(1993) 05 DEL CK 0040

In the Delhi High Court

Case No : I.A. No. 561 of 1981 and 7290 of 1984 in O.M.P. No. 13 of 1971

Smt. Ram Jawai and others APPELLANT

Vs

Smt. Shakuntala Devi and others RESPONDENT

Date of Decision : 20-05-1993

Acts Referred:

Citation : AIR 1993 Delhi 330 : (1993) 26 DRJ 297

Hon'ble Judges : Sagar Chand Jain, J

Bench : Single Bench

Advocate : Mr. R.K. Makhija, Adv Mr. B.P. Gupta, for J.Ds. Mr. Ishwar Sahai, Mr. Maheshwar Dayal, Mr. Anil Nag and Anil Panwar, for the Appellant;

Judgement

1. This is an application under O.21, R. 95, CPC filed by the auction purchaser, M/s. Delhi Packaging Pvt. Ltd. praying for an order for delivery of possession.

2. The facts giving rise to this application are that Shri Bhag Mal Jain, deceased, who is now represented by his legal representatives as judgment debtors, was the owner/lessee of plots Nos. 226 and 227, Block ''L'', Gali Nos. 2 and 3, Beadonpura, Karol Bagh, New Delhi which was mortgaged by him for Rs. 94,000 with Shri Balkishan Dass, deceased, who is now .represented by his legal representatives as decree-holders by means of a mortgage deed dated 19-9-1958 registered on 24-9-1958. In the suit filed by Balkishan Dass, on the basis of this mortgage deed, a preliminary decree was passed under O. 34, CPC by the Subordinate Judge, Delhi, but all the reliefs claimed by the plaintiff were not granted. He, Therefore, filed a first appeal in this Court (RFA No. 172-D/ 63) which was accepted and a preliminary decree under O. 34, R. 4, C.P.C. was passed on 31-8-1970 by this Court granting four months time to the judgment-debtor to pay the decretal amount. It was further ordered that in case of his failure to do so, the decree-holder would be entitled to apply for the final decree and obtain a direction for sale of the mortgaged property or a sufficient part thereof and recover the decretal amount. The judgment-debtor did not make the payment as per the Judgment and Decree dated 31-8-1970. The decree holder,

Therefore, filed O.M.P. No. 13/71 on 29-1-1971 claiming that a sum of Rs. 1,76,718.88 besides interest from 1-1-1971 up to the date of realisation was still due to him and that the preliminary decree passed by this Court on 31-8-1970 be made final and the mortgaged property be directed to be sold and the sale proceeds be applied for satisfaction and payment of the decretal amount.

3. There has been a protracted litigation regarding this property since 1971 but after dismissal of various applications/ objections filed by Sh. Harbans Lal Naseem and others, the mortgaged property was auctioned on 25-6-1973 and it was purchased by M/s. Delhi Packaging Pvt, Ltd. for a consideration of Rs. 1,40,000 in the court auction. Sh. Harbans Lal Naseem had filed objections on the plea that he had purchased this property in a court auction held on 14th December, 1964 ini execution of a decree in the case of Jatinder Prakashv. Bhag Mal Jain for Rs. 54,000; the sale was confirmed on 14-1-1966 and a sale certificate was issued in his favor on 6-10-1966. The objections filed by Sh. Harbans Lal Naseem were dismissed holding that Harbans Lal had only purchased the right and the interest of the judgment-debtor, Sh. Bhag Mal Jain i.e. he purchased the right to redeem the mortgaged property. It was further held that the suit property stood mortgaged with Shri Balkishan Dass, the decree-holder, earlier to its sale in the case of Jatinder Prakash v. Bhag Mal Jain. The appeal filed against those judgments dismissing the objections filed by Sh. Harbans Lal Naseem and Sh. Vidya Sagar were also dismissed. The preliminary decree dated 31-10-1970 passed in favor of the decree-holder was made final on 12-8-1971 and the property was auctioned on 25-6-1973 and purchased by M/s. Delhi Packaging Pvt. Ltd., being the highest bidder and it deposited the entire sale proceeds. The sale was confirmed and the sale certificate was issued. Possession of the property could not, however, be obtained due to various objections filed by Mr. Harbans Lal and others. In February, 1981 the auction purchaser filed this application under O.21, R.95, C.P.C. seeking the relief of recovery of possession from Shri Kanahya Lal Mittal and Shri Kishan Kumar Mittal, Shri Anand Parkash Gupta, Shri A. S. Pathak, Shri Bhagwan Dass and Shri Parma Nand. It has, however, been averred by the learned counsel for the auction purchaser that S/Shri Anand Parkash Gupta, A. S. Pathak, Bhagwan Dass and Parmanand have settled the matter with the auction purchaser out of Court and. the only dispute which remains to be decided is regarding that portion of the property which is in possession of Sh. Kanhaya Lal Mittal and Shri Kishan Kumar Mittal, who have contested this application and filed objections. In their reply they have alleged that they have been in lawful occupation of the premises bearing No. 226, Block L, W.E.A. Karol Bagh, New Delhi, having been inducted as tenants by a competent person prior to the auction sale of the said property in favor of the auction purchaser on 25-6-73. It is alleged that they were inducted as tenants in the premises in dispute by Sh. Harbans Lal Naseem soon after 14-1-1966 when the sale certificate was issued to him. They are entitled to continue in the premises as lawful tenants and their tenancy rights cannot be disturbed by the auction purchaser. It is also alleged that the sale was wrongly

