D-8 to D-10 the money order coupons of money orders sent and written by the plaintiff himself were also admitted. Ex.D-2 is of 17th October 1974 indicating that rate of rent was Rs. 40.00 and on that date, a sum of Rs. 1517.00 was in arrears towards rent. Out of these Rs. 1517.00 , only Rs. 250.00 were paid, leaving a balance of Rs. 1320.00 . Receipt Ex.D-3 is dated 10th April 1977. This indicated that rate of rent was Rs. 40.00 and that out of Rs. 1440.00 including a sum of Rs. 1380.00 only Rs. 40.00 were paid and Rs. 1400.00 remained as arrears of rent Ex. D-4 is probably of May 1977 (the date is not legible in the photocopy of Ex.D-4), indicated that rate of rent was Rs. 21.00 Out of Rs. 1582.75, Rs. 462.75 were paid, leaving a balance of Rs. 1120.00 . Similarly, vide receipt Ex. D-5, out of Rs. 2376.00 , on 12th April, 1980 Rs. 160.00 were paid, leaving a balance of Rs. 2216.00 . On 19th April, 1983 vide receipt Ex. D-6, Rs. 2951.00 were in arrears and Rs. 21.00 became due. Consequently, Rs. 2972.00 were in all payable by the plaintiff/respondent and Rs. 2030.00 were sent by money order on 19th April,

1983. On 4th April, 1983, vide Ex.D-7, out of Rs. 63.00 , Rs. 63.00 were paid in all by money order. It is apparent from Ex. D-8 -money order coupon that Rs. 1000.00 were sent toward^ arrears of rent. Similarly, Rs. 930.00 were sent as rent from July 1991 to February 1993 vide Ex.D-9 and Rs. 1000.00 were sent towards arrears of rent vide Ex. D-IO and none of these receipts and money order forms sent by the plaintiff indicated any kind of adjustment of interest towards the security deposit.

(8) It is notable that according to lease deed, the entire ground floor portion of premises No. VII/339 (Old) and VII-927 (New) situated in Anaj Mandi, Shahdara was in the tenancy of the plaintiff/lessee on a monthly rent of Rs. 35.00 . Lesser and lessee had mutually agreed that the plaintiff/respondent would surrender possession of back portion of the godown and the passage leading to it. The defendant/ petitioner would grant him lease for 99 years of the front portion, consisting of the shop and the plan shown red in the site plan. The rent was also reduced from Rs. 35.00 to Rs. 21.00 . If the rate of rent was Rs. 21.00 only as mentioned in the lease deed, then the question of any adjustment did not arise. However, it may in this connection be noted that in the receipts Ex.D-2 and D-3, the rate of rent was mentioned at Rs. 40.00 and in the receipts Ex.D-4 to D-7, the rate of rent has been mentioned as Rs. 21.00 . One may take a view that if the rate of rent was Rs. 21.00 and the amount was paid in cash or through money order, then it is not possible to accept the contention that the amount of Rs. 20.00 was being adjusted towards interest on the security deposit of Rs. 6000.00 . As by his persistent conduct, at least from May 1977 and onwards, the respondent had acknowledged arrears of rent in these receipts, the plea of the plaintiff may not appear to be very plausible. But if security amount is seen separately, from the arrears of rent, along with non-adjustability of the security amount towards payment of rent, the above said acknowledgements are satisfactorily explainable. Consequently, the view taken by the learned Judge, Small Cause Court, in the light of the reasons given by him, cannot be said to be perverse to ignore that view and substitute views based on the submissions of learned Counsel for the revision petitioner.

(9) As regards deposit of Rs. 6000.00 as security amount with the defendant, it was agreed that the plaintiff would pay a sum of Rs. 6000.00 as security and for that reason, a document was also drafted and signed. According to Shri Dhan Parkash Gupta, petitioner/defendant, the respondent/plaintiff could not pay the said sum of Rs. 6000.00 because of his financial difficulties. Therefore, although he signed the said agreement in good faith, but the same was not signed by the witness. He admitted to be correct that as and when the plaintiff would pay Rs. 6000.00 to him, then only the said draft could have been got signed by the witness in his presence. It is notable that the agreement relating to security deposit of Rs. 6000.00 marked "A" is dated 27th November, 1974, the lease deed which has been got registered is of the same date vide Ex. D-6. It appears that there is no mention of any security deposit of Rs. 6000.00 in the lease deed. The agreement about the security deposit of Rs. 6000 / - carrying an interest of

Rs. 20.00 per month was admittedly not got registered.

(10) Before proceeding further, it is desirable to appreciate the nature of the agreement, by perusing following paras 1 to 3, of the agreement marked "A":

"1. That the said sum of Rs. 6000.00 (six thousand rupees) deposited by the Lessee with the Lesser shall be deemed to be security deposited by the Lessee for the purposes of the aforesaid lease. 2. That so long as the said security amount shall remain with the Lesser or his successors-in-interest, it shall carry an interest of Rs. 20 / - (twenty rupees) per month. The second party will be entitled to claim and receive back this deposit on surrendering of the tenancy premises and not before. The Lesser will be entitled to refund back this amount with interest at any time he likes. But so long as this amount is not refunded to the Lessee, the Lesser will pay interest at the rate of Rs. 20.00 (twenty rupees) per month to the Lessee. The Lessee may deduct this interest amount out of the monthly rent payable by him under the lease deed and pay the balance to the Lessor. The Lesser will have no objection to the said adjustment.

(11) That this sum will serve as security for the due performance of the obligations undertaken by the Lessee under the aforesaid lease.

