
(2014) 05 DEL CK 0193
In the Delhi High Court
Case No : CS(OS) 3075/2011

Ishpinder Kochhar

APPELLANT

Vs

Deluxe Dentelles (P) Ltd.

RESPONDENT

Date of Decision : 22-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 1, Order 11 Rule 12, Order 11 Rule 13, Order 11 Rule 14, Order 11 Rule 5
Penal Code, 1860 (IPC) — Section 151

Citation : (2014) 05 DEL CK 0193

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Sumit Bansal, Mr. Ateev Mathur, Ms. Richa Oberoi and Mr. Devmani Bansal, Advocate for the Appellant; C.A. Sundaram, Sr. Adv., Ms. Divvya Kesaar and Mr. Mannmohit K. Puri, Advocate for the Respondent

Final Decision : Allowed

Judgement

V.K. Shali, J.

OA No. 87/2014

1. This order shall dispose of the appeal filed by the defendants/appellants under Chapter II Rule 4 of the Delhi High Court (Original Side) Rules, 1967 against the order dated 03.05.2014 passed by the learned Joint Registrar by virtue of which the learned Joint Registrar has directed the defendant No. 2 to produce on affidavit all the three documents as prescribed in Form No. 5 of Appendix C under Order 11 Rule 13 CPC within a period of four weeks, the details of which are given by the respondent/plaintiff in the application. The said three documents are:

- i) Shareholding pattern of M/s. Ramesh Kumar Overseas Private Limited;
- ii) Shareholding pattern in the M/s. Nidas Estate Private Limited; and

iii) The production of the alleged lease deed/document pursuant to which you claim that the M/s. Ramesh Kumar Overseas Private Limited is in possession of Western Portion of the shop in question.

2. Briefly stated, the facts leading to the filing of the present appeal are that the plaintiff filed a suit for possession against the appellants/defendants making the defendant No. 2, an individual, Mrs. Adarsh Gill, a party. It was alleged in the plaint that the defendant No. 1 had entered into an unregistered agreement of lease dated 21.11.1999 with the erstwhile owner, Smt. Neeta Mehra, with respect to 45% of the area of the suit property baring Plot No. 10, Block-172, Jor Bagh Market, New Delhi-110003 which was consisting of Eastern Shop, an office block, a mezzanine over the office block, a toilet, courtyard at the back and the concerned verandah with a display window more particularly referred as RED portion in the site plan annexed to the plaint and referred to as Eastern part of the ground floor. The appellant/defendant No. 1 was alleged to have been holding the premises unauthorizedly after expiry of the period of lease of eleven years and eleven months. It was alleged that initially the rent was Rs. 2650/- per month which was enhanced by 10% every three years and after 17.11.2008, the rent of the premises in question was Rs. 3527 and since the rent was more than Rs. 3,500/-, therefore, they were not protected by the Delhi Rent Control Act, 1958. With regard to the western portion of the premises in question, more particularly shown in Yellow in the plaint, it was alleged that the same was in the unauthorized occupation of the defendants as a trespasser with respect to which a decree of possession was sought apart from a decree of damages. The defendants filed the written statement and admitted being a tenant in respect of the eastern portion of the premises in question. The rent was stated to be initially Rs. 2650/-. It was denied that the rent was liable to be increased or that they were in arrears of rent. However, so far as the eastern portion of the premises in question is concerned, a judgment on the basis of the admission under Order 12 Rule 6 CPC was passed by this court, which is stated to be under appeal and is not in any way an issue in the present appeal. What is in issue is that the defendants had taken a specific plea in para 12 of the written statement that M/s. Ramesh Kumar Overseas Private Limited was the tenant under the erstwhile owner of the suit property. However, they had occupied the premises after removal of the wall separating the eastern portion from the western portion of the premises in question with the consent of the M/s. Ramesh Kumar Overseas Private Limited and Mrs. Neeta Mehra who is the erstwhile owner. The suit was contested and the issues are yet to be framed in the suit. The respondent/plaintiff filed IA No. 20768/2012 under Order 11 Rule 12 & 14 read with Section 151 CPC seeking production of the following documents:

i) Shareholding pattern of M/s. Ramesh Kumar Overseas Private Limited;

ii) Shareholding pattern in the M/s. Nidas Estate Private Limited; and

iii) The production of the alleged lease deed/document pursuant to which you claim that the M/s. Ramesh Kumar Overseas Private Limited is in possession of

Western Portion of the shop in question.

