

(2012) 01 CHH CK 0035
In the Chhattisgarh High Court
Case No : First Appeal No. 11 of 2008

M/s. Anmole Motors and Another	Vs	APPELLANT
M/s. Shivam Motors Pvt. Ltd.		RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 31, 96

Citation : (2012) 1 CGBCLJ 392

Hon'ble Judges : I.M. Quddusi, J;Gulam Minhajuddin, J

Bench : Full Bench

Advocate : Pramod Kumar Verma, with Mr. Sumit Verma, for the Appellant;
Sanjay S. Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Gulam Minhajuddin, J.—This appeal has been filed u/s 96 read with Order 41 Rule 1 of the CPC against the judgment and decree dated 12.10.2007 passed by the District Judge, Korba in Civil Suit No. 16B/07 (M/s. Shivam Motors Pvt. Ltd. Vs. M/s. Anmole Motors and another) whereby the suit filed by the respondent/plaintiff has been decreed with costs. Brief facts of the case are that the respondent/plaintiff is a private company registered under the provisions of the Companies Act, 1956 having its head office at Jabalpur (M.P.) and branch office at Industrial Estate, Sirgitti, Bilaspur (C.G.), which is under the management and control of the General Manager appointed by the respondent company. The General Manager of the respondent company has been authorized by the respondent company to sign affidavit and other documents as well as to file suit and to give evidence in Court on behalf of the respondent company. Appellant No. 2/ defendant is doing the business in the name of appellant No. 1 and is the sole proprietor of appellant No. 1. The respondent/plaintiff company is the owner of land situated near New Bus Stand, Transport Nagar, Korba, bearing Khasra Nos. 184/1, 184/4, 187/2 and 187/9, total area 1.16 acres. The respondent/plaintiff is the authorized dealer of the vehicles manufactured by Telco.

2. Appellant No. 2, with intent to construct a showroom for the sale as well as a workshop for repairing of Telco manufactured vehicles, approached the respondent to give land admeasuring 20430 sq. ft. (in short "the suit land") out of the abovementioned 1.16 acres of land on rent. It was agreed upon between the parties that 20430 sq. ft. of the abovementioned land will be given on rent @ 50 paisa per sq. ft. per month to appellant No. 2. It was orally agreed upon that the tenancy will commence from 1.4.2000 and as a confirmation of the same, an agreement was executed between the parties on 12.8.2000, subject to the conditions mentioned therein and a rent of Rs. 10,215/- p.m. was settled, which was to be paid by appellant No. 2 to the respondent/ plaintiff company. In addition to other conditions, it was also agreed upon that appellant No. 2 will be free to construct a structure of a permanent nature for the purpose of showroom and workshop and in future, if the respondent company desires to sell the said land, then appellant No. 2 will have a preferential right to purchase the said land on the then prevailing market value. In case, appellant No. 2 refuses to purchase the said land, then the respondent company will have a right to purchase the super structure raised by appellant No. 2 on paying cost of the same.

3. Pursuant to the said agreement, possession of the suit land was handed over to appellant No. 2/defendant, who, after getting construction of the super structure done, started his business there, but failed to pay the monthly rent of Rs. 10,215/- of the land to the respondent/plaintiff. As such, 39 month's rent, amounting to Rs. 3,98,385/-, for the period commencing from 1.4.2000 till the date of filing of the suit i.e. 30.6.2003, was due from appellant No. 2 to the respondent/plaintiff. Before filing of the suit, notices demanding arrears of rent were served upon appellant No. 2, who replied the same and came out with a false case saying that the suit land was agreed to be sold to appellant No. 2 for Rs. 5 lacs, but as the respondent company had taken a loan from the Bank of Baroda and documents of the suit land were pledged with the Bank, therefore, sale deed could not be executed and as such, it was agreed upon that till execution of the sale deed appellant No. 2 will be paying Rs. 20007/- per year as license fee to the respondent company. On this premise, appellant No. 2 denied that he is liable to pay Rs. 10,215/- p.m. as rent of the suit land. As such, on the basis of agreement executed between the parties on 12.8.2000 that a civil suit for recovery of rent for 36 months", amounting to Rs. 3,67,740/-, was filed against the appellants/ defendants, because though 39 months" rent was due on the date of filing of the suit, but only 36 months" rent could be recovered as per provisions of Limitation Act, 1963 and the rent for the rest 3 months had become time barred by the time the suit was filed.

4. As per the appellants/defendants, appellant No. 2 was in a dire need of land for constructing showroom and workshop for the sale and repairing of Telco manufactured vehicles and as such, he had approached Kailash Gupta, who is owner and one of the Directors of the respondent company. It was agreed upon between the parties that Rs. 5 lacs will be paid by appellant No. 2 to the respondent company as cost of the land, but as the sale deed could not be

registered immediately on account of the fact that the title documents relating to the suit land were pledged with the Bank, it was agreed upon that till execution of the sale deed, appellant No. 2 will pay to the respondent company a sum of Rs. 2000/- per year as licence fee. Pursuant to this agreement, possession of the suit land was handed over to appellant No. 2, who got a showroom and workshop constructed thereon for the purpose of sale and repair of the Telco manufactured vehicles. It was never agreed upon that Rs. 10,215/- p.m. will be paid as rent of the suit land by appellant No. 2 to the respondent company. Appellant No. 2 reposing total faith on Shri Kailash Gupta had executed an agreement dated 12.8.2000 and it was agreed upon that the said document will not be acted upon. As such, appellant No. 2 was only to pay Rs. 2000/- per year as licence fee, till execution of the sale deed.

