

(2002) 04 DEL CK 0055

In the Delhi High Court

Case No : CR No. 1207 of 2001 and CM 2544 of 2001

H.B. Mishra

APPELLANT

Vs

Ram Parkash (Deceased) Thr LRs

RESPONDENT

Date of Decision : 05-04-2002

Acts Referred:

Citation : (2002) 4 AD 755 : (2002) 97 DLT 879 : (2002) 62 DRJ 525 : (2002) 4 RCR(Civil) 739

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : K.C. Mittal, for the Appellant; J.S. Chauhan, for the Respondent

Judgement

R.C. Jain, J.—This revision petition is directed against the order of the learned Additional District Judge, Delhi dated 17.9.2001. By means of this composite order, the learned trial court has disposed of four applications; three filed on behalf of the petitioner-defendant seeking different reliefs and one application filed by the plaintiff-respondent u/s 151 CPC seeking a direction on the petitioner-defendant for payment/deposit of rent/damages from 1.6.97 onwards @ Rs. 6500/- per month. The challenge in the present revision petition is confined only to the order passed on the application filed by the plaintiff-respondent u/s 151 CPC.

2. The petitioner-defendant is facing a suit for his eviction from the suit premises after termination of his tenancy. The suit is being contested by him inter alias on the ground that a memorandum of Understanding has been executed between the parties and in pursuance thereof, the petitioner had deposited an amount of Rs. 6 lacs with Late Ram Parkash and the interest accrued on the said amount was being adjusted against the rent. During the pendency of the suit, the plaintiff respondent moved an application u/s 151 CPC alleging that the rate of rent was Rs. 6500/- per month and the defendant was in arrears of rent w.e.f. 1.6.97 and Therefore, prayed to the Court that the petitioner-defendant be directed to pay rent/damages from 1.6.97 onwards @ Rs. 6500/- per month. The

petitioner denied that he was liable to pay rent from 1.6.97 on the strength of Memorandum of Understanding dated 22.8.97 and pleaded that he was in rightful possession of the suit premises. A copy of the said memorandum was filed on record and the Court though referred to the contents of the said Memorandum of Understanding in which it was categorically recited that the plaintiff had received a sum of Rs. 6 lacs and Rs. 19,500/- as rent from the month of June, 1997 to August, 1997 upon rescinding erstwhile agreement dated 21.9.1995 and that on receipt of the said amount had allowed the petitioner to continue in peaceful occupation of the suit premises for a period of five years from 1.9.97 to 31st August, 2002 against interest to be accrued against the said deposit of Rs. 6 lacs, still refusal to consider the same on the sole ground that the said memorandum of understanding could not be read in evidence being an unregistered instrument as it tended to create a lease for a period of more than one year. The trial court accordingly directed the petitioner to deposit arrears of rent @ Rs. 6,500/- w.e.f. 1.6.1997 till 30th September, 2001 by 15th October, 2001 and also directed him to deposit future rent month by month @ Rs. 6,000/- per month by 15th of each succeeding month.

3. I have heard the learned counsel for the parties and have given my thoughtful consideration to their respective contentions. Learned counsel for the revision petitioner has emphatically urged before me that in the face of facts and circumstances and the material available on record, the learned trial court was not justified in giving such a direction. As against this, the contention of the learned counsel for the respondent is that the said memorandum of understanding dated 22.8.97 is a forged/manipulated document and the learned trial court was justified in not relying and acting upon it.

4. On a consideration of the matter, this Court is of the opinion that the impugned order cannot be sustained because the learned trial court was not justified in discarding the said memorandum of understanding dated 22.8.97 for the reason that it was an unregistered instrument which tended to create a lease for a period of more than one year. There is no dispute about the legal position that a lease for a period of more than one year can be created only by means of a registered instrument as provided u/s 107 of the Transfer of Property Act, but it is equally well settled that such an instrument even if not registered, its contents can certainly be looked into for the collateral purposes. The only question which arose before the trial court for disposal of the application u/s 151 CPC was whether the petitioner-defendant was in arrears of rent from June, 1997 onwards or not. If the defendant by means of a memorandum of understanding could show that the rent for the period June, 1997 to August, 1997 amounting to Rs. 19,500/- was received by the plaintiff landlord and no further rent was payable for the period from September, 1997 to 31st August, 2000 as the interest accrued on the deposit of Rs. 6 lacs was liable to be adjusted against the rent payable for that period, then in the opinion of this Court, said recitation in the memorandum of understanding could very well be looked into. The learned trial court has not discarded the said MOU on the ground that it was not a genuine

document but on the ground that it was an unregistered instrument and Therefore its contents could not be read in evidence. The original MOU was not filed before the trial court and the same was produced in this Court but not filed. The question about its genuinely or otherwise is required to be considered by the Court before the same can be relied upon or discarded.

5. In view of the foregoing discussion, in the result this revision is allowed and the impugned order dated 17.9.2001 so far as it directs the petitioner-respondent to deposit the rent @ Rs. 6500/- w.e.f. 1.6.97 till 30.9.2001 and for deposit of future rent @ Rs. 6500/- per month is hereby set aside. The learned trial court is directed to decide the application afresh after taking on record the original MOU dated 22.8.1997 or any other or further evidence or material which may be produced by the parties in that behalf. With these observations, the petition stands disposed of.

6. CM also stands disposed of accordingly.