

(2012) 12 DEL CK 0249

In the Delhi High Court

Case No : Regular First Appeal (OS) 133 of 2012

Sudesh Chopra

APPELLANT

Vs

Chiranjiv Singh Dang and Another

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2012) 12 DEL CK 0249

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : M.A. Niyazi and Mr. Manish Kumar, for the Appellant; Rakesh Tikun instructed by Mr. Rishi Manchanda and Mr. Ankur Bansal, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.

CM No. 20772/2012

Allowed.

CM No. 20771/2012

Allowed; subject to just exceptions.

RFA (OS) No. 133/2012

1. Learned counsel for the appellant has handed over a bankers' cheque to learned counsel for the respondents in sum of Rs. 4,06,080/- towards payment of part rent and part hire-cum-maintenance charges and undertakes to clear the arrears latest by May 31, 2013. The cheque has been received without prejudice by the respondents. Chiranjiv Singh Dang and his wife Ritu Dang sued appellant for possession of property comprising 500 sq.yd. land and a residential building constructed thereon situated in part of Khasra No. 256/3 Village Chattarpur, Tehsil Hauz khas as also arrears of rent from October 01, 2010 till when the suit

was filed as also future rent including hire charges from October 01, 2010 on the plea that Chiranjiv Singh Dang was the owner of the property in question and had let out the same to the appellant pursuant to a lease deed dated February 12, 2009 at a monthly rent of Rs. 18,000/- to be increased by 6% every year and that the duration of the lease which commenced on January 01, 2009 was to end on December 31, 2011. Rent was to be paid in advance by the seventh day of each calendar month. It was also pleaded that simultaneously under a hire and maintenance agreement of even date the appellant was to pay to Ritu Dang a sum of Rs. 18,000/- per month, to be increased by 6% every year towards fittings and fixtures supplied by her. They alleged that the appellant tampered with the electricity meter installed at the premises in respect whereof a case was registered and thus they determined the lease vide notice dated September 06, 2010 as also the hire agreement.

2. In the written statement filed by the appellant she denied the title of Chiranjiv Singh Dang to the property, and sometimes denying execution of the lease deed and the hire-cum-maintenance agreement and sometimes admitting the same by implication, she took a stand that not being duly stamped as per the Indian Stamp Act 1899, no right could be claimed under the documents and additionally the two not being registered documents.

3. The tacit admission that she was occupying the property as a lessee is to be found at two places in the reply to paragraph 8 of the plaint. In the corresponding paragraph of the written statement filed she, inter-alia pleaded : "In reply to this para it is submitted that plaintiff's are very well aware of the fact that alleged theft of electricity is not related to the period of lease period and even the alleged allegation of plaintiffs finding the defendant indulged in theft of electricity is unfounded, the suit of the plaintiff is devoid of cause of action and has been filed only to harass, humiliate, pressurize and blackmail the defendant so that she bow down the plaintiffs illegal demand of enhancement of unreasonable rent."

4. Suffice would it be to state that if under an unregistered lease deed which is additionally not properly stamped, the possession of the tenant has to be treated as that of a tenancy being from month to month and hence determinable by a notice contemplated by Section 106 of the Transfer of Property Act. The receipt of the notice determining tenancy has not been denied by the appellant and thus she would be in unauthorized occupation of the property with effect from October 01, 2010.

5. The purpose of the lease being residential has not been denied and the rent agreed being Rs. 18,000/- per month to be increased by 6% every year as also hire-cum-maintenance charges payable @ Rs. 18,000/- per month to be increased by 6% every year has also not been denied.

6. Thus, it is a clear case where decree for ejectment has to follow on an admission.

7. Realizing so, after pleadings were completed and matter was listed in Court on September 24, 2012 to consider respondent's application that appellant should be directed to pay rent and hire-cum-maintenance charges which she had not paid since October 2010 as also an application filed by the respondents praying that a decree be passed on admission, learned counsel for the appellant made a statement based whereon the Court noted that appellant would deliver vacant possession of the suit premises within one month and would pay the arrears of rent and hire-cum-maintenance charges within ten days. Decree for ejectment was passed and matter was adjourned for further proceedings, to obviously consider the issue pertaining to damages claimed. Appellant filed an application registered as IA No. 18821/2012. The counsel was changed and the stand taken was that the previous counsel engaged had told the appellant that he did not make any statement as was recorded in the order dated September 24, 2012 and along with the application the appellant filed an affidavit deposed to by the counsel affirming that he had made no concession as was recorded in the order dated September 24, 2012.

8. IA No. 18821/2012 has been dismissed vide impugned order dated October 18, 2012. Action has been directed to be taken against the counsel concerned, which part of the order has not been impugned by the counsel concerned and thus we are not concerned with the same.

9. As regards the instant appeal, it is urged that the counsel never made any concession as was recorded in the order dated September 24, 2012 and that the learned Judge could not have ignored the affidavit filed by the counsel concerned while passing the order dated October 18, 2012.

10. In our opinion, we need not decide the question of fact : Whether or not the counsel concerned made the statement inasmuch as even de hors the statement made by the counsel in view of the pleadings in the written statement filed, case is made out to pass a decree on admission directing ejectment of the appellant from the suit premises.

11. The appeal has to be dismissed on said short ground, and realizing that this would be the fate of the appeal, the appellant brought with her a cheque in sum of Rs. 4,06,080/- towards part payment of arrears of rent and hire-cum-maintenance charges.

12. Learned counsel for the appellant beseeches the Court to grant time to the appellant to vacate the premises after two years and undertakes to pay the agreed rent and hire-cum-maintenance charges by clearing the arrears till May 31, 2013 and punctually pay each month the charges for future months, a request which is declined to be accepted by learned counsel for the respondents.

13. The conduct of the appellant does not inspire any confidence. She has not paid any rent and maintenance-cum-hire charges since October 2010. Part arrears have been tendered in Court today which have been accepted by the respondents without prejudice to their rights.

14. Under the circumstances, we dismiss the appeal but grant appellant time to vacate the suit premises on or before the midnight of May 31, 2013 provided within two weeks from today she files an affidavit containing an undertaking in the suit that she would clear the arrears of rent and hire-cum-maintenance charges by May 31, 2013 and would pay the agreed rent plus hire-cum-maintenance charges for the months of January 2013 till May 2013 by the seventh day of each calendar month. If filed, the undertaking would be treated as made to the Court and accepted by the Court as a term of deferring ejectment of the appellant till May 31, 2013. The undertaking would also be to the effect that she would surrender possession of the suit premises on or before May 31, 2013 and if she would not do so it would be treated as an act of contempt. No costs.

CM No. 20770/2012

Since the appeal stands disposed of, instant application seeking stay of the impugned order till disposal of the appeal is disposed of as infructuous.