(2010) 01 DEL CK 0074

In the Delhi High Court

Case No : C.S. (OS) 140 of 2009 and I.A. No''s. 760, 11271, 11272 and 13496 of 2009 and 565 of 2010

Hindi Printing Press APPELLANT

Vs

Mr. Manjit Singh Sole Proprietor of Aakar Design-O-Print RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Citation : (2010) 4 ILR Delhi 457

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Ratan Kr. Singh Nikhilesh Krishnan and Prabhat Kumar, for the Appellant; Chetan Sharma Vineet Malhotra, K. Singhal and Mayank Wadhwa, for the Respondent

Judgement

S. Ravindra Bhat, J.

I.A. Nos. 13496/2009 & 565/2010

1. The present common order will deals with two applications, one by the plaintiff under Order-12, Rule-6 CPC being I.A. 13496/2009 and the other I.A. No. 565/2010, moved by the defendant for rejection of the plaint under Order-7, Rule-11 CPC.

2. The brief facts of the case are that the plaintiff seeks a decree for possession against the defendant to hand over vacant possession of the suit property, being portion of a basement of A45, Naraina Industrial Estate, Phase-II, measuring 2700 sq. ft. (hereafter referred to as suit premises). The plaintiff also seeks other reliefs including a decree for Rs. 43,648/- towards alleged arrears of license fee as well as decree for mesne profits/damages w.e.f. 6.11.2008 till delivery of possession and costs.

3. The suit averments are that the plaintiff entered into an arrangement recorded in a document styled as license agreement on 27.09.2001 whereby the suit premises were given to the defendant for business purposes; the initial license

fee agreed upon was Rs. 4,200/- per month. It is also contended that a service agreement was simultaneously signed, in which the defendant agreed to pay Rs. 7,800/- to the plaintiff each month, and the plaintiff agreed to work for the defendant during the subsistence of the license arrangement. The license agreement was in force for eleven months. The plaintiff submits that after the expiry of the said period, the defendant continued in the premises and increased the license fee from time to time. It is submitted that as of July, 2008, the license fee paid each month (for the premises and the terms of the Service agreement) together amounted to Rs. 20,460/-. The plaintiff alleges that since it wanted the premises back, a notice was caused to be issued to the defendant on 21.07.2008, claiming vacation of the premises. The plaintiff further states that another legal notice was issued on 18.10.2008 demanding the vacant possession of the premises, after expiry of 15 days of the notice period. Complaining that the defendants did not comply with the demands, the Suit was filed for the relief claimed.

4. The defendant has resisted the Suit, inter alia, contending that the plaintiff continued to accept the amounts beyond the period of notice i.e. 21.07.2008 and that it did not return the cheques issued for the period after 18.10.2008. The contention of the defendant, therefore, is that the plaintiff waived its rights and acquiesced to the continuation by the defendant in the suit premises. The defendant further submits that the real transaction between the parties was a lease and not a license as alleged by the plaintiff. Most importantly, the defendant submits that the plaintiff is an unregistered partnership and consequently the Suit is not maintainable in terms of Section 69(2) of the Partnership Act, 1932.

5. The plaintiff in its application moved under Order-12, Rule-6, CPC contends that all the elements Constituting admission of the material facts that are necessary to decree the Suit in terms of Claim (a) to a decree for possession are present in the written statement. It is submitted that the receipt of notice dated 18.10.2008 by the defendant is not denied; the fact that the defendant came to the possession of the premises in 2001, after which no agreement or any registered instrument in support of the defendant?s possession, has also not been denied. It is contended that the defendant has further admitted that the amount being paid as on the date of notice was Rs. 20,460/-. These, says the plaintiff, are sufficient for the Court to proceed to decree the suit so far as the claim for possession is concerned against the defendant.

6. The defendant has reiterated its submission in the written statement and contends that the plaintiff?s acceptance of the cheques beyond the period of notice constitutes acquiescence and waiver on the part of the plaintiff. It is further emphasized that the defendant has nowhere recorded an unambiguous admission entitling the plaintiff to the decree claim in this application. The defendant further states that its argument regarding the very maintainability of the Suit raises a triable issue and that which the Court should recognize and,

therefore, desist from directing decree to be drawn on the basis of any alleged admission.

7. Learned Sr. Counsel for the defendant/applicant urged that the objection to the maintainability of the Suit is substantial. Not only is the plaintiff disentitled to the claim for a part decree under Order-12, Rule-6 but also that the Suit has to be rejected at the threshold since it is filed by an unregistered partnership.

