**(2017) 10 DEL CK 0274**

**In the Delhi High Court**

**Case No :** Regular Second Appeal No. 245 Of 2017

M/S Atma Ram Properties Pvt. Ltd. APPELLANT

Vs

Union Of India RESPONDENT

**Date of Decision :** 23-10-2017

**Acts Referred:**

Code Of Civil Procedure, 1908 — Section 100, Order 22 Rule 10

**Citation :** (2017) 10 DEL CK 0274

**Hon'ble Judges :** Valmiki J. Mehta, J

**Bench :** Single Bench

**Advocate :** Amit Sethi, Ishan Khanna, Rajesh Gogna, Liu Gangmei

**Final Decision :** Allowed

## Judgement

Valmiki J. Mehta, J

C.M. Appl. No. 37328/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

RSA No. 245/2017 and C.M. Appl. No. 37329/2017 (for stay)

1.(i) This Regular Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) against the judgment of the first appellate

court dated 30.5.2017 by which the first appellate court has set aside the judgment of the trial court dated 6.3.2010 and by which judgment the trial

court had decreed the suit for declaration and permanent injunction which was filed by the plaintiffs in the suit and who are now represented by the

present appellant/company. I may note that the present appellant/company is the successor-in-interest of the original two plaintiffs in the suit, namely,

Commander M.R.A. Rao and his wife Ms. Indu A. Rao. The present appellant/

 

company purchased rights in the suit property in terms of a registered

sale deed dated 5.8.1998 registered as document no. 338 in additional book no. 1 Volume 170, pages 131-149 on 10.2.1999. Present appellant on

purchasing the suit property filed an application under Order XXII Rule 10 CPC for being substituted as the plaintiff in the suit, and this application

was allowed by the trial court vide its order dated 11.10.2000, and which order admittedly has become final as it was not challenged by the

respondent. The order dated 11.10.2000 reads as under:-

â??Pr: Sh. L.L. Garg cl. For the applicant of the application 22 rule 10 Deft. Is already ex parte.

After hearing the arguments on the application of the applicant u/o 22 Rule 10 and carefully going to the registered sale deed in favour of the

applicant, I am of the considered opinion that as the pltfs. has transferred the entire interest in the suit property in favour of the applicant that is Atma

Ram Property Pvt. Ltd., therefore, the applicant should be substituted in place of the pltfs.

I order accordingly.

Now to come up for filing amended plaint on 29.11.2000.â??

(ii) Reference, therefore, in this judgment to the plaintiffs will include, wherever the context so requires, reference to the original plaintiffs or the

present plaintiff and which is the appellant/company.

2. The plaintiffs filed the subject suit for declaration and permanent injunction seeking the following reliefs:-

â??(i) issue a declaration or other appropriate order or direction to the effect that the Defendants are not entitled to recover from the plaintiffs sums

in excess of the 1980 figures of Rs.19949 as ground rent when the lease is due for renewal in September, 1990;

(ii) issue a declaration or other appropriate order or direction that the Defendants are not entitled to levy or revise or enhance or alter at periodic

intervals the supposed charges for sanction for commercialization;

(iii) issue a declaration that the Defendants are legally obliged to calculate and levy/enhance the sum of money for granting of sanction on a

reasonable and proper basis after disclosure of the entire data, facts, figures, basis, methodology, calculation and modality of arriving at the figures for ground rent and premium;

(iv) that a decree for permanent injunction be passed restraining the Defendants or its agents, employees/servants or nominees either from levying or

increasing ground rent and premium beyond the 1980 figures of Rs.19,749 and Rs.99,745 respectively and/or to restrain them from interfering in the

ownership; control and the possession of the property.

(v) pass a decree for permanent mandatory injunction or other order or direction directing grant of previous consent/sanction for commercial user on a

permanent basis without further enhancement of rent or premium.

