
(2000) 12 DEL CK 0006
In the Delhi High Court
Case No : FAO (OS) No. 95 of 1999

Shri V.P. Puri and others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-12-2000

Acts Referred:

Citation : (2000) 12 DEL CK 0006

Hon'ble Judges : Mukul Mudgal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. Kanwal Narayan and Mr. Amitabh Narayan, for the Appellant; Ms. Pinki Anand, for the Respondent

Judgement

Devinder Gupta, J.—The appeal is against the order passed on 28.1.1999 by learned Single Judge on the plaintiffs/appellants application declining to strike out the defense of the defendant due to failure on the part of the defendant to pay the amount towards use and occupation charges.

2. The facts in brief are that a suit has been filed by the plaintiffs against the defendant for a decree for possession and for mesne profits at the rate of Rs.4,46,510/- per month from 1.5.1995 till such time the plaintiffs are able to take possession with interest at the rate of 18% p.a. In addition, decree for Rs.15,627.50 towards arrears of rent along with interest thereon at the rate of 18% p.a. has also been claimed.

3. During pendency of the suit, an application (IA.79/97) was filed by the plaintiffs under Order 39 Rule 10 of the code of Civil Procedure. It was allowed on 15.5.1997 and a direction was issued to the defendant to pay amount for use and occupation charges at the agreed rate of rent of Rs.2,28,225/- per month for the period from 11.11.1995 to December, 1996 within a period of two months and to continue to pay a sum of Rs.2,28,225/- per month during pendency of the suit. While passing this order learned Single Judge observed that the defendant has not disputed its liability to pay rent. Obviously this order was not challenged

by the defendant. Despite this order, the defendant failed to make payment to the plaintiffs.

4. On 27.2.1998 when it was brought to the notice of the Court that the order dated 15.5.1997 had not been complied with, two weeks further time was allowed to the defendant to comply with the said direction. Again the defendant defaulted. In the interests of justice two weeks further time was allowed on 15.4.1998 failing which Secretary (Revenue), Government of National Capital Territory of Delhi was directed to remain present in Court. Such an order had some impact on the defendant when on 6.5.1998 a sum of Rs. 47,25,005.50 was paid by the defendant to the plaintiffs by means of cheques though according to the plaintiffs the amount due had gone up to about Rs. 70,00,000/-. The amount was accepted by the plaintiffs without prejudice. On 10.7.1998 it was noticed that the remaining amount had not been paid by the defendant. On 12.11.1998 six different cheques for an amount of Rs.11,00,140/- were handed over the learned counsel for the plaintiffs, which were accepted without prejudice. At this stage the defendant started taking up an issue of inter se liability of various departments occupying different portions of the property. On the prayer of the defendant notices were issued to some of the departments.

5. Because of persistent default of the defendant and on account of its repeated failure to comply with the order dated 15.5.1997, an application (IA.243/99) was moved by the plaintiffs praying for striking out the defense of the defendant. The said application was disposed of on 28.1.1999 observing that it was not a case fit for striking out the defense, even on account of failure of the defendant to pay the amount within the time allowed, particularly when the defendant had been ordered to pay interest at the rate of 10% p.a. in case of delay in payment vide order dated 12.11.1998. This order is under challenge in this appeal.

6. During pendency of the appeal, two bank drafts in the sum of Rs.2,88,864/- were handed over to learned counsel for the plaintiffs and learned counsel for the defendants stated that the entire payment, which had fallen due with future rent would be made within six months failing which it was stated before learned Single Judge that the defendant will have no objection in case its defense is struck off. On 15.11.1999 again extension, as prayed, was allowed to make payment. Payment was still not made as promised. Even the defendant's prayer for impleading various occupants as parties was declined on 11.7.2000 and rightly so. On 24.8.2000, 30.10.2000 and 5.12.2000 three separate orders were passed granting extension in making payment.

7. In the above background, we considered the submissions made at the bar. Having gone through the record, we are of the view that learned Single Judge was not justified in not passing appropriate order of striking of the defense in the event of failure on the part of the defendant to comply with specific direction dated 15.5.1998. It is not in dispute that the defendant admitted its liability, to make payment for its occupation of the property at the agreed rate, though the case of the plaintiffs is for recovery of mesne profits at double the rate of rent.

On the basis of the defendant's plea, order dated 15.5.1997 was passed. The plea of the defendant for suspension of rent has since been rejected specifically by order dated 24.8.2000. Plea of the defendant for impleading its other departments as part to the suit has also been negatived. As such there is absolutely no lawful or valid excuse with the defendant not to make payment of the amount for use and occupation of the property at least at the agreed rate of rent of Rs. 2,28,255/- per month. As per clause 2 of the rent agreement dated 1.8.1994 the said amount of Rs.2,28,255/- is payable monthly in advance failing which the defendant is liable to pay interest at the rate of 18% p.a. on the amount due till it is paid. There is also no reason why the defendant should not make payment of the amount of interest on the belated payments also. Order dated 15.5.1997 has to be read in that context that the defendant is liable to pay the amount towards use and occupation at the agreed rate of Rs.2,28,255/- per month and in case payment has not been made on the due dates, as per terms of the lease agreement, the defendant must pay interest on the belated payments at the agreed rate of interest i.e. 18% p.a. calculated from the due date till payment. Various orders referred to above would show the conduct of the defendant in continuing to occupy the premises and not to pay even the agreed amount towards use and occupation of the premises and that also despite specific direction of the Court. When a direction has been issued by the Court, the court is not powerless to see that such direction is obeyed by the defendant. The only way the same can be got obeyed is to make the order punitive under the inherent powers of the Court that on failure to comply with the same by a particular date the right of the defendant to continue contesting the suit shall stand struck off.

8. Consequently, we allow the appeal, set aside the impugned order and direct that in case, after adjusting the amounts already paid by the defendant to the plaintiffs, the balance amount towards use and occupation charges at the agreed rate, as per the order dated 15.5.1997, is not paid by the defendant to the plaintiff along with interest accrued on the belated payments from due dates (sic) date of payments at the rate of 18% p.a. on or before 31.3.2000, the right of the defendant to continue contenting the suit shall stand struck off. Needless to add that the payment so made to the defendant, will be accepted by the plaintiffs without prejudice to the respective rights and conclusions of the parties and ultimately on mesne profits being ascertained by the Court, the plaintiffs will be liable to pay full amount of court fee on the amount realised by the plaintiffs from the defendant, pursuant to the order dated 15.5.1997.