8. Elaborating, learned Counsel sought to place reliance on the averments in the Suit and submitted that the real claim in the Suit is to be found in paragraph-(b) to (c), which are based on contract, i.e., the decree for arrears of rent and subsequent damages for alleged wrongful use. It was next contended that the notice period concededly was 15 days whereas the materials on record suggest that an arrangement between the parties constituted a manufacturing or industrial lease which in terms of Section 106 obliged the owner/lessor/landlord to issue a six months notice. Learned Counsel for the applicant/defendant relied upon the decision of the Supreme Court reported as M/s. Raptakos Brett and Co. Ltd. Vs. Ganesh Property, ; Popat and Kotecha Property Vs. State Bank of India Staff Association, and Division Bench ruling of this Court in Himachal Pradesh Cooperative Group Housing Society v. Umesh Goel 2007 (5) RAJ 242 (Del) in support of the submission that the Suit is not maintainable. Particular emphasis was placed upon the judgment in Raptakos Brett case (supra) where, counsel contended, the Supreme Court sustained the decree of the Courts below only because the firm has been registered during the pendency of the proceedings, which according to the defendants, took away the sting from the objection regarding non-maintainability of the action.

9. Learned Sr. Counsel for the defendant/applicant stated that the Raptakos Brett is also authority on the issue where the claim is substantially premised upon a contractual right, and the plaintiff is an unregistered firm, the Suit is not maintainable. He stated that this decision was followed in Popat & Kotecha Property case (supra) with approval and subsequently noticed in Himachal Pradesh Cooperative Group Housing Society case.

10. The Court has considered the submissions. What clearly emerges from the pleadings and

material on record are as follows:

1. The plaintiff and defendant entered into an arrangement recorded in a licensed agreement dated 27.9.2001 whereby the suit premises were given to the defendant for a period of 11 months at a monthly charge/rental/license fee of Rs. 4,200/-.

2. After expiry of the said period, the defendant continued to occupy the premises.

3. No further agreement or license deed was concededly executed by the parties.

4. The defendant continued to occupy the premises but at the same time increased the initial rental approximately on an annual basis.

5. On 21.07.2008, the plaintiff caused legal notice to be issued to the defendant calling upon it to vacate the premises. Apparently, not finding any response, another notice was issued on 18.10.2008 for the same purpose, requiring the defendant to vacate the premises after expiry of 15 days.

11. The defendant?s contentions are essentially three fold. The first is that even though the initial entry or induction through an unregistered instrument is agreed as is the fact that the last rental paid was Rs. 20,460/-, the plaintiff continued to accept the cheques even beyond the 15 days period in terms of the notice dated 21.07.2008. This aspect does not require much explanation. Apparently, mindful of these circumstances, the plaintiff issued a second notice dated 18.10.2008. The defendant has nowhere stated that the cheques issued after receipt of that notice was ever encashed by the plaintiff. A plain reading of the Suit would show that the second relief is in respect of the period after the issuance of the notice dated 18.10.2008. Therefore, this contention of the defendant is without merit and is accordingly rejected.

12. The second issue or contention raised by the defendant, which is also a ground for rejection of the Suit, is that the notice issued by the defendant did not comply with the terms of Section 106 of the Transfer of Property Act. According to the defendant, the arrangement was a lease for manufacturing purposes. In support of the contention, learned Sr. Counsel relied upon the terms of the service agreement executed by the parties initially on 27.09.2001 to the effect that the plaintiff?s services would be engaged, co-terminus with the license arrangement (dated 27.09.2001) and that he would work and assist in the defendant?s office. In this regard, the license agreement dated 27.09.2001, which is part of the record and was not denied by the defendant. It state as follows:

Whereas the Licensee herein above approached the licensor to allow the use of under mentioned space for office and whereas the Licensor agreed to make available the said space to the licensee purely by way of license on the terms and conditions hereinafter appearing.

13. The service agreement to which the plaintiff and defendant were parties and was executed simultaneously on 27.09.2001, pertinently reads as follows:

Whereas the employer of the first part is carrying on the business of Offset Printing in the Union Territory of Delhi and is desirous to employ the employee of the second part to look after and manage/supervise its business activities being conducted at its Press at premises No. A-45, Naraina Indl. Area, Phase-II, New Delhi-110028.

14. Considerable emphasis was placed by the defendant on the averment in paragraph 3 of the Suit that the premises were used for running the factory.

Learned Counsel also relied upon the decision reported as Indraprastha Medical Corporation Ltd. Vs. NCT of Delhi and Others, .