"II. It would thus appear that Rs. 6000.00 were to be deposited as security by the Lessee for the purpose of granting lease. The amount could be received back only on surrendering tenancy premises and not before. The Lesser was to pay interest at the rate of Rs. 20.00 per month to the lessee and the lessee might deduct this amount out of the monthly rent payable by him under the lease deed and pay the balance to the lessor. It also indicated that the Lesser would have no objection to the above-said adjustment. It is also evident that the security was given for the due performance of the obligations under the lessee.

(12) Now the question is whether this document is covered by Section 17(1)(c) or by Section 17(2)(v) of the Indian Registration Act, 1908. These sections read as under:

"17(1). The following documents shall be registered...namely- (a) xxx (b) xxx (e) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest. xx xx xx (2) Nothing in Clauses (b) and (e) of Sub-section (1) applies to : (i) xxx (ii) xxx (iii) xxx (iv) xxx (v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the "value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest".

(13) If we go by Clause 3 of the agreement, it would appear that the amount of Rs. 6000.00 was paid by way of security for the due performance of the obligation undertaken by the lessee under the aforesaid lease and as such it

cannot be said that it was not paid on account of the creation, declaration assigning, limitation or extinguishing upon any such right, title or interest. However, this document by itself did not create, declare, assign or limit or extinguish any right, title or interest in immovable property but it merely created right to obtain another document namely, the lease deed which would when executed create such right title or interest. Thus it would appear that though it is covered by Clause (e) of Section 17(1), it is not required to be registered for it merely created a right to obtain another document namely the lease deed covered by exception contained in Clause (v) Sub- Section (2) of Section 17 of the said Act. As such, it is apparent that this document was not required to be registered.

(14) However, it may be mentioned that even an unregistered document could be considered and looked into for collateral purposes. It has been held by nearly all the High Courts and Supreme Court that an unregistered deed can be used for collateral purposes to show the nature. of possession, the date of taking possession as evidence of attornment and as an evidence of admission of other party, the purpose for which the premises were let to prove receipt of consideration etc. (See Padma Vithoba Chakkayya v. Mohd. Multani & Anr., Air 1963 Sc 70 , J.N. Banerjee Vs. Sohan Lal Bhargava, , S.K. Gupta anr. v. R.C. Jain, Rai Chand Jain Vs. Miss Chandra Kanta Khosla, , and Choyyan Narayani Vs. Ibrahim Kunhi and Others, . Consequently, if this agreement is properly stamped, then it could certainly be looked into for collateral purpose of saying as to whether payment of Rs. 6000.00 was made or not.

(15) In this light, it is essential to see whether this agreement marked "A" is properly stamped or not. It may be mentioned that it has been executed on a stamp of Rs. 21-only. If we consider this agreement, under Clause (C) of Article 5 of Indian Stamp Act, then a stamp duty of 8 Annas (50 paise) was required to be affixed on such an agreement. If it is taken to be a receipt under Article 53, then a stamp-duty of 20 paise was required to be affixed. And from that angle, it bears proper stamp and as such, the document could certainly be looked into. It may be mentioned that if a document is unregistered but properly stamped, it could be used for collateral purpose in the above-said circumstances but if it is not properly stamped, it cannot be used even for collateral purposes. In this connection. Section 33 of the Indian Stamp Act reads as under :

"33.EXAMINATIONand impounding of instruments.-(1) Every person, having, by law or consent of parties, authority to receive evidence, and every person, in charge of a public office except an officer of police, before whom any instrument chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same. (2) For that purpose, every such person shall examine every instrument, so chargeable and so produced or coming before him in order to ascertain, whether it is stamped with a stamp of the value and description, required by the law in force in India when such instrument was executed or first

executed: Provided that- (a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument, coming before him in the course of any proceeding other than a proceeding under Chapter Xii or Chapter xxxvi of the Code of Criminal Procedure, 1898 (5 of 1898); (b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument, under this section may be delegated to such officer as the Court appoints in this behalf. (3) For the purposes of this Section incases, of doubt,- (a) the State Government may determine what offices shall be deemed to be public offices; and (b) the State Government may determine who shall be deemed to be persons in charge of public offices."

(16) Consequently, if a document which requires registration is unregistered and is also unstamped when chargeable with stamp duty, it cannot be admitted in evidence even for collateral purposes like proving signature (see Sanjeeva Reddi Vs. Johanputra Reddi, , AIR 1946 51 (Privy Council) and Jagatjit Industries Ltd. Vs. Sh. Rajiv Gupta, .

(17) In view of the above discussion, this document is certainly admissible. If we consider that its execution was admitted by the revision petitioner, then the contentions raised by the petitioner/defendant are no answer to the reasons given by the learned Judge, Small Cause Court in the judgment. It is note able that if this document was executed and he had not received the amount, then at least being an Advocate, he could have easily give a notice to say that the amount had not been paid and it could be acted only after the payment of the amount. One can very well understand the anxiety of a landlord who wants to take back possession of back portion of the godown and the possession on the back side of the ground floor in terms of the Lease Deed might not have gathered the courage to insist the payment immediately and that might be the reason that though this document marked "A" is dated 27th November, 1974 the rate of rent was continuously being shown at Rs. 40.00 till 1977. But it is not the case of the defendant/petitioner that he had received the amount of Rs. 6000.00 in the year 1977, and that possession was handed over in the year 1977 and thereafter he started charging Rs. 21.00 as rent instead of Rs. 40.00 .

(18) Having given my anxious consideration to the entire evidence on record, I find that there is no force in this revision petition and it is accordingly dismissed without any orders as to costs.