
(2013) 09 DEL CK 0553
In the Delhi High Court
Case No : FAO (OS) 573 of 2009

Mrs. Neelam Chopra

APPELLANT

Vs

Panna Lal

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Citation : (2013) 9 AD 21

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : Tanmaya Mehta, for the Appellant; Prakash Gautam, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Ravindra Bhat, J.—The appellant (hereafter referred to by her name "Neelam Chopra") claims to be aggrieved against the order of the learned Single Judge dated 02.09.2009 (impugned order) to the extent that it directs the respondent (hereafter referred to as "Panna Lal") to pay Rs. 50,000/- as use and occupation charges in respect of Shop No. 58B, Khan Market, New Delhi (hereafter referred to as "suit premises"). The dispute which is the subject matter of the present appeal is a part of a series of litigation between Neelam Chopra and Panna Lal; the acrimony has led to both civil as well as criminal proceedings. Panna Lal filed the suit no. 574/2007 out of which the present appeal has arisen—seeking permanent injunction to restrain Neelam Chopra from forcibly dispossessing him and his sons from the suit property. During the pendency of the proceedings Panna Lal offered to pay a sum of Rs. 50,000/- towards use and occupation charges of the suit premises on monthly basis w.e.f. 10.05.2007 till 11.02.2008. Neelam Chopra along with her Written Statement and Counter Claim against Panna Lal stated that he and his sons were unauthorised occupants of the suit premises and had no right in it. She also claimed a preliminary decree for rendition of accounts in the Counter Claim registered as No. 17/2008. In addition, she sought for a decree of damages for use and occupation against

Panna Lal to the extent of Rs. 5 Lakh per month from the date of the Counter Claim till Panna Lal vacates the premises. Neelam Chopra claimed that she was always the owner and in possession of the suit premises and was carrying on business in the name and style "M/s. Allied Fruit and Florist"; she traced her title to a registered sale deed dated 19.11.1969. It was said by her that Panna Lal and his sons were her employees and after establishing faith and confidence with her impersonated himself as proprietor of a concern and lodged a false complaint with the police. Neelam Chopra, during the course of the proceedings, stated that she has no objection to suffer a permanent injunction as the plaintiff Panna Lal would not be evicted and dispossessed except in accordance with law. As a result, on 27.05.2008, the Court disposed off the suit and pending applications. However, the Counter Claim survives. Neelam Chopra contended that as long as the Counter claim was pending, the defendant Panna Lal should pay her Rs. 5 lakhs for use and occupation of the suit property. Panna Lal, on the other hand, stated that Neelam Chopra was creating obstructions in the smooth running of the business as electricity was disconnected in the suit premises and that she had filed certain First Information Reports against him in connivance with officers of New Delhi Municipal Council (NDMC). He, however, expressed his willingness to pay Rs. 50,000/- as use and occupation charges in terms of an earlier order, provided, Neelam Chopra agreed to the supply of electricity and also issuance of NOC in favour of the NDMC. The learned Single Judge after considering the submissions of the parties proceeded to accept the submissions of Panna Lal and directed payment of Rs. 50,000/- per month w.e.f. 11.02.2008. That amount was to be paid on or before 7th of each English calendar month. Neelam Chopra is in appeal against that order. Her counsel relied upon the materials placed on record in the form of copies of employment registers maintained in respect of the suit premises as well as copies of other documents to say that a sum of Rs. 50,000/- is very inadequate. The materials relied upon includes a photocopy of documents in which amongst others another concern "The Body Shop" which was in occupation of a ground floor back lane block to the extent of 464 Sq. Ft. was paying Rs. 4.32 lakhs per month as lease rent. Similarly, copy of a registered lease deed entered into between B.S. Chugh and Colour Plus Fashions Ltd. in respect of 534 Sq. Ft. area on the ground floor, i.e., Shop No. 28A, Khan Market was leased out for Rs. 3 lakhs 35 thousand per month. Other materials too have been relied upon to show that the suit premises are capable of fetching much higher rent and that the use and occupation charges directed by the learned Single Judge is grossly inadequate. It was submitted by the counsel for Neelam Chopra that two other proceedings are pending before the Division Bench. First is LPA 423/2010 (filed by Neelam Chopra against the order of learned Single Judge dated 31.05.2010 requiring the NDMC to restore electricity to the premises) and the second proceedings, i.e., LPA 207/2001 (directed against the order in another writ petition filed by Panna Lal where the learned Single Judge had, by judgment dated 10.01.2011, directed that Neelam Chopra's "No Objection" was not necessary to issue a trade license). It was submitted that Panna Lal had, on 03.06.2011, in both the said appeals agreed to pay Rs. 2 lakhs towards use and

occupation charges in respect of the premises. Learned counsel submitted that the said amount has been recorded by way of an interim arrangement and that this Court should take into consideration that with the lapse of two years, the rentals have increased and the amount should be accordingly fixed at least at Rs. 3 lakhs per month.