15. This Court has carefully considered the above materials and submissions. What the legislature required when it mandated six months notice in terms of Section 106 of the Transfer of Property Act was that the parties should have agreed that the premises were to be used for manufacturing purposes. In the present case, neither the license agreement nor the service agreement relied upon by the defendant mentions that the premises were to be used for manufacturing purposes. The reliance placed upon Indraprastha case (supra), in the opinion of the Court, is of no avail because that judgment was rendered in the context of interpretation of the term manufacture and manufacturing process under the Factories Act. This Court is mindful of the rule that definitions in one enactment cannot (in the absence of indication in another legislation or provision) be imported into the latter or used for interpreting terms in the latter Act. The consequences for such construction would be contrary to the intentment of the latter enactment (refer to M.S.C.O. Ltd. v. Union of India 1985 (1) SCC 551). Therefore, that printing is a manufacturing process or constitutes manufacturing in terms of the Factories Act (having regard to its disparate objects which may have no co-relation for the purpose of the Transfer of Property Act) or for the purposes of the fiscal and financial enactments such as Sales tax and Excise duty etc. are of no relevance, while construing what is manufacture or manufacturing lease u/s 106. This Court is satisfied that the premises were not leased to the defendant for any manufacturing purposes. To conclude the discussion, it would be pertinent to notice the decision of the Supreme Court in Samir Mukherjee v. Davinder K. Bajaj and Ors. AIR 2001 SC 1696, wherein in paragraph-10, a similar contention of the occupier/lessee was rejected.

16. The last and perhaps most important submission raised in defence to the plaintiff?s application for part decree and also in support of the plea for rejection of the Suit was that the plaintiff is an unregistered firm and consequently, the Suit is not maintainable in terms of Section 69(2). Considerable reliance was placed on the decision in Raptakos Brett case (supra) for this purpose. The facts for the purpose of deciding that case were briefly set out, and the points that required decision were outlined in paragraph-8 of the decision. The Court, as is evident from reading of paragraph-15 & 16, rejected the defendant?s contention that the Suit was not based on a composite cause of action. It, however, proceeded to analyze the facts from paragraph-17 onwards. The relevant discussion vis-?-vis applicability of Section 69(2) appear in Paragraphs 21 & 22. The same reads as follows:

21. So far as the applicability of the bar of Section 69, Sub-section (2) of the Partnership Act is concerned, it is true that it is a penal provision which deprives the plaintiff of its right to get its case examined on merits by the court and simultaneously deprives the court of its jurisdiction to adjudicate on the merits of the controversy between the parties. It will, therefore, have to be strictly

construed. It is also true that once on such construction of this provision the bar u/s 69(2) of the Act gets attracted, then the logical corollary will be that the said provision being mandatory in nature would make the suit incompetent on the very threshold. Consequently, it is not necessary for us to examine various decisions of this Court rendered in connection with Section 80 of the CPC or Section 77 of the Indian Railways Act to which our attention was invited by learned senior Counsel Shri Nariman. We my proceed on the basis that for sustaining a suit which falls within the sweep of Section 69 Sub-section (2), the condition precedent is that the firm must be registered at the time of filing of the suit. If it is not registered the suit must be held to be incompetent from the inception. In this connection we may refer to a decision of the Division Bench of the Calcutta High Court in the case of Goraknath Champalal Pandey v. Hansraj Manot, which had confirmed the decision of the learned Single Judge of the same High Court in the case of Hansraj Manot v. Goraknath Champalal Pandey. It was held in the said decisions that the conditions of Section 69 Sub-section (2) were mandatory in nature. However, it must be observed that the said decisions were rendered in an entirely different fact situation wherein during the subsistence of the contract of tenancy the tenant had failed to pay rent and consequently the landlord had filed the suit for possession on the ground that the tenant had committed breach of the term of tenancy about regular payment of rent. The said suit obviously was a suit for enforcement of the right arising out of a contract of tenancy for regular payment of stipulated rent which was subsisting between the parties. The said suit filed by plaintiff unregistered firm was rightly held to be barred by Section 69 Sub-section (2) of the Partnership Act. In this connection we may also refer to a decision of the Patna High Court in Padam Singh Jain v. Mis. Chandra Brothers and Ors. AIR 1990 Pat 95, wherein a learned Single Judge of the Patna High Court had taken the view that after the expiry of the contractual tenancy when the tenant had continued in occupation as a statutory tenant and when the landlord based his suit for possession on any of the ground available under the Rent Act it cannot be said to be a suit for enforcement of a right arising from the contract of tenancy. The said decision rendered on its own facts cannot advance the case of either side. Similarly, the aforesaid decisions of the Calcutta High Court equally cannot advance the case of either side. In the present case we are concerned with the lease which has come to an end and the erstwhile tenant has remained in occupation as a tenant at sufferance. Under law the erstwhile landlord is entitled to restoration of-possession by enforcement of statutory obligation of the erstwhile tenant as statutorily imposed on him u/s 108(q) read with Section 111(a) of the Property Act. The non-compliance of the statutory obligation by the defendant when made subject matter of corresponding legal right of the erstwhile landlord cannot be said to be giving rise to enforcement of any contractual right of the plaintiff arising from the expired contract of tenancy. As seen earlier, the controversy would have clearly ended in favour of the respondent and against the appellant if the plaint has referred to only the law of the land under which the defendant was required to be evicted on the expiry of the lease. But unfortunately for the plaintiff the suit is also based on the breach of the covenant of the lease as seen from paragraph 2 of the plaint. It is, therefore, not possible to interpret the averments with reference to the covenant of the lease only as referring to a historical fact as tried to be submitted by Dr. Singhvi for the respondent.

