

(1994) 05 DEL CK 0123

In the Delhi High Court

Case No : Interim Application No. 725 of 1993 and Suit No. 4612 of 1992

Jwala Pershad Ashok Ashok Kumar Chopra and Another

APPELLANT

Vs

Nath Tubes Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 24-05-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 10

Citation : (1994) 3 AD 31 : (1994) 55 DLT 277 : (1994) RLR 357

Hon'ble Judges : J.K. Mehra, J

Bench : Single Bench

Advocate : V.K. Makhija, Ashok Kashyap, Alakh Kumar, P.R. Bahl and Raman Duggal, for the Appellant;

Judgement

J.K. Mehra, J.

(1) This is an application for direction to the defendants to pay rent/damages for use and occupation of the premises, which was let out by the plaintiff, H.U.F. to defendant No.1.

(2) In the suit the plaintiff has alleged that the premises in dispute were let out to defendant No.1 and that defendant no.4 who is its Managing Director and defendants 2 and 3, who are the Directors of defendant No.1 had guaranteed the payment of rent. It is further stated that at the time of institution of the suit the agreed rate of rent was Rs. 35000.00 per month. plaintiff has alleged that the defendants had not been paying any rent.

(3) The position taken up by the defendants is that though defendant No.1 was the tenant initially, but subsequently at the time of renewal of the lease deed the tenancy was transferred to defendants 3 and 4 and that defendant No.1 is not liable to pay rent for the premises in dispute. The case of defendant No.2 is also that initially the premises were let out to defendant No.1 which was later on transferred to the name of defendants 3 and 4 who are the Director and Managing Director respectively of the company. The fact that defendants 3 and 4

were initially the surety was not challenged at the bar before me. The defendants 3 and 4 have not disputed the rate of rent but had pleaded further that the plaintiff is not entitled to rent as it had failed to carry out essential repairs which had to be carried out by defendants 3 and 4 at their costs which cost the said defendants Rs.1,67,000.00. These defendants have further urged at the Bar that on the said account of failure of the plaintiff to carry out such repairs, there is abatement of rent and no order for payment can be passed against defendants Nos. 3 and 4. On further clarification, sought by Court on this plea to ascertain whether they claim total abatement or partial, the Counsel claimed abatement to the extent beyond Rs.26,000.00 p.m., i.e., the abatement claimed is @ Rs.9,000.00 p.m. The plaintiff has, however, denied that there was any transfer of tenancy in favor of defendants 3 and 4 and he has alleged that subsequent leases are forgeries and has asked for the production of the originals. Plaintiff maintains that the defendant No.1 is the principal party liable for the rent while defendants 2 to 4 are liable as sureties. In this case, the fact that the premises were let out by the plaintiff at the rate of Rs.35000.00 per month is not in dispute. In the present case identity of the landlord is not in dispute, while it is contended by the plaintiff that defendant No.1 is the tenant and defendants 2 to 4 stood guarantee for the payment of the rent where as the plea of the defendants is that defendant No.1 had ceased to be a tenant as on the expiry of the term of the first lease deed dated 1.11.89 on 1.5.91 where after the tenancy was changed to the names of defendants 3 and 4 who had become the tenants under the subsequent leases. Similar is the stand taken by defendant No. 2. It is stated in the written statement of the defendants that defendants 2 and 3 are the directors of defendant No. 1, defendant No. 4 is the Managing Director and that the rent that was being paid was @ Rs.34500.00 although defendants 3 and 4 have denied that the plaintiffs are the owners of the property. I find from the documents submitted by the defendants 3 and 4 being photocopies of the alleged lease deeds produced by the said defendants Nos.3 and 4 and whereunder they are claiming to have become the tenants that the said plaintiff Huf is shown as the landlord. As such, this plea of defendants Nos. 3 and 4, prima facie, is lacking in bonafides. It is further to be noticed that Mr. Ashok Chopra is clearly stated to be the Karta of the plaintiff Huf in the said lease deed relied upon by defendants Nos. 3 and 4. The denial in the written statement is clearly belied by the documents produced by the said defendants.