confirmed in the name of M/s. Delhi Packaging Pvt. Ltd. by Sultan Singh, J. and, Therefore, M/s. Delhi Packaging Pvt. Ltd. have no valid right or title to claim possession of these premises from the objectors. It is further stated that when the auction with respect to this property was held on 25-6-1973 they were already in possession of these premises as tenants. It is denied that they were inducted as tenants in the unbuilt up area of these premises and that they have made any unauthorised construction on the said plot of land. It is further alleged that the auction purchaser had no locus standi to enter upon these premises because they are neither the landlords nor the owners. These pleas taken by Sh. Kanhaya Lal Mittal and Sh. Kishan Kumar Mittal have been controverter by the auction purchasers in their rejoinder and they have denied that the objectors were inducted in the said premises prior to 25-6-1973. It is further stated that Sh. Harbans Lal Naseem had only purchased the equity of redemption in execution of the decree against Sh. Bhag Mal Jain and he could not have a better title than Sh. Bhag Mal Jain, the original mortgagor. In the mortgage deed dated 19-9-1958 executed by Sh. Bhag Mal Jain in favor of Sh. Balkishan Dass, it has been provided that "the mortgagor has not, nor shall hereafter, encumber, charge or do anything or cause to be done any thing whereby the security is impaired" meaning thereby the judgment-debtor after the date of mortgage could not create any lease of the property in favor of some one else and thereby impair the value of the security. The suit on the basis of mortgage commenced on 18-7-1959 and any lease executed by the judgment-debt or or persons who are alleged to have stepped into the shoes of the judgment-debtor, is hit by the principles of lis pendens and the transferees from the judgment-debtor after filing of the Suit are liable to be evicted at the instance of the auction purchaser. The objectors have no right to continue in possession and are liable to be evicted forthwith.

4. On the basis of the pleadings of the parties, the following Issues have been framed on 21-5-1981 :--

1. Whether the petition is within time?

(onus objected to)

2. Whether M/s. A. S. Pathak, K. K. Mittal and Anand Prakash are in occupation of the godown as tenants prior to the date of sale of the property in favor of auction purchaser?

3. If Issue No. 2 is found in the affirmative, whether they are liable to be dispossessed under the rule of lis pendens.

4. Relief.

The parties i.e. auction purchasers, M/s. Delhi Packaging Pvt. Ltd. and the objectors, Sh. Kanhaya Lal Mittal and Sh. Kishan Kumar Mittal also led evidence oral as well as documentary in support of their respective contentions.

Issue No. I.

5. Whether the petition is within time?

6. In this case the sale of the mortgaged property took place on 25-6-1973 and the property was purchased by M/s. Delhi Packaging Pvt. Ltd. for a consideration of Rs. 1,40,000. Objections were filed against the said sale and the same were dismissed on 25-9-1978 by this Court. The appeal against the said order filed by Sh. Harbans Lal Naseem being FAO (OS) No. 46/78 was also dismissed. On an application filed by the auction purchasers, M/s. Delhi Packaging Pvt. Ltd. the said sale was confirmed by this court on 24-11-1978 and the sale certificate was ordered to be issued in accordance with law. The appeal against the said order dated 24-11-1978 confirming the sale and issuance of the sale certificate was also dismissed by the order of the Division Bench on 9-4-1979. The applications moved by Sh. Harbans Lal Naseem for opposing the sale were also dismissed by this Court on 4-9-1978 and the appeal against the same was also dismissed by the Division Bench on 8-7-1980. The SLP against the said order of the DB was also dismissed as withdrawn in the Supreme Court. It means that the sale became absolute only after 8-7-1980 when the appeal was finally disposed of Article 134 of the Limitation Act provides the period of one year for delivery of possession by a purchaser of immovable property at a sale in execution of a decree.

7. In this case the sale became absolute on 8-7-1980 after the dismissal of the appeal and this application for delivery of possession by the auction purchaser was filed on 18-2-1981 i.e. within one year from the date when the sale became absolute. A Division Bench of the Patna High Court in the case of Mani Devi and Others Vs. Ram Prasad and Others, relying upon the decisions reported in Kandaswami Mudali Vs. K.R. Narasimha Aiyar and Others, held that the sale becomes absolute only after disposal of application for setting aside the sale, or appeal or revision as the case may be.

8. In view of this legal proposition, the objection raised by Sh. Kanhaya Lal Mittal and Sh. Kishan Kumar Mittal that this application under O.21, R. 95, C.P.C. is barred by time is not maintainable and this issue is decided in favor of the auction purchaser, the petitioner.

