

(2009) 10 DEL CK 0257

In the Delhi High Court

Case No : IA No. 7515/08 and CS (OS) No. 1473/07

Sanatana Dharam World Universtity Trust and Others

APPELLANT

Vs

Shri M. Muthu and Another

RESPONDENT

Date of Decision : 27-10-2009

Acts Referred:

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

Citation : (2009) 10 DEL CK 0257

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : K.R. Gupta and Kiran Dharam, for the Appellant; Udaya Kr. Sagar and Bina Madhavan for D.1 and Y. Arunagiri and P. Rakesh for D.2, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—This suit has been filed by the plaintiff for recovery of possession of property No. 20, South Patel Nagar, New Delhi comprising basement and four floors let out to the Defendant vide a rent agreement dated 4th September, 2004 at monthly rent of Rs. 2 lakhs plus electricity and water charges. The suit premises was let out for running a restaurant/hotel/banquet hall/guest house. Although, the rent agreement mentioned that the letting was initially for a period of 5 years and was renewable further but the rent agreement was not a registered lease deed between the parties and therefore could not be considered as a valid document and cannot be looked into except for collateral purpose. The rent deed between the parties, in order to be considered as a valid document was also required to bear proper stamp duty since it sought to create an interest in the property for a period of more than one year. The rent deed does not bear the stamp duty as per law. Thus, the lease between the parties in respect of property had to be considered as a month to month lease.

2. The Defendant had given an advance rent of Rs. 12 lakhs to the plaintiff at the time of creation of tenancy as security. This was adjustable on vacation of the

premises. The plaintiff stated in the suit that Defendant paid rent up to 28th February, 2006 and thereafter defaulted in making the payment and continued to occupy the premises. The Defendant despite notice for payment of rent failed to clear the arrears of rent and also failed to make the current payment of rent. Under these circumstances, the plaintiff served a legal notice dated 15th January, 2007 on Defendant terminating the tenancy with effect from 20th February, 2007. After service of this notice, Defendant paid part of the arrears of rent and gave a draft of Rs. 20 lakhs to the plaintiff and assured the plaintiff that he would be handing over the keys of the premises and shall hand over the physical possession of the premises shortly. However, when the plaintiffs went to collect the keys on appointed day, the Defendant did not hand over the keys and did not hand over the possession. The plaintiff again served another legal notice dated 10th May, 2007 terminating the tenancy with effect from 31st May, 2007 and thereafter filed the suit for recovery of possession and arrears of rent to the tune of Rs. 20 lakhs.

3. During pendency of the suit, on 27th August, 2008 counsel for the Defendant informed the Court that a sum of Rs. 20 lakhs would be paid to the plaintiff within 4 weeks towards arrears of rent. This amount was not paid. On 16th October, 2008, this Court again directed the Defendant to comply with the order dated 27th August, 2008 for payment of Rs. 20 lakhs and also directed to give a statement of amounts paid and due to the plaintiff. A cheque of Rs. 4 lakhs was received by the plaintiff towards rent of August and September, 2008 from the Defendant No. 1. Thereafter, again no rent was paid. However, on 20th July, 2009, counsel for the Defendant No. 1 gave undertaking to the Court to clear the entire arrears of rent on next date of hearing in the Court, i.e., on 8th October, 2009. Today again the Defendant's counsel expressed inability of the Defendant to clear the arrears of rent. The total rent which had become due against the Defendant in terms of agreement amounts to Rs. 58 lakhs. In view of the fact that the Defendant had given an undertaking to the Court to clear the arrears and despite undertaking had not paid the arrears of rent, the defense of the Defendant was struck off.

4. It is a strange case where the Defendant was not using the premises and was not paying the rent for about more than a year and was not vacating the premises also.

5. The plaintiff has moved this application under Order 12 Rule 6 CPC for passing a decree on the basis of admissions. A perusal of WS filed by the Defendant shows that the Defendant has not disputed taking of premises on rent. The rent per month has also not been disputed. The extent of premises under tenancy of the Defendant has also not been denied. The admission/denial of documents done by parties shows that the notice terminating tenancy sent by the plaintiff dated 15th January, 2007 to the Defendant has been admitted by the Defendant. Reply to the notice sent by the Defendant to the plaintiff has also been admitted. The site plan of the property has also been admitted. The plaintiff has placed on

record the notice dated 10th May, 2007 along with postal receipts showing that notice dated 10th May, 2007 was also posted at the correct address of the Defendant through registered covers as well as by UPC. Although, the receipt of this notice has been denied by the Defendant but a presumption goes in favor of the plaintiff that when the notice was posted at correct address through normal course and notice was not received back undelivered, it was received by the Defendant.

6. The termination of tenancy of the Defendant by service of two notices; first in January, 2007 and then in May, 2007 stands proved. It is undisputed that the tenancy was created by an unregistered document and tenancy was a month to month tenancy and can be terminated by a 15 days' notice and the tenancy was validly terminated by notice dated 15th January, 2007 and this termination was reiterated by another notice dated 10th May, 2007.

7. The Court can pass a decree in favor of the plaintiff if there is admission of the facts enabling the Court to pass the decree of possession. The admission can be either directly in the pleadings or through admission of documents. In the present case, in the pleadings the Defendant had admitted the entire case of the plaintiff. I therefore consider that the plaintiff was entitled to a decree of possession as the tenancy of the Defendant was lawfully terminated by the plaintiff by giving a 15 days notice. The plaintiff has claimed user charges at the rate of Rs. 2 lakhs per month which is again admitted rate of rent between the parties. This admission has come in the WS of the Defendant. The plaintiff is therefore entitled to a decree of arrears of rent/user charges at the rate of Rs. 2 lakhs per month. The application is allowed. The suit of plaintiff is therefore decreed in following terms:

(i) A decree of possession of premises No. 20, South Patel Nagar, New Delhi comprising basement and 4 floors is passed in favor of the plaintiff.

(ii) A decree for a sum of Rs. 20 lakhs for arrears of rent before filing of the suit is passed in favor of the plaintiff and against the Defendant.

(iii) A decree for recovery of compensation for use and occupation of the premises from date of filing of suit till the premises is vacated at the rate of 2 lakhs per month is passed in favor of the plaintiff. Any amount paid during pendency of suit shall be adjustable.

(iv) Since the plaintiff paid Rs. 20 lakhs to the Defendant towards fitting and fixtures etc. the plaintiff shall be entitled to recover the possession along with all fittings and fixtures.

(v) The plaintiff is entitled to the costs of the suit.