It was stated in the application that the respondent/plaintiff had come to know that the appellant No. 2 who is the Managing Director of the appellant No. 1 is a majority shareholder in M/s. Ramesh Kumar Overseas Private Limited as well as M/s. Nidas Estate Private Limited. The respondent/plaintiff had placed on record copies of Form 20(B) obtained from the Registrar of Companies which show that M/s. Ramesh Kumar Overseas Private Limited had the authorized capital of 1000 equity shares of Rs. 100 each. Out of these 1000 shares, appellant No. 2, who is the Managing Director of defendant No. 1, holds 61% of the shares i.e. 610 share and the balance 39% are owned by M/s. Nidas Estate Private Limited. It was also the contention of the respondent/plaintiff that the shareholding pattern of M/s. Nidas Estate Private Limited was 60,000 shares of Rs. 10 each and out of these 55,000 are owned by the appellant No. 2 i.e. more than 90% and the remaining 5,000 shares are owned by the daughter of the appellant No. 2. Thus, the entire exercise on the part of the respondent/plaintiff was to show to the court that the appellant No. 2/defendant No. 2 was the majority shareholder of M/s. Ramesh Kumar Overseas Private Limited and it was a fit case where the corporate veil was required to be lifted to ascertain as to who were the real persons controlling the affairs of these three companies and once this is prima facie established, then it will be established that this is a false plea set up by the appellant No. 2 that M/s. Ramesh Kumar Overseas Private Limited was the tenant in respect of the western portion of the suit property. In effect, it was the appellant No. 2 who was the holder of the vital interest and, therefore, the appellant No. 2 be directed to furnish the requisite information on interrogatories on the prescribed form.

3. The application of the respondent/plaintiff was contested by the appellants/defendants before the learned Joint Registrar and they had file the reply. The contention of the appellants/defendants was turned down and the court directed the appellants/defendants to furnish the requisite information in respect of three documents on affidavit in the prescribed Form No. 5 of appendix C under Order 11 Rule 13 CPC.

4. It is under these circumstances that the present appeal came to be filed challenging the order of the learned Joint Registrar. The learned senior counsel appearing for the appellants/defendants has contested that the order of the learned Joint Registrar giving direction to the appellant No. 2 to furnish information with regard to the shareholding pattern of M/s. Ramesh Kumar Overseas Private Limited or M/s. Nidas Estate Private Limited or even to produce the alleged lease deed by virtue of which the M/s. Ramesh Kumar Overseas Private Limited was given the possession of the western portion of the shop in question are not the documents pertaining to the "parties" to the suit and the learned Joint Registrar could not have issued any direction much less to the appellants directing them to furnish the documents on affidavit pertaining to third parties.

5. It was also contended by the learned senior counsel that although there is no judgment on this score passed by the High Court, but he has been able to lay his hands on two judgments. The one is of Madras High Court and the other of Calcutta High Court wherein it has been held by both the High Courts that a party cannot be directed to produce documents in respect of a third party who is not a party in the suit in question. These two judgments are: i) S.A.K. Chinnathambi Chettiar Vs. G.S. Murugan, and ii) Gopaldas Modi Vs. Hansraj, .

6. The learned counsel for the respondent/plaintiff has vehemently contested this submission of the learned senior counsel for the appellants/defendants. He has stated that there is nothing illegal in the order of the learned Joint Registrar directing production on affidavit the documents pertaining to M/s. Ramesh Kumar Overseas Private Limited who is stated to be the tenant in respect of the western portion of the suit property inasmuch the appellants are claiming to have got the possession from M/s. Ramesh Kumar Overseas Private Limited. Secondly, it was contended by the learned counsel for the respondent/plaintiff that this plea of the appellants/defendants that M/s. Ramesh Kumar Overseas Private Limited was not a tenant in respect of the western portion of the suit property is only an afterthought inasmuch as no such plea was taken by them in reply to the notice served by the plaintiff/respondent before initiating the action for retrieval of possession. Thirdly, it has been contended by the learned counsel for the plaintiff that so far as the appellant No. 2 is concerned, no doubt she is the Director of the appellant No. 1 and through whom the agreement in question for and on behalf of appellant No. 1 was signed with the erstwhile owner of the suit property, but she was also the majority shareholder of both M/s. Ramesh Kumar Overseas Private Limited and M/s. Nidas Estate Private Limited and thus effectively controlling both these two companies and more particularly M/s. Ramesh Kumar Overseas Private Limited who is stated to be the tenant and the court was well within its rights to lift the corporate veil in order to arrive at the real issue in controversy as to whether M/s. Ramesh Kumar Overseas Private Limited was the tenant in respect of the western portion of the suit property or not. The learned counsel for the respondent/plaintiff has also placed reliance on two judgments of the apex court: i) Rameshwari Devi and Others Vs. Nirmala Devi and Others, and Maria Margarida Sequeria Fernandes and Others Vs. Erasmo Jack de Sequeria (Dead) through L. Rs., .

7. In the second judgment, the learned counsel has drawn the attention of the court to certain observations passed by the Hon"ble Supreme Court with which there cannot be any dispute that the entire exercise of judicial process is to come to the foundation of the truth and arrive at the finding with regard to the lis which is pending before the court. It has referred to the general observations with which there cannot be any disagreement so far as the present court is concerned. As regards the judgment, the observations to which attention of the court has been drawn are contained in para 52 which reads as under:

52. Truth is the foundation of justice. It must be the endeavour of all the judicial

officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth.