Issues Nos. 2 and 3 :

9. Both these Issues are interlinked and hence discussed together.

10. Relying upon the statements of Sh. Chander Sekhar from the Sales Tax Department, (O.W. 1), Sh. Mahinder Singh, O.W. 2, Sh. Kamal Khandelwal, A.W. 8, Sh. Krishan Kumar Mittal, O.W. 9, Sh. Banarsi Dass Arora, O.W. 10, Sh. Vijay Gulati, O.W. 11, Sh. Raj Kumar Wahi, O.W. 13 and the various documents got exhibited from these witnesses, the learned counsel for the objectors argued that these objectors came into possession of the part of this property in January, 1967 as tenants under Sh. Harbans Lal Naseem at a monthly rent of Rs. 100. According to the learned counsel, Sh. Naseem had stepped into the shoes of the mortgagor, judgment-debtor, having purchased the equity of redemption in

execution of a decree against Sh. Bhag Mal Jain in a court auction held on 14-12-1964 in execution of a decree in the case of Jatinder Prakash v. Bhag Mal Jain and that the sale in his favor was confirmed on 14-1-1966. The learned counsel for the objectors pointed out that the alleged sale in favor of M/s. Delhi Packaging Pvt. Ltd. took place on 25-6-1973 i.e. much after these objectors had come into possession of these premises as tenants under Sh. Harbans Lal Naseem, a competent person to induct them as tenants. He argued that this application under O.21, R. 95, C.P.C. filed by the auction purchaser is not maintainable because these objectors are in lawful possession of these premises as tenants inducted by Sh. Naseem as far back as in January, 1967 when the auction purchaser had no interest in the said property. The auction purchaser cannot have a better title than the mortgagor-judgment-debtor.

11. In order to prove his contention, the learned counsel for the objectors drew my attention towards the statement of Sh. K. K. Mittal, one of the objectors, who appeared as O.W. 9. He stated that he came into possession of the part of this property in January, 1967 as a tenant under Sh. Harbans Lal Naseem on a monthly rent of Rs. 100. The rent receipts used to be issued in the joint name of his father and himself, which he proved as Exs. OW9/1 to OW9/19. They paid rent to the landlord up to 30-6-1980. He proved Exs. OW 9/20 to OW9/25 which are the letters allegedly received from Mr. Naseem by him. According to him they are the tenants of the entire back portion of this property which has the same number as that of the main build ing consisting of two rooms, two kothas, latrine, bath, kitchen, open courtyard and a passage and it was a single storeyed building. He further deposed that his father was working as the distributor for M/s. Jindal Steel Tubes in these premises and they used to receive goods consisting of steel tubes in these very premises and dispose them of by giving the delivery to their customers. He was residing all alone in these premises from 1-1- 67 till 1970 when his family also joined him. Sometime in February, 1970 he shifted his family to 24, Bedeon Pura, Karol Bagh, New Delhi. Mark B1 to B33 are the copies of the bills which they had issued to their customers. The stock registers maintained by them are Ex. OW 9/26 to OW 9/ 35. It is further stated that when they used to purchase the goods from M/s. Jindal India (P) Ltd., they used to issue bills which they were maintaining in the normal course of business. The original bills are contained in the register Ex. OW 9/ 36 and Ex. OW9/37. He further alleged that the business of M/s. Standard Tubes Agency was a partnership business in which his father, Sh. Kanhiya Lal, sister Smt. Narani Devi and Smt. Bimla Devi, one of his relative and Sh. Hari Ram were the partners. Ex. Nos. OW 9/ 38 and OW9/39 are the partnership deeds. The firm, M/s. Standard Tube Agency was also registered with the sale tax authorities. He stated that his father had moved an application before the Sales Tax Officer, Ward XI, Delhi for the inclusion of 2659, Gurdwara Road and 4161-4165 Gali Shatara, Ajmeri Gate as the godowns of the Standard Tubes Agency. This application was allowed by the Sales Tax Officer. Ex. OW 9/40 is the application which was moved by his father for the amendment with the endorsement there- on. Ex. OW9/41 is the

certificate granted by the Sales Tax Officer.