(vi) pass mandatory injunction directing rent of permanent consents/sanction for commercial user on the basis of ordinary commercial purposes and

not lucrative purposes;

(vii) pass a direction or other order directing refund to the Plaintiffs of all excess amounts paid up to date to the Defendant;

(viii) fix a reasonable and appropriate annual ground rent and premium to be charged by the Defendant from the Plaintiffs;

(ix) refer, if necessary, any constitutional or other significant legal issues arising in the present suit to an appropriate constitutional court as provided in

the Civil Procedure Code;

(x) award costs of the suits to the Plaintiffs;

(xi) direct payment of interest by the Defendants on any amounts held to be refundable or due to the Plaintiff from the date of receipt of those

amounts by the Defendants, till the date of realization;

(xii) alternatively, appoint a suitable person, valuer, assessor or arbitrator to determine the correct and reasonable figure to be charged/recovered from

the Plaintiffs on account of land rent & premium;

(xiii) pass such other further orders or direction as this Honâ??ble Court may deem fit, just proper and necessary in the facts and circumstances of

the case.â??

3. Disputes and differences had arisen between the plaintiffs and the respondent/ Union of India (Cantonment Board) being the superior lessor of the

suit premises which is an area of 997.45 sq. meters situated at 21, Maude Road (Thimaya Marg), Delhi Cantonment, Delhi. The original

plaintiffs/Raos were lessees of a larger plot of land of 3616.91 sq. meters. The land was originally let out by the respondent for residential purposes.

With respect to suit land being 997.45 sq. meters forming part of the total land of 3616.91 sq. meters, permission was given by the respondent for user

of this land for banking purposes vide permission letter dated 18.9.1980 and subject to payment of additional rent of Rs.19949/- per annum with a

premium of Rs.99745/-. We are concerned for the purpose of this present litigation only with land comprised in area of 997.45 sq. meters and which

has been carved out of the original total land of 3616.91 sq. meters and allowed to be used for commercial purposes viz. banking purposes.

4. Respondent/defendant contested the suit and pleaded that the claim made by the plaintiffs in the suit for challenging the enhancement of

commercial user charges was misconceived and the suit had to be dismissed. Issue arose between the parties therefore as to what should be the

commercial user charges which the respondent/defendant claimed it was entitled to and the denial by the original plaintiffs of disentitlement of the

respondent/defendant to seek enhancement of commercial user charges after the first permissible commercial usage period of five years. On account

of the present appellant/company being substituted as plaintiff an issue also arose as to whether the appellant/company has proved its title to the suit

premises.

5. The following issues were framed in the suit:-

â??I. Whether the plaintiff is entitled to decree of injunction and defendants can be restrained from dispossessing the plaintiff from the suit land? OPP

II. Whether the demand raised by the defendant can be declared null and void as being against the contract and if so at what rate and for what period,

the plaintiff is entitled? OPP

III. Whether the plaintiff is entitled for decree of declaration that his name be mutated? OPD

IV.Relief.â??

6. As regards the issue as to whether the appellant/company would stand substituted for the original plaintiffs, the first appellate court has held this

issue against the appellant/company on the ground that appellant/company has failed to file any document to show how the appellant/company derived

title to the suit premises on account of its transfer by the original plaintiffs/Raos to the appellant/company. Accordingly, it was held by the first appellate court that the present appellant/company could not be said to have any locus standi to continue with the suit as it had failed to prove any

ownership title to the suit premises. The second issue which arose was with respect to the claim of enhanced commercial user charges as claimed by

the respondent/defendant. In this regard the trial court has held that only in terms of admitted lease deed dated 20.12.1978 between the original

plaintiffs and the respondent/defendant, the respondent/defendant had a right to claim charges. Counsel for the appellant/company however concedes

before this Court that in fact appellant/company agrees to comply with the demands raised by the respondent/defendant for the commercial user

charges in terms of the extant circulars etc issued by the respondent/defendant from time to time.

