
(1997) 01 DEL CK 0110

In the Delhi High Court

Case No : Interim Application No. 7211 of 1995 and Suit No. 1113 of 1993

Sagar Enterprises (P) Ltd.

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision : 09-01-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6

Citation : (1997) 1 AD 529 : (1997) 65 DLT 621 : (1997) 40 DRJ 605

Hon'ble Judges : J.B. Goel, J

Bench : Single Bench

Advocate : R.P. Sharma, R.P. Bhat, Hetu Arora and N.R. Nath, for the Appellant;

Judgement

J.B. Goel, J.

(1) By this order I shall dispose of plaintiff's application under Order 12 Rule 6 CPC . dated 5.7.1995 for passing a decree of possession in respect of the suit premises.

(2) This application has arisen in a suit for recovery of possession, and for damages/manse profits.

(3) The case of the plaintiff is that the plaintiff have purchased the suit property from the previous four co-owners by means of a sale deed dated 30.6.1980 which was duly registered before the Sub Registrar, New Delhi on 7.7.1980. The property was interalia occupied by the defendant as a tenant on monthly rent of Rs.3,750.00 ; the tenancy premises comprised of 2500 sq. ft.; after purchase of the property defendant had attorney to the plaintiff. Tenancy of the defendant is alleged to have been terminated by means of notice dated 27.11.1992. As the defendant has not delivered the possession of the premises damages for use and occupation are claimed at the rate of Rs.30.00 per sq. ft.. Land & Development Officer under whom the land of the property is held on lease had made a demand for mis use charges and on the basis of that it is claimed that defendant is liable to pay damages as their share amounting to Rs.5,66,3143.75. plaintiff has thus

filed the present suit for possession and mis use charges and for damages for use and occupation.

(4) Defendants have filed written statement and have contested the suit. Inter alia, it is alleged that the suit has not been instituted by a competent person. It is not disputed that the defendant was a tenant of the plaintiff at a monthly rent of Rs.3,750.00 . It is also not disputed that the notice of termination, dated 27.11.1992 was served on the defendant. However, it is denied that the tenancy has been validly terminated. ownership of the plaintiff is also denied. Liability to pay damages is also denied.

(5) I have heard learned counsel for the parties. Learned counsel for the plaintiff has contended that relationship of Landlord and tenant, receipt of notice of termination of tenancy, and rate of rent are not disputed and that as the rate of rent is more than Rs.3,500.00 the Delhi Rent Control Act is not applicable and as such plaintiff is entitled to seek a decree of possession from the Civil Court. He has relied on section 3(C) of the Delhi Rent Control Act, section 106(q) of Transfer of Property Act, D.C. Bhatia & Ors. Vs. Union of India & Anr. (56) 1994 Dlt 329, S.L. Associates Pvt. Ltd. Vs. Karnataka Handloom Development, . Whereas learned counsel for defendant has contended that it is not prima facie proved that the suit has been instituted by a competent person and as such suit is not maintainable. It is also alleged that the defendant has not admitted that the plaintiff is the owner of the property or tenancy has been validly terminated and as such unless these facts are proved plaintiff is not entitled to seek eviction. He has also relied on Smt. Radha Lal Vs. M/s. Jessop and Company, .

(6) It is seen that the plaintiff is a private limited company. As alleged in Para 1 of the plaint the plaint has been signed and verified and suit has been instituted by Shri V.S. Anand who is alleged to be Director and competent to institute the suit. The defendant has denied that Shri V.S. Anand is one of the Directors of the plaintiff or is competent to sign and verify the plaint and institute the suit.

(7) plaintiff has not alleged how nor placed on record any material to show how Shri V.S. Anand is competent to institute the suit. As a Director he may be principal Officer of the company and for that matter he may be competent to sign, and verify the plaint as provided under Order 29 Rule 1 CPC . but that in itself will not give him power to institute this suit. No material is available on record to show the competency of Shri V.S. Anand to institute the suit. As such at this stage it cannot be said that the suit has been instituted by a competent person and for that purpose it cannot be said that the plaintiff would be entitled to the relief claimed in the suit. In the circumstances, when plaintiff is not likely ultimately to succeed it is also not entitled to a part decree under Order 12 Rule 6 CPC . This application thus is dismissed.