

(2000) 11 DEL CK 0080

In the Delhi High Court

Case No : IAs. 1304 of 2000 with 3910 of 2000 in Suit No. 1121/99

Narinder Makhija

APPELLANT

Vs

Survir Sales Corpn.

RESPONDENT

Date of Decision : 23-11-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10

Citation : (2000) 11 DEL CK 0080

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : P.P. Ahuja, for the Appellant; Sunil Mittal, for the Respondent

Judgement

Mukul Mudgal, J.—These are two applications, filed by the plaintiff. The application (IA. 3910/2000), filed u/s 151 CPC, seeks a direction for striking out the defense of the defendants due to the non-compliance of the orders of this Court dated 17.9.1999. The second application (IA. 1304/2000), filed under Order VIII Rule 10 CPC, seeks orders against the defendants due to the non-payment of monthly rent as per Order dated 17.9.1999.

2. The suit has been filed by the plaintiff, Narendra Makhija against M/s Survir Sales Corporation as a first defendant and Shri Ramesh Khanna, as defendant No. 2. The plaint prays for a decree for possession in respect of the suit property bearing No. Y-28, Okhla Industrial Area, Phase-II, New Delhi and a decree for Rs. 15,95,460/- towards arrears of rent.

3. The suit is founded on the plea that the defendant No. 1 was inducted as a tenant by the plaintiff on monthly rent of Rs. 24,000/- and in spite of the various demands including a Legal Notice dated 20.3.99 terminating the tenancy, the defendant No. 1 has not paid the rent as claimed in the notice and a cheque of Rs. 1,00,000/- paid towards arrears of rent, given by defendant No. 1 on 18.3.99 bounced on account of insufficient balance. The plaintiff thus claimed the arrears of rent @ Rs. 24,000/- with effect from 15.8.1995 up to 14.2.1997 and @ Rs.

28,000/- per month with effect from 15.2.1997 to 14.5.1999. The plaintiff has also claimed interest on arrears to rent which comes to Rs. 3,30,360/-.

4. The break-up of the arrears of rent claimed by the plaintiff is as follows :-

The rent for the period:15.08.95 TO 14.02.97 @ Rs. 24,000/-FOR 18 MONTHS

RS. 4,32,000.00

Rent From :15.02.97 TO 14.05.99@Rs. 28000/-

FOR 27 MONTHS

RS. 7,77,600.00

INTEREST ON RENT @ 24%

RS. 3,30,360.00

DAMAGES @ RS. 50,000 W.E.F. 15.5.99 up to 14.6.99.

RS. 50,000.00

NOTICE CHARGES

RS. 5,500.00

RS.15,95,460.00"

5. The plaintiff has also claimed damages from the date of termination of the tenancy on 20.3.99 at the rate of Rs. 50,000/- per month.

6. The defendants pleaded in the written statement that M/s Suvir Sales Corporation, the defendant No. 1 surrendered peaceful and vacant possession of the premises to the plaintiff on 31.3.1994 and thereafter the premises., were let out to Mantra Health & Herbals at the rate of Rs. 32,000/- per month and the surrender of 70% of the area was made by Mantra Herbals in December 1996 thereby reducing orally the rent from Rs. 32,000/- to Rs. 9,000/-.

7. During the pendency of the suit in this Court on 24.5.2000, the following order was passed:-

"The learned counsel for the plaintiff has submitted that the claim of the defendant is false and even after 31st March, 1994 the date of purported variance of the terms of tenancy, cheques dated 26th April, 1994, 20th May, 1994, 23rd June, 1994, 9th January, 1995, 18th April, 1995, 27th July, 1995 & 1st August, 1995 amounting to Rs. 24,000/-, Rs. 24,000/-, Rs. 24,000/- Rs. 1,20,000/- Rs. 96,000/- Rs. 32,000/- & Rs. 32,000/- respectively have been paid @ Rs. 24,000/- per month which was the existing rent thus belying the plea that the terms of the tenancy were varied. The learned counsel for defendants 1, 2 & 3 has stated that the cheques have not been issued by either defendant No. 1

and defendant No. 2. He further clarifies the statement by saying that the cheques are not issued by any partner of defendant No. 1.

The learned counsel for the plaintiff seeks time to show that the cheques were issued by defendant No. 1/defendant No. 2."

8. Thereafter the learned counsel for the plaintiff filed certificate of the banker to show that the cheques dated 26th April, 1994, 20th May, 1994, 23rd June, 1994, 9th January, 1995, 18th April, 1995, 27th July, 1995 & 1st August, 1995 amounting to Rs. 24,000/-, Rs. 24,000/-, Rs. 24,000/-, Rs. 1,20,000/-, Rs. 96,000/- Rs. 32,000/- & Rs. 32,000/-, starting from 26th of April, 1994 to 1st of August, 1995 were issued by the defendant No. 1, Suvir Sales Corporation. Three cheques dated 7.4.1995 for Rs. 96,000/-, dated 24.7.1995 for Rs. 32,000/- and dated 5.1.1995 for Rs. 1,20,000/- are filed by the plaintiff to show that the cheques were issued at the old rate of rent even after the purported variance in the terms of tenancy as wrongly claimed by the defendants.