12. On the basis of the aforesaid documents ,the learned counsel for the objectors also drew my attention towards the statement of Sh. Chander Sekhar from the Sales Tax Department, OW 1 and Sh. Raj Kumar Wahi, OW 13. Sh. Chander Sekhar, OW 1 proved the application dated 29-1-1970 of the Standard Tube Agencies. Photostat copy of this application is marked as X-1, and the original certificate of registration is marked as Ex O-1 and the certificate dated 31-8-81 issued by Sh. V.K.S. Chauhan, Asstt. Sales Tax Officer is marked as Ex. X-2. Sh. Raj Kumar Wahi, a stenographer in the Sales Tax Department stated from the record that the Standard Tube Agency had moved an application before the department for amendment on 29-1-1970. The copy of the said application is marked as O W 13/1. Besides the statements of these witnesses, the learned counsel also drew my attention towards the statement of Sh. Banarsi Dass Arora, who appeared as OW 10, and who was running a pipe business under the name of Delhi Pipe Store, Hauz Qazi, Delhi. According to him their firm used to purchase steel pipes from Standard Tube Agency belonging to Sh. Kanhiya Lal Mittal and his son. The goods used to be supplied by Standard Tube Agency from Gurdwara Road godown. He stated that the sales tax declaration forms affixed at the back of Exs. OW10/1 and Ex OW 10/2 are correct. According to him the sales tax declaration forms Ex OW 10/1C and Ex OW 10/1D bear the signatures of Sh. Adarsh Arora, partner of the firm. OW11, Sh. Vijay Gulati, also dealing in the pipe and hardware business stated that his firm had dealings with Standard Tube Agency since 1969 when he came in as a partner in his firm. According to him the sales tax declarations Exs. OW 11 /1 to OW 11/13 bear the signatures of Sh. Krishan Lal Dang, who was the partner in the year 1969 to 1982. The goods from Standard Tube Agency used to be received from their godown at Gurdwara Road, Karol Bagh, New Delhi. Sh. Mahinder Singh, QW2 alleged himself to be a neighbour of the objectors and stated that he knows the objectors, Sh. Kanhaya Lal Mittal and Sh. Kishan Lal Mittal and he has been seeing these objectors using the said godown for the last 15-16 years in front of his shop at 2679 Gurudwara Road, New Delhi. The objectors keep steel pipes in the said godown and that it is partly open and partly covered.

13. Besides relying upon these documents and the statements of the witnesses, the learned counsel for the objectors also relied upon the statement of the applicant. Sh. Kamal Khandelwal, AW 8. In his cross-examination this witness admitted the signatures of his father on the letter Ex. AW 8/10.

According to him in this letter the presence of the objector in these premises has been admitted even before purchasing the property by the auction purchaser. On the basis of this oral as well as documentary evidence, the learned counsel for the Objectors argued that the objectors are in possession of these premises as tenants under Sh. Harbans Lal Naseem prior to 25-6-1973 when this property was purchased by M/s. Delhi Packaging Private Ltd., the present applicant, and Therefore, after the purchase of this property by M/s. Delhi Packaging Pvt. Ltd.

they became the tenants under M/s. Delhi Packaging Pvt. Ltd. and the provisions of O. 21, R. 95, C.P.C. do not apply in the present case.

14. Learned counsel for the auction purchaser, drew my attention towards the evidence in rebuttal for showing and proving that the objectors were not in possession of these premises prior to their purchase i.e. on 25-6-1973. M/s. Jindal India Pvt. Ltd. were having their godown and used to stock their pipes on the open plot. M/s. Jindal India Pvt. Ltd. continued in possession till 1975 and, thereafter, they shifted their godown to some other place and that plot remained vacant till July, 1978. As per the statement of Sh. Kamal Khandelwal, AW 8, it was in the year 1978 that he came to know that these objectors had applied for installation of electric meter in the premises. It is only in July or August, 1978 that he found Sh. K. K. Mittal on the open plot of land and on enquiry Sh. Mittal informed Mm that he had taken on rent that very plot from Mr. Harbans Lal Naseern, who was the auction purchaser of equity of redemption. Learned counsel for the auction purchaser relied upon the statements of Sh. Dwarika Prasad, AW 1 a neighbour, and Sh. Sham Lal, AW 2 a clerk from DESU, in support of his contention that it was only in 1978 that Sh. K. K. Mittal applied for electric connection on this plot of land. He relied Upon the statement of Sh. Mool Chand Mittal, AW 3, a ration depot holder, who stated that Sh. K. K. Mittal was drawing ration from his fair price shop and the residential address of Sh. K. K. Mittal as mentioned in the register is 18/4, Punjabi Bagh, Delhi. Sh. K. K. Mittal continued to draw his ration from his shop till 30-7-1975. He proved the copy of entry of the register as Ex. AW 3/1. Shri Jaipal Dhaiya, who appeared as AW 4, is also a fair price dealer who stated that Sh. K. K. Mittal has beer shown as one of the ration card holder in his Register at Serial No. 616, whose residential address is mentioned as 18/44, Punjabi Bagh, Delhi. He continued to draw his ration from the said shop till 1977. AW 5 Shri Harlok Kumar, is L.D.C. in the Telephone Deptt. According to him telephone No. 569056 was installed in Beadonpura in the disputed premises on 13-10-80. Before that this very telephone was installed at 2855, Sirkiwalan. Hauz Qazi, Delhi and in those premises the number of this telephone was 264474. He has proved the copy of application form for installation of the telephone which is Ex. AW5/1 and the application for transfer of this telephone from Sirkiwalan to the present premises D/-4-8-80 which is Ex. AW 5/2. AW 6, Sh. Shiv Chand stated that he was working as LDC in the Water and Sewage Deptt. of the M.C.D. and he stated that in house No. 2659/2, Beadonpura, Karol Bagh, Delhi, the water connection was installed in the name of Sh. Kanhaiya Lal and Sh. Krishan Kumar Mittal on 30-6-79. AW 7 is Mrs. Santosh Jain, who was appointed as a Local Commissioner in Suit entitled Delhi Packaging Pvt. Ltd. v. Krishan Kumar Mittal. According to her she went to the spot on 18-9-1979. She submitted her report dated 26-9-79 in the court. The certified copy of the said report is Ex. OW9/D-4 and her notes of inspection are Ex. OW9/D-5. According to her at the spot she had met Sh. Krishan Kumar Mittal. The proceedings were prepared in his presence, who signed the proceedings. According to the learned counsel for the applicant, Sh. K. K. Mittal

