

(2012) 05 DEL CK 0022

In the Delhi High Court

Case No : Regular First Appeal 218 of 2012

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Meenakshi Khosla

RESPONDENT

Date of Decision : 18-05-2012

Acts Referred:

Citation : (2012) 130 DRJ 319

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Manjusha, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

CM No.8851/2012 (Exemption)

Exemption allowed subject to just exceptions. CM stands disposed of.

RFA 218/2012 & CM 8816/2012 (stay)

1. This appeal was argued in detail by the earlier counsel Mr. Suresh Sharma, Advocate on 14.5.2012. At the stage of passing of the judgment for dismissing of the appeal, the earlier counsel took adjournment to take instructions if the decretal amount can be paid with a slightly lesser rate of interest. Today, however, new counsel appears and, wants to again argue the matter. In my opinion, this is an unacceptable practice. I cannot allow appeals to be argued afresh on each hearing merely because a new counsel appears and seeks to re-argue the matter. The challenge by means of this Regular First Appeal u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 31.1.2012 decreeing the suit of the respondent/plaintiff/landlord for dues towards the maintenance charges which were not paid by the appellant/defendant/tenant with respect to the tenanted-suit premises being flat nos. 404 & 405 admeasuring 1475 sq. ft and 1207 sq. ft. respectively in Rattan Jyoti

Building, Rajendra Place, New Delhi.

2. Before advertng to the facts on merits, I must state that the appellant/defendant led no evidence before the trial Court in spite of opportunities, and consequently, the right of the appellant/defendant to lead evidence was closed by the trial Court.

3. The facts of the case are that the appellant/defendant was a tenant in the suit premises. It was inducted as a lessee under a lease deed dated 27.4.1979. The suit premises were vacated by the appellant/defendant on 3.8.2003 pursuant to a decree for possession passed by the Civil Court on 7.1.2002. Since the appellant/defendant during the period of its stay failed to pay the general maintenance and water charges to the maintenance society where the flats were situated, the respondent/plaintiff was forced to pay the said amount and thereafter she filed the subject suit for recovery of Rs. 6,79,584/- alongwith interest.

4. Before the trial Court, it stands established in terms of the lease deed that the liability to pay the maintenance and water charges with respect to the tenanted flats, to the maintenance society of the multistorey building, was of the appellant/tenant/defendant. The lease agreement was proved and exhibited in the trial Court as Ex.PW1/A to Ex.PW1/D. Trial Court has arrived at a finding that the appellant/defendant had made a wrong representation that all the bills towards the electricity, water etc for the tenanted premises for the period of occupation have been paid, however, it subsequently transpired that the amounts towards maintenance charges and water charges were not paid to the maintenance society, M/s R.C.Sood & Company. An amount of Rs. 3,92,431/- was due towards the general maintenance charges up to 3.8.2003 and towards water charges a sum of Rs. 38,938 was due. The receipts of payment were exhibited as Ex.PW1/Q and Ex.PW1/R to Ex.PW1/T. The statement of account of the maintenance society with respect to dues was also exhibited as Ex.PW1/K to Ex.PW1/M. The respondent/plaintiff served a legal notice dated 14.5.2008 exhibited as Ex.PW1/V upon the appellant, receipt of which was not disputed and all that was pleaded in the reply was that the notice was baseless. Such a stand is of no effect because payments have to be shown to have been made towards the maintenance charges and water dues (the liability being of the appellant/tenant), and which however was not done. As already stated above, there was no evidence led by the appellant/defendant and therefore, trial Court has decreed the suit.

5. The relevant observations in this regard made by the trial Court to hold the appellant liable read as under:-

24. The short question for consideration is whether in these circumstances the defendant is bound to re-imburse the plaintiff for the maintenance charges and interest payable and paid for the period of defendant's enjoyment of the property. The claim of the plaintiff is based upon Section 69 of the Indian Contract Act which runs as under-"A person who is interested in the payment of

money which another is bound by law to pay, and should therefore pay it, is entitled to be re-imbursed by the other.

25. For a claim to be sustained u/s 69 of the Act, the plaintiff must be entitled to three things (1) That defendant was bound by law to pay the amount in question (2) That plaintiff was interested in payment of the money (3) She, therefore, paid the money.

26. The payment to the third party must be because of the interest the plaintiff had in the payment. It must not be an official and voluntarily one. The scope of Section 69 is manifest, it affords to the person who pays money because she has herself an interest in making the payment, an indemnity in respect of the payment against a person who should have made the payment should rather than he, could have made liable at law to make the payment. The word "bound by law to pay" in Section 69 does not exclude those obligations by law which arise inter parties whether by contract or tort and are not confined only to those public duties which are imposed by statute or general law.

27. It is not in dispute that plaintiff let out the premises bearing no. 403, 404 & 405 situated in Rattan Jyoti Building, Rajinder Place, New Delhi. It is also not in dispute that the defendant agreed to pay the maintenance, electricity and water charges to the builder directly as per the actual consumption vide lease agreement Ex.PW1/A to C.

