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(2018) 01 DEL CK 0643

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 65 Of 2016, Civil Miscellaneous Application No. 2304 Of 2016

M/S. P. G. Sons Huf — APPELLANT

Vs

Lalit M. Sharma — RESPONDENT

Date of Decision : 31-01-2018

Acts Referred:
Code Of Civil Procedure, 1908 — Order 12 Rule 6

Citation : (2018) 01 DEL CK 0643

Hon'ble Judges : R.K.Gauba, J

Bench : Single Bench

Advocate : M.L. Mahajan, Gaurav Mahajan, Ajit Nair

Final Decision : Disposed Of

Judgement

R.K.Gauba, J

1. The petitioner is the plaintiff of suit (Suit No.45/15) wherein the respondent is the defendant, the prayer made being for the reliefs in the nature of

decree of possession and mesne profits in respect of premises in which the defendant admittedly is a tenant. It appears while resisting the suit, the

defendant (the respondent herein) has taken the position that tenancy was created, not orally but by a lease agreement dated 10.08.1996 and further

that at the time of creation of the tenancy, security amount of Rs.11,00,000/- had been paid which needs to be accounted for.

2. The plaintiff had moved an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC) on 01.08.2015 seeking a decree on

admissions in the pleadings. The said application was dismissed by the impugned order dated 16.12.2015, the Civil Judge framing issues by a

corresponding short order of the same date, as under:-

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â??1.Whether plaintiff is entitled to the decree of possession and mesne profits, as prayed for? OPP.

2. Whether the lease agreement dated 10.08.19939 (sic) was executed between the plaintiff and the defendant, if so, its effect? OPP.

3. Whether the defendant has paid the rent up to date? OPD?

4. Relief.â??

3. There is clearly typographical error in the date mentioned in second issue quoted above.

4. The ground primarily on which the application for judgment on admissions was declined is that triable issues arise in the suit on which the defendant

would be entitled to demolish the case of the plaintiff and prove his contentions in accordance with law.

5. The grievance of the petitioner (the plaintiff) is essentially that the lease agreement to which the defendant refers was neither stamped nor

registered and, therefore, it could not be allowed to be proved in evidence. Reliance is placed on Deluxe Dentelles Pvt. Ltd. & Anr. vs. Ishpinder

Kochhar, 218 (2015) DLT 645 (DB), and Modern Food Industries (India) Limited vs. I.K. Malik & Ors., 98 (2002) DLT 593 (DB).

6. The contention on the other side is that the tenancy reflected in the document in question was for a period of eleven months and, therefore, there

was no need for registration. The defendant asserts the right to prove that security amount in the sum of Rs.11,00,000/- had been paid for which he

claims opportunity to lead evidence.

7. In the facts and circumstances, this court finds no error in the view taken by the Civil Judge in so far as declining the application for judgment on

admissions is concerned. But, it is noted that the issues framed on 16.12.2015 do not properly capture the area of dispute nor do they appropriately

place the burden of proof. The first issue framed is actually unnecessary since it was inherent in the fourth issue (relief). The date of the lease

agreement referred to in issue No.2 is apparently erroneous in that it should read â??10.08.1996â?, which is said to be the date of the document, copy

of which has been submitted by the defendant. Moreover, such issue cannot be a matter of burden of proof of the plaintiff. It is the defendant who

relies on the said document and, therefore, the onus should have been placed on him. An additional issue also arises in the context of the claim of the

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defendant of having paid the security amount as aforesaid, which must also be added.

8. In the above facts and circumstances, the petition at hand is disposed of with directions that the learned Civil Judge shall re-frame/re-cast the

issues, appropriately placing the burden of proof of all the three crucial issues on the defendant. In the given scenario, it is the defendant who must

begin first by leading evidence to discharge his onus. The turn of the plaintiff would follow.

9. The learned Civil Judge will take the proceedings further in light of the above directions. It is hoped and trusted that the trial Judge will be able to

expedite the proceedings.

10. The petition and the applications filed therewith stand disposed of in above terms.

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