

(2005) 05 DEL CK 0092

In the Delhi High Court

Case No : CM No. 6259 of 2005 in Regular First Appeal No. 129 of 1998

R. Narain Dyeing and Printing Mills P. Ltd.

APPELLANT

Vs

Mrs. Pavindra Diwan

RESPONDENT

Date of Decision : 17-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, Order 39 Rule 1, Order 39 Rule 2

Companies Act, 1956 — Section 291

Citation : (2005) 120 DLT 129 : (2005) 83 DRJ 465

Hon'ble Judges : Rekha Sharma, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : C.M. Chopra and Sudhir Sharma, for the Appellant; Pinky Anand and Reetika Walia for R-1 and A.K. Nijhawan, Adv for R-2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Rekha Sharma, J.—The subject matter of dispute in the appeal before us is House No. C-58, Friends Colony, New Delhi. It is a house built on a plot of 600 sq. yards comprising of Basement, Ground floor, with garage Block, First Floor and Second floor. It was a bone of contention between Shri Parshinder Singh Uppal and Smt. Pavindra Diwan, who are brother and sister. The sister is no more in the picture although she continues to be a respondent in the appeal. She has settled the dispute with her brother and consequent thereto, she executed a 'Relinquishment Deed" in his favor which is dated 10th August, 2004. The property was thereupon sold by the brother by means of three sale deeds dated 17th February, 2005 to Shri Sanjay Sachdev and Shri Nalin Sachdev for a total consideration of Rs. 3 crores, out of which, he received a sum of Rs. 1.50 crore, while the balance was paid to his sister-Smt. Pavindra Diwan.

2. Now, the dispute centers around the appellant which is a private limited company by the name of M/s. R. Narain Dyeing & Printing Mills Private Limited and the aforementioned purchasers of the property Dr. Sanjay Sachdev and Dr.

Nalin Sachdev. The company says that it is a tenant and is in possession of the ground floor and garage of the said building on a monthly rent of Rs. 2500/-and that, even though the property was sold, it cannot be evicted from the portion under its occupation except by due process of law. The company further says that the property including the portion in its occupation is being demolished by the purchasers, which cannot be done in respect of the tenanted premises. Hence it has filed an application under Order 39, Rule 1 and 2 of the CPC (hereinafter called CPC) seeking stay of demolition till the disposal of the appeal with a further direction to the purchasers not to prevent the entry of the representatives of the company into the premises.

3. It may be noticed by way of background facts that the house in question was owned by Smt. Kuldeep Kaur. The company was having four shareholders, namely, Shri Parshinder Singh Uppal, his sister Smt. Pavindra Diwan and their parents Shri J.S. Uppal and Smt. Kuldeep Kaur. The company claims that it was a tenant of Smt. Kuldeep Kaur in respect of ground floor and garage portion of the house on a monthly rent of Rs. 2500/- on terms and conditions as contained in the rent deed dated 6th January, 1996 and that the tenanted portion was being used as residence of its earlier Managing Director Shri parshinder Singh Uppal and also as the office of the company. On 23rd December,1991, Smt. Kuldeep Kaur died and on 2nd February, 1992, Shri J.S. Uppal also died. Consequent upon the death of Shri J.S. Uppal, Shri Parshinder Singh Uppal appointed himself as the Managing Director of the company and nominated his wife as a Director. As for the sister, she filed a suit against him in this Court. It was a suit registered as 1116/92 seeking for a decree for partition and injunction. The basis of the suit was a `Will" which she claimed was left in her favor by her mother and she thereby became owner of the property. In the said suit injunction was granted in her favor restraining Shri Parshinder Singh Uppal and his family from illegally and forcibly dispossessing her from the portion in her occupation. On the other hand, the company through its Managing Director Shri Parshinder Singh Uppal also filed a suit in this Court being Suit No. 1230/92 for permanent injunction and for a decree of possession in its favor against Smt. Pavindra Diwan, alleging therein, that it was a tenant in respect of the ground floor and the garage portion of House No. C-58, Friends Colony, New Delhi, since 1986 on a monthly rent of Rs. 2500/- and also alleging that the father of the Managing Director Shri J.S. Uppal had left a `Will" in his favor dated 12th March, 1991 by virtue of which he became the owner of the property.