8. The foundation of the aforesaid observation is that the court should resort to discovery and production of documents and interrogatories at the earliest in order to focus and arrive at the truth for the purpose of doing the substantial justice.

9. There cannot be any dispute with regard to this proposition also, but the question which needs to be considered in the instant case is that whether a direction can be issued on the basis of an order passed on an application under Order 11 Rule 12 & 14 i.e. discoveries to be effect on interrogatories in respect of certain documents pertaining to someone who is not a "party" to the suit in which the interrogatories and the discoveries are sought to be made. The answer to this question has been given by the Calcutta High Court that before an interrogatory or a discovery is sought to be made under Order 11 Rule 12 & 14 CPC, the party against whom the documents are sought to be produced must be a party to the suit. The exact language of Rule 1 of Order 11 CPC is as under:

1. Discovery by interrogatories

In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose:

Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

10. It may also be pertinent here to refer to Rule 5 & Rule 12 of Order 11 of CPC.

5. Corporations

Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

xxx xxx xxx xxx

12. Application for discovery of documents

Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents

which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion be thought fit:

Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

11. A conjoint reading of all these rules will clearly show that the law permits in any suit the plaintiff or the defendant with the leave of the court to deliver the interrogatories in writing for the examination of the opposite parties. Further, no party shall deliver more than once set of interrogatories to the same party without an order for that purpose; that interrogatories which do not relate to any matters in question to the suit shall be deemed to be irrelevant and where a party to a suit is a corporation or a body of persons, whether incorporated or not, in such a case, interrogatories may be given to any member or an officer of such a body corporate or corporation under an order of the court. A perusal of the aforesaid rules will clearly show that before interrogatories are given, a person or a body corporate must be a party to the suit. In the instant case, the interrogatories are being sought from appellant No. 2 who has been impleaded as a party seeking eviction from the eastern portion of the shop in question as a signatory to the lis for and on behalf of the appellant No. 1 and from western portion in the capacity of a trespasser. The appellant No. 2 has not been impleaded as a party, as a Managing Director or a shareholder of M/s. Ramesh Kumar Overseas Private Limited which was claimed by the present appellants to be the tenant in respect of the western portion of the shop in question nor is M/s. Ramesh Kumar Overseas Private Limited a defendant in the suit. Therefore, in my considered opinion, as M/s. Ramesh Kumar Overseas Private Limited is not a defendant in the suit, no interrogatories could be issued to M/s. Ramesh Kumar Overseas Private Limited or to appellant No. 2 in the capacity of the purported holder of a majority stake of the said company. In my considered opinion, there is no question of lifting of a corporate veil in the instant matter. There is a definite case which has been set up by the plaintiff and a definite defence taken by the defendant and the basic dictum is one who asserts must prove.

12. The plaintiff has taken a definite plea in the plaint that the appellants/defendants are trespassers in respect of the western portion of the shop. Therefore, the issue which is to be framed would be whether the respondent/plaintiff is the owner of the suit premises and consequently whether the appellants/defendants are the trespasser with respect to the western portion of the shop in question. If so, its effect and the onus in respect of both these issues would on the respondent/plaintiff.

13. So far as the defence of the appellant/defendant is concerned, they have taken a defence that M/s. Ramesh Kumar Overseas Private Limited was the

tenant in respect of the western portion and they are in occupation of the said portion with the consent of the previous owner Smt. Neeta Mehra and M/s. Ramesh Kumar Overseas Private Limited will have to discharge this onus in rebuttal to the issues in respect of which burden of proof is on the plaintiff. The question of shareholding of M/s. Ramesh Kumar Overseas Private Limited is not all relevant and in any case even if it is considered to be relevant, the plaintiff/respondent has already claimed that after making enquiries from the Registrar of Companies he has placed on record the shareholding pattern of the said company and another company M/s. Nidas Estate Private Limited which according to them is having the majority interest in appellant No. 2, but that is inconsequential, irrelevant and unrelated to the lis between the parties for the reasons which have been enunciated by the court hereinabove.

14. For the reasons mentioned above, I feel that the respondent/plaintiff is trying to make a fishing enquiry by seeking a direction to the appellant No. 2 to produce the documents on affidavit with respect to:

- i) Shareholding pattern of M/s. Ramesh Kumar Overseas Private Limited;
- ii) Shareholding pattern in the M/s. Nidas Estate Private Limited; and
- iii) The production of the alleged lease deed/document pursuant to which you claim that the M/s. Ramesh Kumar Overseas Private Limited is in possession of Western Portion of the shop in question.

The same could not have been done on the basis of Order 11 Rule 12 CPC. The learned Joint Registrar seems to have fallen into an error in passing the order dated 03.05.2014, which is not in my opinion, sustainable in the eyes of law. I accordingly, allow the appeal and set aside the order passed by the learned Joint Registrar dated 03.05.2014. No order as to cost.

15. List before the Joint Registrar on 08.08.2014, as already fixed.