22. The net effect of this discussion, therefore, is that the plaint as framed by the plaintiff respondent is based on a composite cause of Action consisting of two parts. One part refers to the breach of the covenant on the part of the defendant when it failed to deliver vacant possession to the plaintiff lessor on the expiry of the lease after 15.03.1985 and thereafter all through out and thus it was guilty of breach of covenants 14 and 17 of the lease. The second part of the cause of Action, however, is based on the statutory obligation of the defendant lessee when it failed to comply with its statutory obligation u/s 108(q) read with Section 111(a) of the Property Act. So far as this second part of the cause of Action is concerned it cannot certainly be said that it is arising out of the erstwhile contract.

17. After recording the above conclusion, the Court held on the facts as follows in answer to point No. 1 with regard to the maintainability of the Suit:

On the facts of the present case it has to be held that there is no further locus poeneteatiae given to the tenant to continue to remain in possession after the determination of lease by efflux of time on the basis of any such contrary express term in the lease. Consequently, it is legal obligation flowing from Section 108(q) of the Act which would get squarely attracted on the facts of the present case and once the suit is also for enforcement of such a legal right under the law of the land available to the landlord it cannot be said that enforcement of such right arises out of any of the express terms of the contract which would in turn get visited by the bar of Section 69 Sub-section (2) of the Partnership Act. Consequently it has to be held that when paragraph 2 of the plaint in addition made a reference to right of the plaintiff to get possession under the law of the land, the plaintiff was seeking enforcement of its legal right to possession against the erstwhile lessee following from the provisions of Section 108(q) read with Section 111(a) of the Property Act which in turn also sought to enforce the corresponding statutory obligation of the defendant under the very same statutory provisions. So far as this part of the cause of Action is concerned it stands completely outside the sweep of Section 69 Sub-section (2) of the Partnership Act. The net result to this discussion is that the present suit can be said to be partly barred by Section 69 Sub-section (2) so far as it sought to enforce the obligation of the defendant under Clauses 14 and 17 of the contract of lease read with the relevant recitals in this connection as found in paragraph 2 of the plaint. But it was partly not barred by Section 69 Sub-section (2) in so far as the plaintiff based a part of its cause of Action also on the law of the land, namely, Transfer of Property Act where under the plaintiff had sought to enforce its statutory right u/s 108(q) read with Section 111(a) of the Property Act. Enforcement of the right had nothing to do with the earlier contract which had stood determined by efflux of time. The first point for determination therefore, has accordingly, to be held partly in favour of the plaintiff and partly in favour of the defendant. As the decree for possession is passed on the basis of both parts of causes of Action, even if it is not supportable on the first part, it will remain well sustained on the second part of the very same cause of action.

24. In view of our conclusion on point No. 1, though the appellant partly succeeds thereon the ultimate decree for peaceful possession against the appellant would remain well sustained.

18. The above decision was not distinguished and was indeed applied in the second case relied upon on behalf of the defendant, i.e., Popat & Kotecha Property (supra) where the final order of the Supreme Court indicated that the order rejecting the Suit was set aside and the matter remitted for consideration on merits. In the present case, a facial reading of the relief clause would indicate that the relief of possession is founded essentially on the averment that the defendant continued to occupy the suit premises after expiry of 15 days notice period. This Court has previously rejected the defendant?s contention that the real arrangement between the parties constituted a manufacturing lease requiring the issuance of six months as a prelude to an claim for possession. Consequently, the notice period in the present case of 15 days was within the contemplation of the Section 106 of the Transfer of Property Act. The defendant?s plea as regards maintainability of the Suit as well as its opposition to the application under Order 12, Rule 6, cannot succeed.

19. For the above reasons, I.A. 13496/2009 has to succeed and is accordingly allowed. I.A. No. 565/2010 has to be and is rejected with costs of Rs. 75,000/- (Rs. Seventy five thousand) to be paid to the plaintiff within two weeks. CS (OS) 140/2009 in view of the order passed today in I.A. 13496/2009, let decree in terms of prayer (a) of the plaint be drawn forthwith. List on 14th April, 2010, for further proceedings.