28. The plaintiff has taken a plea that defendant vacated the tenanted premises on 3.8.2003 pursuant to a court decree dated 7.01.2002. The defendant on the other hand pleaded that it had delivered the possession of the tenanted premises to the plaintiff on 19.08.2002. The plaintiff has examined herself as PW-1 and reiterated the said fact in para 6 of his examination in chief. During cross-examination PW-1 deposed that the possession of the suit premises was taken by her in August 2003 by way of court decree. The said deposition of PW-1 has not been challenged by the defendant nor she was given any suggestion that defendant had handed over the possession on 19.08.2002 and not on 3.08.2002 through court decree deemed to have been admitted by the defendant. The defendant has not produced any material on record which can show or suggest that it delivered the possession of the tenanted premises to the plaintiff on 19.08.2002 and not on 3.08.2002 as pleaded by the plaintiff. The plaintiff has thus proved on record that defendant delivered the possession of the tenanted premises on 3.08.2003.

29. As per plaintiff an assurance was given by the defendant that all bills including electricity, water for the said period had already been paid, however, she was shocked to learn from the builder that defendant had not paid the general maintenance and water charges and has left behind huge unpaid arrears in this regard and has not paid the said despite the request. Therefore, plaintiff had left no alternative but to deposit the said amount on behalf of the defendant. The defendant has denied its liability and taken a plea that it had already vacated

the premises on 19.08.2002, therefore, it is not liable to pay any such amount. Besides the above averment the defendant has not furnish any detail of any such payment made by the defendant.

30. In order to substantiate her case plaintiff has examined herself as PW-1 and reiterated the plea taken by her in her examination in chief. She has been thoroughly cross-examined by Id. Counsel for the defendant, however, her testimony to the effect that defendant has not paid general maintenance and water charges and has left out huge unpaid arrear remain unchallenged. Defendant has not carried out any cross-examination with respect to the above testimony. PW-1 has also deposed in her examination in chief that a sum of 38,938/- was outstanding towards water charges and a sum of Rs. 3,92,431/- was due towards general maintenance up to 3.8.2003. She has further deposed in para 12 of her examination in chief that, "defendant was liable to pay the maintenance and water charges to the builder directly which was not paid by it as such having no other remedy available with her she had to deposit the said maintenance and water charges alongwith interest to the builder, M/s R.C.Sood and Company Pvt. Ltd. As per receipt dated 5.2.2005 Ex.PW-1/Q and Ex.PW-1/R to T. The defendant has not disputed the above testimony of PW-1 during her cross-examination. Defendant has not carried out any cross-examination of PW-1 to the effect that said amount was not due or paid by her. In the absence of any cross-examination or confrontation of PW-1, the defendant has deemed to have been admitted the above testimony of PW-1.

31. The plaintiff has placed on record the statement of account dated 31.01.2005 Ex.PW1/K to M. A perusal of Ex.PW-1/M shows that a sum of Rs. 6,79,584/- was due and recoverable from the defendant as on 3.08.2003 including interest charged by the builder. The said amount was deposited by the plaintiff with the builder on 25.01.2005 vide letter Ex.PW1/S & T for which M/s R.C.Sood Company Pvt. Ltd. issued receipt Ex.PW-1/Q and subsequently no due certificate Ex.PW-1/Y.

32. It is relevant to point out here that before filing the present suit the plaintiff has issued a legal notice Ex.PW1/V dated 14.05.2008 upon the defendant demanding the said amount from it. The said notice was sent through speed post. The original postal receipt and Speed post are Ex.PW-1/U & W. The defendant has not disputed the receipt of the legal notice Ex.PW1/V, it only taken a plea that said notice was baseless. Despite the service of the legal notice defendant has not given any reply of the said notice. The Hon"ble High Court in "Kalu Ram Vs. Sita Ram" reported as 1980 RLR (N) 44 has held:-

If plaintiff before filing suit makes serious assertions in a notice to defendant, then defendant must not remain silent by ignoring to reply. If he does show then addresses inference may be raised against him.

33. In the present case plaintiff has served a legal notice Ex.PW1/V upon the defendant which was sent through speed post at the correct address of the

defendant but despite the service of the legal notice defendant has not given any reply. In the absence of any reply an adverse inference is required to be drawn against the defendant.

34. The defendant has although disputed its liability but has not led any evidence to disprove the case of the plaintiff. The defendant has not produced any material to show that it had cleared all the charges qua general maintenance and water charges qua the premises under its occupation till it delivered the possession to the plaintiff. The defendant has not placed any material which can show or suggest that it was not liable to re-imburse the plaintiff for the amount paid by her on its behalf.

(underlining is mine)

6. In view of the above facts of the liability of the appellant/tenant under the lease deed having not been discharged, the respondent/plaintiff was forced to clear such liability. Section 69 of the Contract Act, 1872 thus came into play, and therefore, the suit of the respondent/plaintiff has rightly been decreed. The respondent/plaintiff need not have rushed to Court immediately on coming to know of the dues, because, unless there was a refusal to pay the dues by the appellant/defendant, the respondent/plaintiff did not have to file the suit. The entitlement to sue arose only after the respondent/plaintiff paid the amounts to the maintenance society vide receipt Ex. PW1/Q dated 05.02.2005. The suit filed on 22.1.2008 was thus within limitation and so rightly held by the trial Court while dealing with issue no.2. Even the rate of interest granted is very reasonable at 9% per annum simple. In view of the above, there is no merit in the appeal which is accordingly dismissed leaving the parties to bear their own costs.