had admitted before the Local Commissioner that the entire construction work was being made by him in the portion belonging to Jindal India Pvt. Ltd. and a sign board of the said firm was also shown to her by Sh. Mittal. According to the learned counsel for the applicant on 26-9-1979 even Sh. Mittal had not stated to the Local Commissioner that they are in occupation of. the said premises as tenants and they were raising construction in their portion. Even the Local Commissioner was not confronted when she appeared as a witness regarding this report. AW-8, Shri Kamal Khandelwal has proved his case in entirety and stated that there is not a single document on record which can show and prove that the objectors came into possession of these premises as tenants of Sh. Harbans Lal Naseem prior to 25-6-1973.

15. According to the learned counsel for the applicant, the letter Ex. AW 8/10 alleged to have been issued by the father of Sh. Kamal Khandelwal to Sh. Harbans Lal Naseem on 7th December, 1972 is a forged one. My attention has been drawn towards I.A. No. 7290/84 filed by this applicant in this Court for bringing true facts on record regarding this letter as an additional evidence. According to the learned counsel the said document Ex. AW 8/10 is on the printed letter head of the Delhi Packaging Pvt. Ltd. and the phone number of the administrative office of the auction purchaser at 1-E/9 Jhandewalan Extension, New Delhi-110055 is mentioned as 527153. The number 527153 of the said phone was assigned for the first time on 28-8-1976, when Idgah Exchange was commissioned and some telephone lines of Karol Bagh Exchange were transferred to Idgah Exchange. The previous number of the same telephone was 565054 which was commissioned on 27-12-1969. Since in 1972 the said telephone No. 527153 was not allotted to the auction purchaser but it was allotted for the first time on 28-8-1976, it is apparent that the said document Ex. AW 8/10 which bears the date as 7-12-72 has been forged. It is further stated that another phone number printed on the said document Ex. AW 8/10 is 200231 of the U. P. factory of the auction purchaser at 6th Milestone, Delhi-U.P. Border, P.O. Chikam-berpur. The said number was assigned to the phone at the said premises for the first time on 22/25th November, 1975 when new exchange at U. P. Border started working with Code Number 20. The previous number of the said phone was 212805 and the said phone had been commissioned on 30-1-1969. As the auction purchaser did not have phone No. 200231 on 7-12-72. which is the date of document AW 8/10 and the said number was allotted to the auction purchaser for the first time in November, 1975 it becomes clear that the document.Ex. AW 8/10 has been forged by typing the contents and date 7-12-1972 on a previous letter head of the auction purchaser without Realizing its consequences. It is pointed out that Sh. G. D. Khandelwal was not the director of the auction purchaser on 7-12-1972. At that time the directors of the auction purchaser were Sh. Kamal Khandelwal, Smt. R. D. Khandelwal, Smt. P. L. Khandelwal. Shri G. D. Khandelwal, whose signatures as Director purport to appear on the said document Ex. AW 8/10 became director of the auction purchaser company for the first time with effect from 30-10-1976 and intimation

to the said effect had been sent to the Registrar of Companies. He also pointed out that the scheme for assigning postal pin code numbers for different localities came into force for the first time in January or February, 1973 and prior to that no pin code numbers were allotted. The printed letter head AW 8/10 dated 7-12-1972 also bears pin code number of the administrative office of the auction purchaser as well as their factory at Delhi. Since the scheme of pin code numbers came into force for the first time in 1973 the document in question dated 7-12-1972 could not have borne the said pin code numbers. This also shows that the said document dated 7-12-1972 had been forged on the letter head printed after introduction of the pin code numbers in 1973. According to the learned counsel the letter heads on one of which Ex AW 8/10 has been forged were got printed by the auction purchaser sometime after 28-8-1976. According to the learned counsel the said document AW 8/10 is a forged one and no reliance can be placed on this document and even the contents of this letter were not put to the witness and only the signatures were shown by putting the hands on the contents.