4. The above suit No. 1230/92 filed by the Company was transferred to the District Court after enhancement in the pecuniary jurisdiction of the District Courts. Upon transfer the suit was renumbered as 287/96. It was tried by Additional District Judge Shri S.N. Dhingra who vide his judgment dated 15th November, 1997 dismissed the same, on the ground, that Shri Parshinder Singh Uppal had no locus to file the same in his capacity as Managing Director of the Company. He held that after the death of Shri J.S. Uppal the company was left with only two Directors and those two were Parshinder Singh Uppal and his

sister. He further held that a Managing Director under the Companies Act could be appointed only in the meeting of the Board of Directors, but Shri Parshinder Singh Uppal without holding any such meeting with his sister, who was the other Director, appointed himself as Managing Director and his wife as an Additional Director. He also dismissed the suit on the ground that the company had not come to the Court with clean hands as it did not disclose that a suit for partition and injunction bearing No. 1116/92 had been filed against Shri Parshinder Singh Uppal by his sister prior in point of time than the suit of the company and in that suit injunction was granted restraining Shri Parshinder Singh Uppal and his family from dispossessing her from the premises. Aggrieved by the judgment, the appellant company through its Managing Director, Shri Parshinder Singh Uppal filed the present appeal which is pending before us. In the said appeal, an application under Order 39 Rule 1 and 2 CPC bearing CM No. 491/1998 was filed on 19th February, 1998 seeking restraint order against respondent No. 1, i.e., Smt. Pavindra Diwan from parting with any portion of premises No. C-58, Friends Colony, New Delhi and a further order restraining her from entering into an agreement in respect thereof with any third party. The affidavit annexed to the said application is filed by Shri Parshinder Singh Uppal. He has stated in paragraph 1 of the said application that he is the appellant in the said application. The said application was disposed of vide order dated 14th December, 2000, which runs as under :-

5. 14.09.2000

Present:

Ms. C.M. Chopra, Advocate for the applicant.

Ms. Pinky Anand, Advocate for the respondent.

6. CM NO. 491/99 in RFA NO. 129/98

"Counsel for the appellant submits the premises possession whereof was with respondent No. 1 has been leased out to a third party. Therefore, she does not want to press his application. The application is disposed of accordingly."

7. The only other application which came to be filed under Order 39, Rule 1 and 2 CPC, is the application under consideration for stay against demolition of the property in question. What is of significance about this application is that the affidavit in support of the same has not been filed by its Managing Director Shri Parshinder Singh Uppal. It has been sworn by one Randhir Singh Rana stating therein that he is a Director of the appellant company. Along with this application, the Company also filed another application under Order 22, Rule 10 CPC seeking substitution of the name of Dr. Sanjay Sachdev in place of Smt. Pavindra Diwan. This application too is supported by the affidavit of Shri Randhir Singh Rana. The said application was allowed by us vide our order dated 6th May, 2005, and, consequently, Dr. Sanjay Sachdev and Dr. Nalin Sachdev, were impleaded as respondent Nos. 2 and 3 in the appeal in addition to Smt. Pavindra

Diwan.

8. We may, at this stage also notice that during the course of hearing of the application under Order 39, Rule 1 and 2 CPC, we recorded the statement of Shri Parshinder Singh Uppal on 6th May, 2005. In his said statement, which was taken on oath, he said that the affidavit to the initial application under Order 39, Rule 1 and 2 CPC was executed and filed by him. He further said that he had executed the affidavit in his capacity as a Director of R. Narain Dyeing & Printing Mills Private Limited., which was plaintiff in the suit and appellant in the appeal. As per him, the appeal was filed by the counsel under his instructions and that he was looking after and was responsible for the functioning and management of the appellant company at the relevant time. He also stated that he had executed three Agreements to sell in favor of Dr. Sanjay Sachdev and Dr. Nalin Sachdev and had received an amount of Rs. 1.50 crores as half of the consideration amount of property at C-58, Friends Colony, New Delhi, while the balance sale consideration was paid to his sister Smt. Pavindra Diwan, who is respondent in the appeal.

9. Having noticed the above details it is time now to have a look at the reply filed by the respondents to the application under Order 39 Rule 1 and 2 and to consider the submissions made by their counsel.

10. The respondents in their reply have stated that no real tenancy was ever created between the appellant company and the original owner. It was submitted that when the alleged tenancy was created, the company comprised of only four shareholders, all of whom were family members. They were Shri Parshinder Singh Uppal, Smt. Pavindra Diwan, and their parents Shri J.S. Uppal and Smt. Kuldeep Kaur Uppal. It was alleged that the company entered into the so-called tenancy Agreement with Smt. Kuldeep Kaur only with a view to derive some corporate and tax benefits. Reference in this regard was made to a statement of Shri Parshinder Singh Uppal dated 20th August, 1997 which was recorded by Additional District Judge Shri S.N. Dhingra under Order 10 of the CPC when the suit was pending before him. It transpired from the statement so recorded that the Rent Deed was executed in respect of the entire ground floor and garage and that the market rent of that much accommodation in 1985 was Rs. 8,000/- to 10,000/- while the company was paying a rent of Rs. 2500/- per month only. It further transpired that his parents were living in the said house and at no point of time, they shifted from the place. On the basis of the said statement, it was contended, that the Rent Agreement was totally a sham transaction.