5. It has further been averred that the quality as well as the location of the land was not good as the municipal corporation sewerage line was passing through the said land, it had a very narrow access and was not leveled and on account of this, Kailash Gupta, owner of the respondent company, was in search of a purchaser and was not interested in retaining the same. An objection has also been raised that as the agreement dated 12.8.2000 was for a period of three years, therefore, it was compulsorily registrable and since the same has neither been registered nor requisite stamp duty has been paid, hence, it is not admissible in evidence.

6. Learned trial Court, after hearing counsel for the respective parties and after close scrutiny of the evidence, oral and documentary adduced by the parties, decreed the suit of the respondent/plaintiff by the impugned judgment and decree.

7. Heard learned counsel for the parties, perused the LCR as also the impugned judgment and decree.

8. To substantiate the averments made in the plaint, the respondent/plaintiff has examined its General Manager S.S. Bisht, Ramesh Kumar Mishra-Asstt. Manager (Legal) and Chandrakant Chouhan as PVV-1, PVV-2 and PW-3 respectively, and has got the documents exhibited from Ex.P/1 to P/5. On the other hand, the appellants/defendants have examined Santosh Kumar Agrawal, Harikishan Gupta and Sushil Kumar Agrawal as DW-1, DW-2 and DW-3 respectively and in addition to this, filed documents Ex.D/1 to D/9 in support of their case.

9. In this appeal, the points for determination under Order 41 Rule 31 of the CPC are the following:

(i) Whether as per agreement dated 12.8.2000, the suit land, area 20430 sq. ft., was given to the appellants/defendants by the respondent/plaintiff on a monthly rent of Rs. 10,215/- p.m. i.e. @ 50 paisa per sq. ft.? (ii) Whether an agreement dated 12.8.2000 was executed between the parties, subject to the conditions mentioned therein?

(iii) Whether despite continuous reminders, appellant No. 2 had not paid 36 months' rents amounting to Rs. 3,67,740/- to the respondent/plaintiff?

10. So far as execution of the agreement dated 12.8.2000 is concerned, photocopy of the agreement dated 12.8.2000 has been filed by the respondent/plaintiff, which has been marked as Ex.P/1. This document Ex.P/1 has not been denied by appellant No. 2, who has stated that as he was in dire need of land, therefore, he had executed the said agreement reposing full faith on Shri Kailash Gupta, who is owner of the respondent/plaintiffs company that the same will not be acted upon and will not be misused by Shri Kailash Gupta. As per the statements of respondent/plaintiffs witnesses, the suit land was given on monthly rent of Rs. 10,215/- to appellant No. 2 for appellant No. 1 and an agreement dated 12.8.2000 (Ex.P/1) was executed between the parties and the original was handed over to appellant No. 2, whereas photocopy was retained by the owner of the company i.e. respondent.

11. As per statement of Sanjay Kumar Agrawal (appellant No. 2/DW-I), it was agreed upon between the parties that the suit land was to be sold by the respondent/plaintiff to appellant No. 2 and the price was fixed at Rs. 5 lacs, but because the documents of the suit land were pledged with the Bank of Baroda by the respondent/ plaintiff, therefore, it was not possible to execute sale deed immediately and in such circumstances, it was agreed upon that till execution of the sale deed, appellant No. 2 will be paying Rs. 2000/- per year to the respondent company as licence fee and thereafter, pursuant to the said agreement of sale, possession of the suit land was handed over to appellant No. 2. Therefore, the question of paying monthly rent @ Rs. 10,215/- does not arise.

12. However, Santosh Kumar Agrawal (DW-1) had admitted that there is neither any agreement of sale in respect of the suit land in writing nor he has filed any suit for specific performance of contract of sale. Santosh Kumar (DW-1) has also admitted that at the time of signing, the agreement (Ex.P/1) was not blank but was in writing and he had signed the same reposing full faith on Shri Kailash Gupta that the said documents will not be acted upon, but, in fact, the same has been misused by the respondent/plaintiff. The respondent/plaintiffs witnesses have stated that after reading the agreement dated 12.8.2000 for 2-3 times that the same was signed by Santosh Kumar Agrawal (DW-1). As such, the case, which has been tried to be set up by appellant No. 2, is not supported by any documents, except his oral statement, which is not trustworthy, in view of the admission of Santosh Kumar Agrawal (DW-I) himself that he had signed the agreement Ex.P/1 dated 12.8.2000 reposing full faith on Shri Kailash Gupta, owner and one of the Directors of the respondent company.

13. In view of all this, on the basis evidence adduced by the parties, it stands proved that the suit land was given on a monthly rent of Rs. 10,215/- to appellant No. 2 by the respondent/ plaintiff as per oral agreement on 1.4.2000, and in confirmation of which an agreement (Ex.P/1) was executed on 12.8.2000, subject to the conditions mentioned therein.

14. It is an admitted fact that after obtaining possession of the suit land and getting super structure raised, appellant No. 2 has not paid any amount as rent to the respondent/plaintiff as per agreement dated 12.8.2000 (Ex.P/1). Appellant No. 2 was to pay rent of Rs. 10,215/- p.m. from 1.4.2000. Further, the fact of service of notice by the respondent/plaintiff on appellant No. 2 demanding arrears of rent has not been challenged by appellant No. 2. As such, it is proved that appellant No. 2, as per terms and conditions of the agreement dated 12.8.2000, was to pay Rs. 10,215/- p.m. as rent of the suit land from 1.4.2000, but despite demand of arrears of rent through demand notices, the same has not been paid by appellant No. 2.

15. On the basis of aforesaid discussion, the issues framed above are answered in favour of the respondent/ plaintiff and against the appellants/ defendants. We find no illegality or infirmity in the impugned judgment and decree of the trial Court warranting interference by this Court.

16. In the result, the appeal being without substance fails and is hereby dismissed. No order as to costs. The Additional Registrar (Judicial) is directed to draw up a decree accordingly.