16. He also placed on record the pages of the telephone directory of that period in support of his contention.

17. Learned counsel further argued that OW 1, Sh. Chander Sekhar of the Sales Tax Deptt. was not produced for cross-examination and as such his evidence cannot be taken on record as no opportunity was granted for his cross examination. His examination in chief does not help the objectors. The documents produced does not show and prove that the objectors came into possession of this property in the year 1967, as alleged by them. It is in the year 1970 that an application was alleged to have been moved on behalf of Standard Tube Agency before the Sales Tax authorities. Even the evidence of Sh. Raj Kumar Wahi, OW 13 does not help the objectors. The application for amendment is dated 29-1-1970. In his cross-examination this witness has stated that he joined the Sales Tax Deptt. in May, 1980 and he has not dealt with the file of Standard Tube Agency and he could not identify the signatures of any of the persons on the application Ex. OW 13/1. The file which he brought with him was not indexed or page marked. He also stated that no document was attached along with the application by the applicant. In view of such a statement of the witness, the learned counsel submitted that no reliance can be placed on his evidence and the document proved by him. Regarding the certificate dated 8-3-1983 issued by Mr. M. L. Sharma, S.T.O., Ex OW/41 learned counsel submitted that this document does not help the objectors to show and prove that they came into possession of the premises in 1967 as alleged by them. Even Mr. M. L. Sharma, S.T.O. has not been examined. He further stated that the rent receipts alleged to have been issued by Sh. H.L. Naseem which are Ex OW9/1 to OW 9 / 19 and the letters alleged to have been written by him. Ex OW 9/ 22 to OW 9/ 25 also do not help the objectors because Sh. H. L. Naseem, though available, was not examined by the objectors to prove these documents. They are not at all admissible in evidence. He cited the decision of the Supreme Court

reported as Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others, in support of his contention that the author of the document should be examined before any reliance can be placed on the document alleged to have been executed by him. He also put reliance on a Bombay High Court decision in Prakash Cotton Mills Pvt. Ltd. Vs. Municipal Commissioner for Greater Bombay and Another, in support of his contention that the contents of a document can only be proved by examination of the executant. He also pointed out that the Stock Registers Ex OW 9/26 to 35 and cash memo Ex OW 9/ 36 to OW 9/ 37 are also not to be relied upon to show that the objectors were in possession of these premises since 1967. The presence of the rubber stamp mentioning the address of the disputed premises on these register and bills does not help the objectors as rubber stamp can be put any time later on. He also pointed out that the objectors have been taking different stands at different time. Earlier in the suit for permanent injunction Krishan Kumar v. H. L. Naseem in the application filed under O.39, Rr. 1 and 2, C.P.C. by Sh, Krishan Kumar, a copy of which is Ex. OW 9/ D2 in para 2 it has been mentioned by Sh. Krishan Kumar Mittal that he is in occupation of the premises since 1962 which consists of 2 rooms. In reply to the application filed under O.21, R. 95, C.P.C. the date and year of possession has not been mentioned. But later on he came forward with the statement that he is in occupation of the premises since the year 1967. According to the learned counsel the objectors have fabricated these documents and have given the year of occupation as 1967 suiting to their purpose and on that basis the documents were forged. According to the learned counsel from the evidence on record the objectors came into possession of the vacant plot which was not built up at that time sometime after 1975 and Sh. H. L. Naseem had no right to create any tenancy in their favor after the sale of this entire property in favor of the auction purchaser on 25-6-1973. He also argued that though in this case it has not been proved that these objectors had come into the premises as tenants prior to 25-6-1973, but even otherwise they have no right in this property. According to him even if it be presumed that they came into possession of these premises in 1967, that is after the filing of this suit, which will attract the principle of lis pendens. A combined reading of S. 52 of the Transfer of Property Act and O. 21, R. 102, C.P.C. postulates that a purchaser pendente lite does not acquire any title to the property to the detriment of the rights of other party and if such a purchaser makes any obstruction or resistance to the execution of the decree so passed, an enquiry is not contemplated under O.21, R.99 or 100, C.P.C. Therefore, the objections in that regard cannot be entertained. He relied upon a decision of the Andhra Pradesh High Court in the case of J. P. Shankar v. Pacha Bee (1985) 2 Andh LT 428 in support of his contention. According to the learned counsel the applicant-auction purchaser is entitled to the possession of the property in occupation of the objectors Sh. Krishan Kumar Mittal and Sh. Kanhaya Lal Mittal and that the applicant be put into possession of the property after demolishing the structure raised by the objectors later on.

18. It is generally said that the persons can speak lies, but the documents

cannot. But in this case the documents produced by the objectors Sh. Krishan Kumar Mittal and Sh. Kanhaya Lal Mittal are also speaking lies. It appears that they have been fabricated in some way or the other to serve their purpose and in that attempt they have miserably failed.