(4) Coming to the liability and the question of power of Court to order the payment or deposit of rent has been challenged on the ground that no such order can be made in any of the litigations between the landlord and the defendants. In the light of the facts set out above, I am in no doubt that there is no dispute about the liability of defendants No.3 and 4 whether in their capacity as tenants or tenants by holding over or as guarantors which can be decided on merits of the suit after evidence is led by both plaintiff and the defendants.

(5) The question of passing orders for payment of the amount equal to the rent has come up for decision before various courts. Counsel for the defendants had

relied upon the decision of this Court in the case of Brig. S.S.Suri (AVSM)(Retd) v. R. Chander Shekhar reported as 1994 (1) AD 98. I am unable to appreciate as to how this ruling helps the defendants because it has been clearly held in the said case that an order for deposit of rent can be passed by the Court in fair exercise of its judicial direction. The Court in that case has examined the provisions of Order 39 Rule 10 CPC which reads as under:-

"WHERE the subject matter of a suit is money or some other thing capable of deliver and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last named party with or without security, subject to the further direction of the Court."

and also Order 12 Rule 1 CPC and Section 151 CPC can be invoked to cover all such cases. The Court had clearly held in that case that the Court can in a case of this kind in fair exercise of its judicial discretion order for deposit of money pending the decision of the suit.

(6) From the copies of the lease deeds produced by the defendants the rate of rent is clearly stated as Rs.35000.00. per month. There is no mention about any such condition of lack of repairs of the premises which would render it incapable of enjoyment nor is dispossession of any part of the premises alleged. The abatement of rent could be considered only if the premises had been rendered incapable of enjoyment. There is no such plea urged before me that the entire premises had become incapable of enjoyment and in any event it does not stand to reason that if the premises had been rendered incapable of enjoyment why did the defendants renew the lease and continue in occupation thereof. The question further remains that defendants No.3 and 4 are claiming to have spent Rs.1,67,000.00- on repairs to the premises which fact is disputed by the plaintiff. In my opinion this is a matter which can be decided only on evidence, but it clearly establishes that it could at best be a case of non-repair on the part of the landlord. I am not satisfied that there is case made out for payment of rent. The rent does not abate merely because the premises require repairs. Counsel for defendants 3 and 4 has cited Abhoya Charan Sen and Others Vs. Hem Chandra Pal and Others, , and Dharendra Nath Roy and Others Vs. Bhabatarini Debi and Others, , which to my mind, have no application to the facts of the present case as in those cases, the question for consideration was that the tenant had been deprived of possession/occupation of the part of the whole land in dispute and in those circumstances, the Court had come to the conclusion that the landlord had dispossessed the tenant from a part of the premises when rent was fixed for the whole. However, a contrary view has been expressed on tenancies in Bengal itself in AIR 1943 24 (Privy Council) . No such condition prevails in the present case where the defendants are definitely enjoying the use and occupation of the premises in dispute. The law in this behalf has been settled by the Hon'ble Supreme Court in Surendra Nath Bhabra Vs. Stephen Court Ltd., wherein 1943 P.C.

24 (supra) has been explained and laid down where out of three bedrooms, only two were handed over to tenant. The tenant is not entitled to suspend rent, but must pay proportionately. A mere breach of the condition to repair does not give rise to abatement of rent and this view finds support also from the cases of Bansi Sah and Others Vs. Krishna Chandra and Others, and Phelps & Co. v. Shalimar Paints, reported as 1980 Rlr 646.

(7) Since the question as to whether the defendants 3 and 4 are entitled to adjustment of Rs.1,67,000.00 is yet to be determined, I direct that for the present the amount equal to the rent up to date minus Rs.1,67,000.00 be deposited in this Court by defendants No.3 and 4 without prejudice to the rights and contentions of the parties. The said defendants are further directed that they should continue to deposit every month Rs.35000.00 which is the admitted rate of rent in this Court without prejudice to the rights and contentions of either party. The plaintiff shall have a right to withdraw the same. The amount deposited by defendants No.3 and 4 and its withdrawal by the plaintiff shall be subject to the final judgment of this Court. Payment of arrears be made within six weeks from the date of the order.

(8) List the suit on 20/09/1994 for framing of issues.