

(2022) 05 DEL CK 0270

In the Delhi High Court

Case No : Regular Second Appeal No. 238 Of 2019, Civil Miscellaneous
Application No. 20693-94 Of 2022, REVIEW PET. No. 120 Of 2022

Rahul Arora

APPELLANT

Vs

Ashok Chadha

RESPONDENT

Date of Decision : 25-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 136
Transfer of Property Act, 1882 — Section 109

Citation : (2022) 05 DEL CK 0270

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Manoj K. Srivastava, Vikas Chadha

Final Decision : Dismissed

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.

CM APPL.20694/2022

2. This is an application seeking condonation of delay in filing the review petition. For the reasons stated in the application, the delay of 68 days in filing the review petition is condoned.

3. CM APPL.20694/2022 is disposed of.

REVIEW PET.120/2022 & CM APPL.20693/2022 in RSA 238/2019

4. The present review petition has been filed by the Appellant/Defendant/Tenant (hereinafter "Defendant") seeking review of the order dated 11th January, 2022 passed by this Court vide which the second appeal preferred by the Defendant was disposed of. Vide the said order, the Defendant was directed to pay the entire use and occupation charges to the Respondent/Plaintiff/Landlord (hereinafter "Plaintiff") on or before 31st March, 2022. Subject to payment of the

aforesaid amount, the Defendant was allowed to retain the possession of the property in question till 15th April, 2022.

5. The background of the case is that the Defendant was a tenant in the shop bearing No.7/73, Bhim Gali, Vishwas Nagar, Shahdara, Delhi-110032 measuring 60 sq. yards (hereinafter "suit property"). The Trial Court vide judgment / decree dated 12th April, 2018 in CS No. 9270/2016 titled Sh. Ashok Chadha v. Sh. Rahul Arora directed eviction of the Defendant from the suit property. The Appellate Court vide judgment dated 31st August, 2019 upheld the judgment of the Trial Court.

6. A second appeal was preferred to this Court against the judgment of the Appellate Court. Vide order dated 2nd December, 2019, the eviction of the Defendant was stayed subject to deposit of upto date mesne profits in the form of fixed deposit with the Executing Court. Thereafter, it came to the attention of the Court that the Defendant had deposited mesne profits only up-until 2nd December, 2019. The Court vide order dated 17th February, 2021 directed the Defendant to deposit the mesne profits up till 17th February, 2021. The Defendant sought modification of the said order and on 15th April, 2021 the Defendant was directed to deposit the aforesaid amount in two instalments- (i) 50% of the amount on or before 15th May, 2021; and (ii) the balance amount on or before 31st May, 2021. None of these orders were complied with.

7. On 11th January, 2022, detailed submissions were heard on each of the issues which were raised by the Defendant. The said issues, inter alia, related to-

- a. That the ownership/title documentation in favour of the Plaintiff is not proper.
- b. That the suit is barred by limitation.
- c. That the plea of adverse possession was not considered by the courts below.
- d. That the landlord/tenant relationship is not established.

8. Ld. counsels for both the parties had made their submissions on the said date and the Court gave detailed findings on all the issues that were raised and discussed the applicable case laws/judgments.

9. The said order of this Court dated 11th January, 2022 was assailed by the Defendant before the Supreme Court vide SLP (Civil) No.5664/2022. However, the said SLP was dismissed by the Supreme Court vide order dated 4th April, 2022 in the following terms:

"Having heard learned counsel for the petitioner and on perusal of the record, we do not find any reason to entertain this petition under Article 136 of the Constitution of India.

The petition seeking special leave to appeal is, accordingly, dismissed.

All pending applications stand disposed of."

10. It is after the dismissal of the SLP assailing the order dated 11th January, 2022, the present review petition has been filed by the Defendant before this Court.

11. Mr. Manoj Srivastava, Id. Counsel appearing for the Defendant submits that there are substantial questions of law involved in the present case relating to the following aspects:

- a) That the suit is barred by limitation,
- b) That the evidence of Mr. Manish Sharma was beyond the pleadings,
- c) That Smt. Maya Devi, who claimed to be an original owner of the suit property through partition has not placed on record the partition deed,
- d) That the tenancy was oral in nature.

12. The Court had considered in detail the pleas which have been raised today in the review petition. The issue of limitation and evidence as also the title of Smt. Maya Devi has already been considered in the order dated 11th January, 2022. Tenancy in this case was also held to be established as per section 109 of the Transfer of Property Act, 1882 and the documents which are on record. Id. Counsel for the Defendant under instructions had made a categorical submission on 11th January, 2022 that the Defendant was willing to pay the entire arrears by 31st March, 2022 and vacate the suit property by 15th April, 2022. The operative portion of the said order reads as under:

"15. Id. Counsel for the Defendant, upon being queried, sought instructions as to by what time her client would be able to pay the arrears and also vacate the suit property inasmuch this Court is not inclined to entertain the present second appeal.

16. After seeking instructions, Id. Counsel for the Defendant submits that her client is willing to pay the entire arrears by 31st March, 2022 and she also undertakes that her client would also vacate the suit property by 15th April, 2022.

17. In view of the submissions by the Id. Counsel appearing for the Defendant that her client would clear the entire outstanding amount by 31st March, 2022 and vacate the property by 15th April, 2022 as also considering the pandemic period, the undertaking given on behalf of the Defendant is accepted. The Defendant is thus given time to vacate the property. The following directions are accordingly issued:

- i) The tenant shall pay the entire use and occupation charges as directed by the Appellate Court on or before 31st March, 2022, without payment of any interest. If the said amount is paid by 31st March, 2022 the tenant shall be entitled to retain the property till 15th April, 2022, by which time the Defendant shall hand over the vacant and peaceful possession to the landlord, failing which the Executing Court shall proceed in accordance with law.

ii) If the said amounts are not paid by 31st March, 2022, the Plaintiff/ Decree Holder shall be entitled to execute the decree in accordance with law. In such a case, the landlord shall also be entitled to recover interest at the rate of 6% per annum on the outstanding the amount due and payable by the tenant.

iii) The amount deposited by the tenant before the Trial/Executing Court to the tune of Rs.5 lakhs along with the interest accrued thereon be released to the landlord within two weeks. If any other sums are lying deposited by the tenant, the same shall also be released by the Trial/Executing Court within the same period.”

13. Mr. Srivastava, Id. Counsel for the Defendant, concedes that the Defendant has not vacated the suit property and the payment of arrears has also not been made.

14. There is no error apparent on the face on record. The Defendant being in gross violation of the order of this Court, having not made the payment as directed and continuously enjoying the property in question, the Court is of the view that the present review petition is not liable to be entertained. In any event, the review petition is liable to be dismissed with heavy costs in view of the conduct of the Defendant.

15. Accordingly, the review petition, along with all the pending applications, is dismissed, with costs of Rs.25,000/-.

16. The costs shall be paid by the Defendant to the Plaintiff within four weeks failing which the Plaintiff would be entitled to recover the said amount along with the decretal amount in the execution proceedings.

17. The Executing Court is directed to ensure strict compliance of this order.