

(2012) 01 DEL CK 0225

In the Delhi High Court

Case No : Regular First Appeal No. 18 of 2012

M/s Jay Shree Investment Pvt. Ltd.

APPELLANT

Vs

Col. Anil Ohri (Retd.) and Another

RESPONDENT

Date of Decision : 09-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0225

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : B. Mohan with Mr. Vageesh Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

Exemption allowed subject to just exceptions. CM stands disposed of.

CM No.369/2012 (delay)

Condonation of delay of 284 days in filing of this appeal is sought on the ground that the Advocate of the appellant did not contact the appellant from 15.4.2009 till July 2011, and within this period made a statement in the trial court on 16.4.2009 closing the evidence on behalf of the appellant / defendant. It is stated that the appellant / defendant has already filed a complaint with the Bar Council against the said Advocate. In my opinion although there may not be sufficient reasons for not contacting its Advocate by the appellant from 15.4.2009 till July 2011, since I have heard the counsel for the appellant on merits, I am formally condoning the delay, however, condonation of delay should not be interpreted to mean I agree that the Advocate of the appellant / defendant who conducted the case in the trial court is guilty of negligence. I am also, therefore, allowing the present application of condonation of delay, only subject to just exceptions, inasmuch as there is another appeal RFA No.22/2012 filed by the appellant against and impugned judgment of the same date

dismissing the counter claim of the appellant / defendant and in which a similar application has been filed.

The application accordingly stands disposed of.

RFA No.18/2012

1. The challenge by means of this Regular First Appeal (RFA) filed u/s 96 of the Code of Civil Procedure, 1908 is to the impugned judgment of the trial court dated 6.12.2010 decreeing the suit of the respondent / plaintiff / landlord for mesne profits for the period from 1.11.2006 to 31.5.2007.

2. The facts of the case are that the appellant / defendant / tenant took on lease the ground floor of House No. C-34, Greater Kailash-I, New Delhi-48 vide lease agreement and maintenance agreement, both dated 23.7.2001. The total amount of charges payable with respect to the leased premises was `75,000/- per month, `45,000/- as rent and `30,000/- as maintenance charges, the latter being actually part and parcel of the rent. The period of lease was for three years which expired on 31.7.2004. The respondent / plaintiff issued and served upon the appellant / defendant a legal notice of termination for tenancy dated 6.7.2004, Ex. P-10 and to which a reply dated 6.8.2004 was also given, Ex. P-11. Since the appellant / defendant failed to vacate in spite of termination of the monthly tenancy, the subject suit for possession and mesne profits came to be filed.

3. I may note that the appellant / defendant has already handed over the possession of the suit premises to the respondent / landlord on 31.5.2007 inasmuch as earlier a decree under Order 12 Rule 6 CPC was passed on 22.11.2006 against the appellant / defendant, and which decree became final.

4. The only issue in the present appeal is with respect to payment of mesne profits from 1.11.2006 till 31.5.2007, inasmuch as, at the rate at which mesne profits have been decreed, the appellant / defendant has already paid the increased charges / mesne profits for the period prior to 1.11.2006.

5. The trial court has held that in terms of the agreements between the parties being the lease deed, Ex. P-1 and maintenance agreement, Ex. P-2 there was to be a yearly increase of 20% on the last paid charges, and therefore, for the subject period from 1.11.2006 to 31.5.2007, increase of 20% has been granted over the last paid charges. I do not find any illegality or perversity in this approach of the trial court inasmuch as the increase is as per the agreement between the parties.

6. So far as the aspect that appellant / defendant had paid enhanced charges and therefore became a tenant for a period of two years from 1.8.2004, I may note that admittedly no rent agreement was entered for this period of two years, and as per the judgment of Hardesh Ores Pvt. Ltd. Vs. Hede and Company, there cannot be a lease for a period of more than 12 months by mere exercise of an option, unless, there is registered lease deed for the period. This requirement of

a lease deed of more than 12 months having to be by a registered document is in terms of Section 107 of the Transfer of Property Act, 1882 read with Section 17(1)(b) and Section 17(1)(d) of the Registration Act, 1908. It has also been held by the Supreme Court in the case of Sarup Singh Gupta Vs. S. Jagdish Singh and Others, that in case the landlord receives charges after termination of tenancy, he can appropriate those charges towards the charges payable for use and occupation of the tenanted premises by the tenant. I, therefore, hold that the appellant / defendant has rightly been held liable to pay mesne profits, inasmuch as, there was no registered lease deed for the period for which the tenancy was claimed by the appellant / defendant.

7. In view of the above, there is no merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs.

CM No.368/2012(stay)

Since the main appeal has been dismissed, no orders are required to be passed in this application, which is also dismissed.