19. The objectors have taken different stands at different times to show that they are in occupation of the suit premises. In reply to the application filed by the auction purchaser under O.21, R.95, C.P.C., they have not mentioned as to since when they are in occupation of these premises. In para 2 of the reply it has only been mentioned that Sh. Kanhaya Lal Mittal and Sh. Krishan Kumar Mittal have been in lawful occupation of the premises bearing No. 226-227, Block ''L'', W.E. A. Karol Bagh, New Delhi, having been inducted by a competent person since prior to the auction sale of the said property in favor of the auction purchaser/applicant on 25-6-1973. However, in rejoinder to the reply filed on behalf of the auction purchaser dated 19-5-81 in para 4 it has been mentioned for the first time that the objectors were inducted in the premises in question on 1-1-1967 when auction stood already confirmed in favor of Harbans Lal Naseem on 14-1-1966. In the application filed under O. 39, R. 1-2, C.P.C. copy of which is Ex PW9/D2 in the earlier suit Krishan Kumar v. H. L. Naseem the date of occupation has been shown as 1962. The evidence led by the objectors showing their occupation is, however, after the year 1970 except a few rent receipts alleged to have been given by Sh. Harbans Lal Naseem Ex OW 9/1 to OW9/9 and the letters Ex OW9/22 to OW9/25 allegedly sent by Sh. Harbans Lal Naseem which are not admissible in evidence as Sh. Harbans Lal Naseem, the alleged executant has not been proved these documents. What is not evidence cannot be read as evidence. No material can be relied upon to establish a fact unless the persons who are competent to speak about them are examined and are subjected to cross-examination by the parties against whom they are sought to be used. When a document is produced in Court, a question that naturally apices is -- Is it a genuine document, what are its contents and are those statements contained therein true or not? These rent receipts and the letters allegedly written by Sh. Harbans Lal Naseem have been challenged by the auction purchaser/applicant. Mr. Harbans Lal Naseem was available and he could have been the best witness to come in the witness box and depose about these documents and an opportunity should have been granted to the auction purchaser to cross examine him on these documents. Exhibiting these documents on the basis of the statement of the Objector, Sh. Krishan Kumar Mittal does not mean that the contents of these documents are to be read into evidence. Reliance can be made on the decision of the Supreme Court in the case of Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others, in support of this legal proposition that the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no material can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be

used. If a letter or other document is produced to establish some fact which is relevant to the case, the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with the principles of natural justice as also according to the O. III, C.P.C. and the Evidence Act, both of which incorporate these general principles.

20. Regarding the letter Ex AW 8/10 allegedly written to Sh. H. L. Naseem by the father of Sh. Kamal Khandelwal, on 7-12-1972 it also cannot be read into evidence as even on prima facie ground it appears to be an act of forgery on the part of the objectors. This letter Ex AW 8/10 is on the printed letter head of the Delhi Packaging Pvt. Ltd. and the phone number of the administrative office of the auction purchaser at 1-E/9 Jhandewalan Extension. New Delhi-110055 is mentioned as 527153. The number 527153 of the said phone was assigned for the first time on 28-8-1976, when Idgah Exchange was commissioned and some telephone lines of Karol Bagh Exchange were transferred to Idgah Exchange. The previous number of the same telephone was 565054 which was commissioned on 27-12-1969. Since in 1972 the said telephone No. 527153 was not allotted to the auction purchaser but it was allotted for the first time on 28-8-1976. This fact is also borne out by the telephone directory of that period i.e. of 1972. No specific denial of the facts mentioned in I.A. No. 7290/84. The application for additional evidence containing these facts have been made in the reply to this application by the objectors. They have only denied these facts for want of knowledge. Denial for want of knowledge is no denial in the eyes of law and there should be a specific denial of the facts alleged specifically. Meaning thereby that the averments made in the application I.A. No. 7290/84 have not been specifically controverter and Therefore, stand admitted. Treating the facts as mentioned in I.A. No. 7290/ 84, which I hereby allow as correct, as not specifically denied, this letter Ex AW 8/10 loses its significance and cannot be read into evidence. Besides this, the contents of this letter have not at all been proved, neither by putting to any witness nor by summoning the executant of the letter as a witness. The contents of the document can only be proved by the executant. The executant of this document has not been examined and, there- fore, its contents cannot be read into evidence. What has been formally proved is the signature of the father of Sh. Kamal Khandelwal by putting the question to Sh. Kamal Khandelwal, who appeared as a witness and not the contents of the document Ex AW 8/10 and consequently even if the entire document is held to be formally proved, that does not amount to proving of contents of the document because the only person who could depose as to the truthfulness of the contents of the document was the father of Sh. Kamal Khandelwal, the alleged executant. The objectors cannot take benefit of this letter Ex AW 8/10. Regarding the application dated 29-1-1970 of the Standard Tube Agency to the Sales Tax Deptt, marked Ex X-1, original registration certificate O-2 and the certificate dated 31 -8-1981, Ex X-2 proved by Sh. Chander Sekhar, OW 1 they are also not to be taken into consideration in evidence. Sh. Chander Sekhar, OW 1 was not produced for cross-