7.(i) At this stage, let me reproduce the operative portion of the para of the judgment of the trial court dated 6.3.2010 and which para 11 reads as

under:-

â??11. Relief:- In view of the above observations instant suit is decreed in favor of the plaintiff and against the defendant with cost and the defendant

is restrained from dispossessing the plaintiff from the suit land/property and further directed to accept the cheque/draft in terms of the calculation

mentioned above and not to raise any enhanced amount in future except in terms of lease deed as above upto 2063. The defendant is also directed to

mutate the name of plaintiff as owner in their records on deposit of the arrears as per calculations made in issue no. 2. The defendant will calculate

the amount within 15 days from today and the plaintiff will deposit the amount within one month from date of this judgment. If the defendant does not

give any calculation to the plaintiff he will be at liberty to deposit the amount as per the calculation ordered in the judgment. During the course of the

argument the plaintiff has even suggested that he is ready to make the payment as demanded by the defendant which is under challenge and as

tendered by them earlier to avoid the controversy without prejudice to their rights and in these circumstances, the defendant is directed to receive that

amount as the same is as per their calculation, (though it is not entitled to the same) and in these circumstances carry out the mutation forthwith.

Decree sheet be prepared. File be consigned to record room.â??

(ii) It is therefore seen that the appellant/company no longer disputes that whatever are the charges which the respondent/defendant would claim for

permitting commercial user of the suit premises, the appellant/company would pay the same, and for which purpose certain different directions were

given to the respondent/defendant by the trial court to calculate the amount within fifteen days and which amount thereafter the appellant/company

was to pay.

(iii) Appellant/company says that after the disputes arose and certain payments were made by the original plaintiffs and the present

appellant/company, the same were received by the respondent/defendant but the respondent/defendant did not encash the banking instruments which

were given by the appellant/company to the respondent/defendant.

8. Therefore, no longer there remains any dispute between the parties of any challenge by the appellant/company to whatever would be the claim of

the respondent/defendant for permitting the appellant/company to use the suit premises for commercial purposes. I may note that the

respondent/defendant will charge the appellant/company such commercial charges which are payable from the date the respondent/defendant has not

received the commercial charges with respect to the suit property and the charges claimed will be in terms of its policies which were extant from time

to time and till date. Really therefore, in fact, no substantial question of law needs to be framed or decided on this aspect because the admitted fact

which emerges is, and which was not decided by the first appellate court, that the appellant/company will pay all charges for commercial user of the

suit property, in terms of the policies, circulars etc which were issued by the respondent/defendant from time to time. Respondent/defendant is now

directed within a period of eight weeks from today to issue a demand letter to the appellant/company giving the details of the calculations for each

year and month of the amounts which would be payable by the appellant/company for commercial user of the suit property. The demand letter of the

respondent/defendant must, besides stating the calculations, be accompanied by the relevant policies and the circulars specifying as to how the

calculations have been made by the respondent/defendant for its claim of commercial charges for the relevant particular period specifying the

particular month and year of the claims. On the appellant/company receiving the aforesaid demand letter, the appellant/company will within a period of three months thereafter pay the charges as are claimed by the respondent/ defendant. This disposes off the issue between the parties as regards the

claim of commercial user charges or enhanced commercial user charges by the respondent/defendant with respect to the suit property being allowed

to be used for commercial purposes.

9. The only issue which now remains is as to whether the appellant/company has validly purchased rights in the suit property from the original

plaintiffs, and who were the original lessees of the suit property. The Indenture of Lease in this regard is the Indenture of Lease dated 20.12.1978.

The case argued by the respondent/defendant is under two heads. Firstly, it is pleaded and argued by the respondent/defendant that the

appellant/company is not the legal successor-in-interest of the original plaintiffs in the suit as document of title has not been proved, and secondly that

there could not be any transfer by the original lessees/original plaintiffs/Raos in favour of the present appellant/company without taking prior

permission of the respondent/defendant. Let us examine these aspects as these would be the substantial questions of law which are required to be

framed and decided for determination of this second appeal. The following substantial questions of law are framed:-

(i) Whether the first appellate court has not committed a complete illegality and perversity in holding that a prior permission is required from the

respondent/defendant before the original plaintiffs/Raos transferred their rights in the suit property to the present appellant/company, inasmuch as,

there is no such clause in the Indenture of Lease dated 20.12.1978 which requires prior permission to be taken by the original plaintiffs/Raos for

transfer of their rights in the suit property to the present appellant/company?