11. The respondents in their reply to the application also made reference to a letter dated 5th March, 1998 which was written to Smt. Kuldeep Kaur by Shri Parshinder Singh Uppal in his capacity as Director of the company. He wrote that the company was going through some financial problems and for that reason it was not possible to pay the rent from April, 1998 onwards. He further wrote that the company was formally terminating the lease deed dated 6th January, 1986. This letter, it was argued, indicated that the appellant company itself had

terminated the tenancy as far back as on 5th March, 1988 and that nothing thereafter was brought on record to show that a fresh tenancy was ever created. The respondents also placed reliance on the order dated 14th September, 2000 as re-produced above which shows that according to counsel for the appellant, the possession of the premises as on 14th September, 2000, was with respondent No. 1 and it had been leased out to a third party. It was, Therefore, argued that the case set up by the company in its application under order 39 Rule 1 and 2 CPC that it was in possession of the tenanted premises and that the respondents were not permitting its agents, representatives, employees from entering into the same was false to its knowledge.

12. It was also stated in the reply that Shri Randhir Singh Rana who has filed his affidavit in support of the application as a Director of the company had no locus standi to file the same. It was submitted that his name nowhere appeared in the records of the Registrar of Companies" as a Director of the appellant or at least nothing was placed on the record of this Court to indicate that he was infact a Director of the company. According to the respondents, it was Shri Parshinder Singh Uppal who was behind the filing of the application under Order 39 Rule 1 and 2 CPC and that Shri Randhir Singh Rana had simply been upstaged by him with an ulterior motive.

13. Having considered the facts and submissions as noticed by us, the averments made in the application, the reply to the same and the submissions of the respondents, we feel, that here is a case where the appellant who is seeking an equitable relief for injunction has not come to the Court with clean hands. We say so on the basis of orders dated 14th September, 2000 and the letter dated 5th March, 1998. These two documents prima facie go to show that the tenancy of the company, assuming it was not a sham transaction as alleged by the respondents, came to an end after 1998 or in any case, it was no more in existence after 14th September, 2000. The aforesaid view also gets support from the statement of counsel for the appellant as recorded in the order dated 14th September, 2000 that the suit premises had been leased out to a third party. We feel, the plea that the appellant is still a tenant in the property has been taken only with a view to deny the fruits of the sale of the property to the respondents. It is also of no less significance that Shri Randhir Singh Rana who has filed his affidavit in support of the application and who claims to be a Director of the company has not placed on record any material to show that he is infact a Director or that he has been authorised by the company to move the application. No document from the office of the Registrar of Companies" has been placed on record to show the change in the constitution of the company. We are Therefore of the view that Shri Randhir Singh Rana has no locus to file the application, especially, in view of Section 291 of the Companies" Act and in this regard, we rely upon a judgment of the Delhi High Court in Nibro Ltd. Vs. National Insurance Co. Ltd., , wherein, it has been held that unless the power to institute a suit is specifically conferred on a particular Director, he has no authority to institute a suit on behalf of a company and that such a power can be conferred by the

Board of Directors only by passing a Resolution in that regard.

14. Lastly, what is nagging our mind is the conduct of the Managing Director of the company Shri Parshinder Singh Uppal. Why is he who had filed the appeal and the earlier application under Order 39 Rule 1 and 2 CPC being CM NO. 491/98 has not come forward to file the present application? Why is he keeping back ? What has prevented him from swearing the affidavit in support of the present application ? Why is he shying away from coming to the centre stage ? We have not been provided answers to these questions. This has given rise to suspicion in our minds. We are Therefore, prima facie of the view that it is Shri Parshinder Singh Uppal who is behind the filing of the application but he is deliberately keeping himself back because it was he who had sold the property to the respondents by representing to them at the time of the sale that it was free from all encumbrances. The Company, we feel, has only been made a subterfuge and that Shri Randhir Singh Rana appears to be dancing to the tunes of Shri Parshinder Singh Uppal. There appears to be much more than what meets the eye.

15. In the above facts and circumstances of the case, we hold, that it is not a case fit enough for the grant of ad interim injunction sought by the appellant. The application thus stands dismissed. However, it is made clear that whatever views have been expressed here are only for the purpose of deciding the present application and that may constitute our prima facie opinion at this stage. Hence, nothing said in this order shall be treated as an expression of opinion on the merits of the case.