2. Learned counsel for the respondent, i.e., Panna Lal, argued that the order of the learned Single Judge is a purely interlocutory one and that the parties have to proceed to prove merits of the respective contentions in the pending Counter Claim. It was argued that the Panna Lal has been in continuous and long occupation of the suit premises as a lessee and that till date Neelam Chopra has not issued any notice terminating the arrangement. Learned counsel argued that having regard to the other litigations pending before various Courts including criminal proceedings, it would be inappropriate that through the present appeal, a final determination directing a considerably higher amount than what was ordered by the learned Single Judge should be made.

3. Before discussing the merits of the rival contentions, it would be essential to extract the order dated 3.6.2011 made in the pending appeals, i.e., LPA 423/2010 and LPA 207/2011. As noticed earlier, both the appeals have been preferred by Neelam Chopra. They are in respect of the orders made in two separate writ petitions instituted by Panna Lal. The learned Single Judge in those cases by separate orders directed the NDMC to restore electricity supply to the suit premises and also directed that Panna Lal's application for license should be processed without the "No Objection Certificate" of Neelam Chopra. The order of 3.6.2011 reads as follows: -

Settlement talks have started between the parties, but remain inconclusive. However, since orders of the learned Single Judges in two writ petitions have been stayed in these LPAs, the parties discussed the modalities for interim arrangement. It is agreed between the parties that Ms Allied Fruits & Florists Pvt. Ltd./Panna Lal shall pay a sum of Rs. 2 lacs per month to the appellant, Neelam Chopra with effect from 01.06.2011. The electricity connection is in the name of the appellant, the NDMC shall restore the connection expeditiously and in any case by 8th June, 2011. The electricity dues for consumption of electricity shall be borne by the respondent No. 1. Payment of Rs. 2 lacs for June, 2011 shall be paid simultaneously with the restoration of electricity by NDMC and subsequent payments to be made on or before 7th day of every month.

Insofar as the arrears of previous period are concerned, the respondent No. 1 shall for the time being pay a sum of Rs. 5 lacs on an account payment to the appellant within three weeks from today. The payments shall be made through Demand Drafts and shall be handed over to the counsel for the appellant.

The appellant agrees that she will not pursue the criminal cases which are filed against the respondent and they will remain in abeyance except the matters in which there are specific directions of the Supreme Court. In that case also

though the directions of the Supreme Court are to be complied with by the Police in filing the Challan, the appellant has assured that she will not oppose the grant of bail to the respondent. Likewise, the appellant assures that no coercive action shall be taken in any of the matters till the next date.

The interim arrangement is made without prejudice to the contentions of the parties.

A reading of the impugned order would reveal that the learned Single Judge was persuaded to accept the Panna Lal's concession to pay Rs. 50,000/- per month towards use and occupation of the premises. As a principle, the contention that the appellate Court considering a purely interim arrangement should be slow in interfering with the order of the learned Single Judge is unexceptionable. However, the subsequent conduct of the parties in agreeing to work out an interim arrangement whereby Panna Lal is now to pay Rs. 2 lakhs per month to Neelam Chopra in an interregnum is equally a reality which the Court cannot lose sight of. During the course of hearing, Panna Lal's counsel had even suggested that if the "No Objection" as well as other issues were to be sorted out and a reasonable time for occupation of premises were to be agreed upon, there might be no objection in paying amount higher than Rs. 2 lakhs. That offer it was submitted was conditional upon all disputes being ended. However, this course of action was not acceptable to counsel for the appellant Neelam Chopra.

4. In view of the above circumstances, what this Court has to really decide is whether the direction of the learned Single Judge to Panna Lal to pay Rs. 50,000/- per month towards interim use and occupation charges should bind the parties. This Court fortunately is spared of the necessity to examine the merits of the appellant's contentions that in fact as on date higher amounts are being paid in respect of similar premises in Khan Market. Although such material is on record today, the fact remains that both Panna Lal and Neelam Chopra have agreed-albeit as an interim arrangement-that the sum of Rs. 2 lakhs would be reasonable and ought to be paid towards the use and occupation charges for the suit premises. The LPAs are not before this Court; therefore, it would be inappropriate for the Court to comment upon the merits of the contentions in that regard.

5. In view of these events, which occurred more than two years ago, this Court is of the opinion that the best course would be to substitute the Single Judge's order directing Panna Lal to pay Rs. 50,000/- to Neelam Chopra with a direction that Rs. 2 lakhs be paid. The appeal is accordingly allowed to that extent. The other conditions applicable in the impugned order are left undisturbed. All rights and contentions of the parties to urge the grounds available to them in law in the pending counter claim are reserved. The appeal is accordingly partly allowed to the above extent. There shall be no order as to costs.