(ii) Whether the first appellate court has not committed a complete illegality and perversity in holding that the appellant/company had failed to prove

transfer of title in its favour by the original plaintiffs, inasmuch as the appellant/ company had not only filed the copy of the registered sale deed dated

5.8.1998 in its favour but also the fact is that the order dated 11.10.2000 passed by the trial court had become final and which order had accepted

transfer of the title to the present appellant/company from the original plaintiffs in the suit?

10. So far as the first substantial question of law as to whether any prior

 

permission was required, let me reproduce the relevant clause I(8) which is

relied upon by the respondent/defendant as to whether such a clause requires any prior permission by the original lessees/original plaintiffs before

transferring their rights in the suit property to the present appellant/company. Appellant/company has argued that by virtue of the self-same clause I(8)

that no prior permission is required. This clause I(8) reads as under:-

â??(8) Upon every assignment, transfer or sub-lease of the premises hereby demised or any part thereof or within one calendar month thereafter to

deliver a notice of such assignment, transfer or sub-lease to the MEO setting forth the names and descriptions of the parties to every such assignment,

transfer or sub-lease and the particulars and effect thereof.â??

11. In my opinion, the contention urged on behalf of the respondent/defendant is completely misconceived that clause I(8) requires any prior

permission. All that this clause requires is that upon the transfer/assignment or sub-lease of the suit premises by the original lessees/original

plaintiffs/Raos, then, only a notice of assignment/transfer or the sub-lease is required to be given to the respondent/defendant with the details of the

assignment/transfer/sub-lease. I do not find even remotely any language in clause I(8) which requires any prior permission of the

respondent/defendant before transfer of rights by the lessee(s) to anyone including the present appellant/company. I may note that this clause I(8) has

to be distinguished from those other clauses which exist in lease deeds which are executed by the DDA/L&DO (Union of India) and as per which

clause there is an absolute bar to transfer the property by a lessee to a third person and which absolute bar is removed only on the payment of 50% of

unearned increase to the DDA/L&DO. Accordingly, the first substantial question of law is answered in favour of the appellant/company by holding

that clause I(8) of the lease deed does not envisage any prior permission being taken from the respondent/defendant by the lessees of the property

before the lease held rights are transferred by the lessees to a third person such as the appellant/company.

12. The second aspect with respect to the second substantial question of law framed above is that whether the appellant/company has proved its title

to the suit premises. In this regard, in my opinion, the defence of the respondent/defendant is frivolous to say the least because the appellant/company has purchased the suit property in terms of the registered sale deed dated 5.8.1998 and detailed particulars of which have been given above. Not only

that, this sale deed has been the basis for the trial court to allow the application under Order XXII Rule 10 CPC filed by the appellant/company, and

which was allowed vide the order of the trial court dated 11.10.2000 already reproduced above. This order dated 11.10.2000 makes note of the going

through of the registered sale deed in favour of the appellant/company and consequently allowing the appellant/company to be substituted in place of

the original plaintiffs. This order dated 11.10.2000 has become final as it was not challenged by the respondent/defendant. Even if I am called upon to

decide this issue, then, in my opinion, this issue has to be decided in favour of the appellant/company as the trial court had gone through the registered

sale deed, a copy of which was filed by the appellant/company before the trial court. As a matter of abundant caution I also direct that the

appellant/company will on a date and time to be fixed by the concerned officer of the respondent/defendant, take the original sale deed with certified

copy thereof for being given to the concerned authority of the respondent/ defendant and the concerned authority of the respondent/defendant, at that

stage can verify the original sale deed executed by the original plaintiffs/Raos in favour of the present appellant/company. The second substantial

question of law is also therefore answered in favour of the appellant/company and against the respondent/defendant.

13. In view of the above, this Regular Second Appeal is allowed by answering the substantial questions of law in favour of the appellant/company.

The respondent/defendant in terms of the present judgment will now issue the demand letter to the appellant/company within a period of eight weeks

from today and the appellant/company will comply with the demand letter by making payment to the respondent/defendant within a period of three

months thereafter. Parties are left to bear their own costs.

 