examination and as such his examination in chief cannot be read into evidence. The statement of Sh. Raj Kumar Wahi, OW 13, the steno from Sales Tax Deptt. who has proved the application dated 29-1-1970 Ex OW 13/1 is also not helpful to the objectors in view of the fact that in cross-examination he has admitted his ignorance about this-case. He stated that he had joined the Sales Tax Deptt. only in May, 1980 and he has never dealt with the file of M/s. Standard Tube Agency. He could not identify the signatures of any of the persons on the application. Ex OW 13/1 and the file which he had brought was found neither indexed nor page marked. In these circumstances, his evidence leads us nowhere. Ex OW9/41 certificate was issued by Sh. M. L. Sharma in favor of the Standard Tube Agency is also not admissible in evidence because Sh. M. L. Sharma has not been produced. He could have been the best witness to prove that certificate. The contents of this document are not to be read into evidence as he has not been examined. Even otherwise the certificate is of the year 1980 i.e. much after the sale of this property in favor of the auction purchaser. The stock registers and the copies of original bills and the declaration forms of sales tax allegedly proved on record also do not help the objectors in as much as only rubber stamp of this address have been put on these documents, though the printed address is of some other place. Ex AW 8/11 allegedly written to M/s. Kailash Nath Associates also does not help to show that the Objectors have been in possession since 1967. The other witnesses examined by the objectors, namely Sh. Mahinder Singh, OW 2, Sh. Vijay Gulati, OW 11, and Sh. Banarsi Dass Arora, OW 10 also do not help the objectors in proving and showing their case that they were inducted as tenants on 1-1-1967 by a competent person, authorised to do so. The case of the applicant auction purchaser that previously Jindal India Pvt. Ltd. was in occupation of these premises and they vacated the same in 1975 and thereafter these objectors came into possession stands proved from the documents on record and the statement of the witnesses examined by the applicant. In the statement of Sh. Kamal Khandelwal, AW 8, it has come that M/s. Jindal India Pvt Ltd. were in possession of this vacant plot till 1975 and thereafter they shifted their godown to some other place. That plot remained vacant till July, 1978 and in July or August, 1978, he found Sh. K.K. Mittal sitting in the vacant plot along with some labourers and on enquiry he was told that he had taken on rent that very plot from Mr. Harbans Lal Naseem, who was the previous auction purchaser. An F.I.R. was lodged with the Police Station Karol Bagh immediately thereafter by the auction purchaser. A letter was also written to the DESU requiring them not to sanction the installation of the new electric meter on the vacant plot in the name of Mr. K.K. Mittal. A complaint was also lodged with the police officers as well as with MCD for raising unauthorised construction on this plot in July or August, 1978. These facts as mentioned by this witness in examination in chief remained unsheltered in the cross examination and also it finds support from the report of Smt. Santosh Jain, Local Commissioner, who has proved Ex. OW9/D-4 and OW 9/D-5 wherein Sh. Mittal had admitted on 18-9-1979 before the Local Commissioner that the entire construction work was being made by him in the portion belonging to Jindal India

Pvt.,Ltd. and a signboard of the said firm was also shown to the Local Commissioner by him. It means that till then the Objectors were not in possession of the premises in their own right and it was an unbuilt plot at that time. The Local Commissioner appeared as a witness, but she was not confronted with this admission made by Sh. Mittal before her meaning thereby that it is correct. The fact that the objector applied for electric connection, water connection and for change of telephone in the premises after 1978 also confirms the plea of the applicant auction purchaser that it was after 1978 that the objectors came into possession of the premises.

21. The survey reports of the M.C.D. Ex AW 8/1,2 and 3 also show and prove that the name of Sh. Kanhaya Lal Mittal and Sh. Krishan Kumar Mittal came to be mentioned as occupants of these premises for the first time in 1978. Earlier they were not shown as occupants of these premises. The evidence of the ration depot holders also show that previously the residential address of K.K. Mittal was of the some other place.

22. From whatever point of view we may take, the applicants have been able to show and prove their case while the objectors have failed to show and prove their case that they came into possession of these premises as tenant of H.L. Naseem in 1967 i.e. prior to the sale of this property in favor of the applicant.

23. these circumstances, I allow this application filed by the auction purchasers and direct that Warrants of Possession be issued with the direction that Shri Kanhaya Lal Mittal and Shri Krishan Kumar Mittal, their servants, agents and representatives or anyone else occupying the said premises on their behalf be dispossessed from the portion of plots 226-227, Block L Western Extension Area, Naiwala, Beedanpura, Karol Bagh, New Delhi (as per plan attached with the application) after demolishing the structure thereon and that the auction purchaser, M/s. Delhi Packaging Pvt. Ltd. be put into possession. If there is any resistance, the police help can also be obtained from the local police station.

24. The application against Sh. Anand Parkash Gupta, Sh. A. S. Pathak. Sh. Bhagwan Dass and Sh. Parma Nand is dismissed as the auction purchaser has not claimed any relief against these persons having settled the matter with them out of Court.

25. As the auction purchaser has been deprived of the possession of this portion of the property since the year 1973. I Therefore allow this application with costs which I assess at Rs.5,000/-.

26. Application allowed.