9. On 13.3.2000, the statement of defendant No. 2 under Order X Rule 2 CPC was recorded and the relevant portion of the said statement reads as follows :-

".....Due to the surrounding of possession of 70% of the ground floor it was agreed between the parties in the year 1996 orally that rent for the remaining area would henceforth be Rs. 9,000/- per month. I had incurred considerable expenditure in laying pipes, partitions etc. in the 1st floor & terrace for storage of herbs etc. Also the open area from the portion was covered by us. According to me Mantra. Health & Herbals became tenant of the property with the consent of the landlord who is my friend. The rent of the Mantra Health & Herbs was agreed at the rate of Rs. 2,000/- per month up to 2002 on account of the expenditure made by me in the property. This agreement was also verbal. I sent a letter dated 18.12.99 to the Joint Assessor & Collector, Special Assessment Unit, MCD stating that our tenancy with the landlord of the portion occupied by us of the above property was earlier fixed at Rs. 2,000/- and it was further stated in the said letter that the rent has been paid in cash up to 2002. This rent in Cash was paid up to 2002 somewhere in the year 1998. (The said letter is taken on record and exhibited as PW-D/1)."

10. In the said statement the defendant No. 2 stated that the rent of the premises were reduced from Rs. 24,000/- to Rs. 9,000/- and thereafter to Rs. 2,000/- up to 2002 by an oral agreement due to the surrounding of 70% of the area of the area earlier tenanted and expenditure made by Manta Herbals in the property.

11. Thereafter IA.3910/2000 has been filed, stating that defendant No. 2 made a false statement before this Court under Order X Rule 2 CPC on 13.3.2000 that the monthly rent of the property was reduced from Rs. 24,000/- to Rs. 2,000/- and the defendant No. 2 be directed to pay the rent at the monthly rent fixed between the parties. For this purpose, the learned counsel for the plaintiff has put reliance on the Order of this Court dated 17.9.1999, the relevant portion of

which reads as follows:-

".....Learned counsel for the defendants states that rate has been paid up to date. However, the learned counsel for the defendants disputes the amount sought by the plaintiff.

Learned counsel for the defendants undertaken that the defendants shall continue to pay the monthly rent, if not already paid."

12. The said order proceeded on the statement made by the learned counselor the defendants that rent has been paid up to date and that the defendants shall continue to pay the monthly rent, if not already paid. The interim order was continued upon the basis of the above statement.

13. The defendants have not been able to show any document evidencing the reduction of the rent from Rs. 24,000/- per month to Rs. 2,000/-per month. There is also nothing filed to show as to on what date and how was the surrender of 70% of the area originally let out made to the plaintiff. On the other hand the plaintiff has been able to demonstrate the falsity of the claim of the defendant by collateral circumstances. Defendant's case that M/s. Suvir Sales Corporation had surrendered the possession on 31.3.1994 is belied by the Certificate dated 25.5.2000, issued by the Punjab & Sindh Bank, filed by the plaintiff which showed that the four cheques for Rs. 24,000/- per month issued on 19.3.1994; 22.4.1994; 19.5.1994 & 20.6.1994, totalling Rs. 96,000/- by M/s Suvir Sales Corporation were cleared and credited in the name of the plaintiff, Shri Narendra Makhija. This clearly gives a lie to the defendants' case that there was a surrender of the property by Suvir Sales Corporation, defendant No. 1 on 31.3.1994 and thereafter there was reduction in rent. Furthermore another Certificate issued by the Punjab & Sindh Bank shows that Pay Order dated 7.4.1995 for Rs. 96,000/- was issued in favor of the plaintiff by M/s Suvir Sales Corporation. These certificate clearly demonstrated the falsity of the claim of the defendants that M/s. Suvir Sales Corporation ceased to be the tenant on 31.3.1994.

14. It is thus clear that the defendant No. 2 has wrongfully claimed that part of the tenancy was surrendered which assertion is belied by the cheques issued by the defendant No. 1 subsequent to 31.3.1994 and the bank certificates indicating the encashment of such cheques. Even on 24.5.2000 a wrong statement was made on behalf of the defendants in this Court that no rent was paid by either of the defendants after 31st March, 1994. This statement is clearly falsified by the cheques issued by defendant No. 1/Suvir Sales Corporation after 31st March, 1994.

15. Consequently since the defendants have enjoyed the interim orders of this Court on the basis of the statement made on his behalf that he has paid and will continue to pay the monthly rent every month, the defendants are liable to pay a rent of Rs. 24,000/- per month starting from 15.08.1995 till the date the possession is handed over to the plaintiff. Even otherwise the defendants are

bound to pay the monthly agreed rent for the period of their occupancy at least at the rate of Rs. 24,000/- per month at this stage, in view of the above findings disbelieving the defendant's version of reduction of tenanted area as well as rent. IA.3910/2000 is consequently allowed. The defendants are directed to pay the rent @ Rs. 24,000/- per month w.e.f. 15.8.1995 till the date when the possession is handed over to the plaintiff. The payment of all arrears be made within four weeks from today. In view of the orders passed above in IA.3910/2000, no further orders are required to be passed in IA.1304/2000 at this juncture.

16. The application (IA.3910/2000) is accordingly disposed of. Suit of 1121/99 List this matter before the appropriate Court on 12.12.2000 for further proceedings, subject to the orders of the Judge-In-Charge (Original Side).