

(2011) 09 DEL CK 0212

In the Delhi High Court

Case No : Regular Second Appeal No. 24 of 2011

Union of India (UOI) and Others

APPELLANT

Vs

Sh. Deepak Singh and Another

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 100
Punjab High Court Rules and Orders — Rule 15

Citation : (2011) 10 AD 148

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Jatan Singh and Kunal Kahol, for the Appellant; Jagmohan Sabharwal S.K. Sabharwal and Seema Singh, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular Second Appeal u/s 100 CPC is to the two concurrent judgments of the Courts below, of the first Court dated 20.5.2009, and of the second/Appellate Court dated 27.9.2010, and by which judgments, the Courts below have passed a decree in favour of the Respondents/owners restraining the Appellant from claiming any misuse charges or penalty with respect to the property situated on plot No. 59, Golf Links, New Delhi and the Appellant was further restrained from re-entering the suit property.

2. The facts of the case are that the subject property was given on lease by the Appellant by means of a perpetual lease dated 7.4.1959 to Smt. Mohini Balwant Singh, the predecessor-in-interest/mother of the Respondents. Smt. Mohini Balwant Singh had during her lifetime let out the first floor of the property to M/s. Boehringer Knoll Ltd. for residential purposes as a guest house vide lease deed dated 15.9.1974. Smt. Mohini Balwant Singh died on 31.1.1983. By virtue of her Will, the aforesaid property was inherited by her son and daughters/Respondents herein in equal shares. The Respondents on the basis of this Will applied for mutation with the Appellant and thus began the harassment of the Respondents,

a plight of many a common man in this country. The Appellant then issued its notices of misuse dated 20.8.1984 and 13.9.1984 claiming misuse charges on account of the fact that there was contravention of the terms of the lease deed by letting out the premises for a guest house. At the outset one may of course ask that if really there was a misuse than for as long as a decade why the Appellant did not carry out any inspection and act accordingly.

3. The issue before the Courts below was therefore as to whether letting out of the first floor of the premises to the tenant for use as a guest house strictly for residential purposes amounts to misuse of the premises in terms of Clause 2(7) of the lease deed dated 7.4.1955, and which clause reads as under:

(7) The Lessee will not without such consent as aforesaid carry on or permit to be carried on the said premises any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of a double storey residential building consisting of a single or two residential flats in all or do or suffer to be done thereon any act or thing whatsoever which in the opinion of the Chief Commissioner of Delhi may be an annoyance or disturbance to the President of India or his tenants in the New Capital of Delhi.

(underlining added).

4. A reading of the aforesaid clause shows that what is prohibited is the carrying on of any trade or business in the premises or uses other than the residential purposes. The Respondents filed in the Court below the lease deed entered into by their mother, Smt. Mohini Balwant Singh with the tenant, M/s. Boehringer Knoll Ltd. Para 2 of this lease deed which has been exhibited in the Trial Court as Ex. PW1/2 is relevant and the same reads as under:

2. The premises will be used for Guest House/Residence of the personnel of Messrs. Boehringer Knoll Limited only and for such other residential purposes only as the Lessee may desire, this lease cancelling all other agreements heretofore entered into by the said Parties relating in any way to the premises herein described.

(Emphasis supplied).

5. It is therefore quite clear that what was let out to the tenant-company was a letting out only and only for a residential purpose for residence of its personnel. Obviously, a company being a legal entity cannot physically stay in a premises and surely on its behalf, only its employees can stay in the premises.

6. With regard to this relevant issue, the Trial Court framed the issue No. 1 which was whether the Plaintiff was entitled to the injunction as prayed for? With regard to this issue, the Trial Court has given a finding in favour of the Respondents as per para 8 of its judgment dated 20.5.2009 and the same reads as under:

8. Issue No. 1: Whether the Plaintiff is entitled to injunction as proved for? OPP:-

The main question involved in this case is as to whether the premises was being used as guest house or as the office. The case of the Plaintiff is that it was being used as guest house and the case of the Defendant is that it was being used as office. The Defendant had examined one witness namely Sh. Atma Ram and he has himself stated that he had not inspected the premises in dispute and he has also not given the name of the officer who inspected the property in 1994. He rather stated that he has no personal knowledge of the case and no letter has been issued by him. He has even no knowledge regarding trial of the criminal case. The impugned notice is of 2.7.1985 as Ex. PW-1/D1 vide which the alleged misuse charges were demanded and threatening was given to re-enter into the premises. In this notice the misuse charges have been calculated without mentioning as to what is the misuse. It is typed performa issued without application of mind. No justification has been placed on record by the Defendant as to how and in what circumstances it was issued. There is not an iota of evidence on record to substantiate the allegations of the Defendant that the premises were used in the capacity of office. As per the WS, it has been mentioned that there is contravention of Clause 2(7) of the lease deed but notice dated 2.7.95 does not talk about the same. The letter dated 30.5.83 has not been proved on record as the same is marked A and thus no benefit can be drawn by the department from this document. Thus the Defendant has miserably failed to prove the misuse on record. On the other hand the averments of the Plaintiff that it was being used for guest house has been duly made out as per Ex. PW1/2 lease deed entered into by the Plaintiff with the concerned company wherein guest house has been mentioned. Thus, there is no question of nay commercial activity of running of the office in the premises in question. The Defendant could not rebut this document Ex. PW-1/2 and thus the initial onus is discharged by the Plaintiff. Moreover, the Plaintiff in his plaint has clearly mentioned that prosecution was initiated against the company/lease by DDA for misuse of the premises but accused persons were acquitted by judgment dated 22.2.84 passed by the then Ld. MM but there was no specific denial by the Defendant in his WS and the same is deemed to be admitted as per Order 8 Code of Civil Procedure. The Defendant rather admitted that case No. 233/80 was decided by the court. The DDA was the complainant in this case and DDA is also the Defendant through Land & Development Officer in this case. Hence they cannot escape by giving the evasive reply. Rather, the Plaintiff in his statement has deposed to this effect but no cross-examination was conducted by the Defendant on this aspect. Rather, no suggestion was given by the Defendant to the Plaintiff that premises was being used for office. Even no suggestion was given explaining that it was not being used for guest house. Even the inspection report has not been proved by the Defendant and it is clearly held in AIR 1988 Del 332 as well as Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, that if any document having bearing on the case is withheld by party who is having the possession of the same then even irrespective of the onus of proof, the party who was bound to produce it as having custody of the same was bound to suffer and adverse inference can be taken against it. The inspection report was important document

which could show the mind of the inspector and particularly the articles found by him in the premises and the reasons prevailed in his mind to include that premises was being used for office. On the contrary, the Plaintiff by the oral as well as documentary evidence has rebutted the presumption or averments raised by the Defendant that it was being used for office purposes. Rather, it is concluded that as per lease deed, it was used for guest house. The counsel has relied upon 1981 Rajdhani Lal Reporter(Note), Bawa Holiday Home v. DDA and argued that using the premises for guest house or lodging house does not mean it is being used for anything other than residential. To the same effect is the judgment 1978 RLR 378, R. Ramanujam v. Ajit Singh. Thus in this circumstances, the letter demanding damages for misuse is not sustainable in the eyes of law and this issue is accordingly decided in favour of Plaintiff and against the Defendant.

(underlining added).

7. A reading of the aforesaid paragraph shows that no evidence worth any value was led by the Appellant to show that the premises were being misused. On the contrary, besides proving the lease deed Ex. PW1/2 showing letting out for residential purposes, the Respondents led evidence to show that when the tenant was prosecuted for misuse, those prosecution proceedings were dismissed by holding that there was no commercial use of the premises.

8. The finding of the Trial Court as given in para 8 of its judgment has been upheld by the Appellate Court, and which judgment of the Appellate Court is now impugned in this Court.

9. In my opinion, there is absolutely no merit whatsoever in the appeal. In view of the fact that the prosecution of the tenant under the Delhi Development Act, 1957 for misuse was dismissed by holding that there is no commercial use of the premises surely that is a clear indication that there was no commercial use of the premises. In any case, absolutely no doubt whatsoever remains that there was no misuse of the premises by virtue of the fact that para 2 specifically provides that the use will be as a guest house/residence only and only for such other residential purposes and nothing more. In the face of this categorical clause, no conclusion can be reached other than the conclusion that the premises in question were only and only let out for residential purposes though, the term guest house is used along with an oblique mark with the expression residence. Para 2 of the lease deed, Ex. PW1/2 when read as a whole leaves no manner of doubt that the letting out was only and only for residential purpose for the residence of the employees of the tenant, M/s. Boehringer Knoll Ltd.

10. Learned Counsel for the Appellant sought to place reliance upon NDMC v. Sohan Lal Sachdev (dead) Represented by N.D.M.C. Vs. Sohan Lal Sachdev (Dead) Represented by Mrs. Hirinder Sachdev, to argue that the Supreme Court has held that use of a guest house amounts to use for a commercial purpose. Reliance was also placed upon a judgment of a single judge of this Court in the

case of Delhi Development Authority Vs. Maharaja Hotel and Others, that user of a guest house amounts to use for a commercial purpose.

11. Both the judgments which are relied upon by the learned Counsel for the Appellant have absolutely no application to the facts of the present case. In the facts of the case before the Supreme Court in the case of NDMC v. Sohan Lal Sachdev(supra), the letting out was to a tenant, M/s. Sachdev guest house for running a commercial guest house i.e. like a hotel almost. This letting out for running a guest house is therefore surely a commercial purpose as distinguished from a letting out to a company for residential use of its employees, and this guest house use cannot by any stretch of imagination be equated with commercial guest houses which dot this city. The description in this case by the company/tenant of a guest house was for the obvious reason that the premises are not going to be used by any single/one employee of the company but will be used by different employees who will come at different points of time to stay in the premises and therefore the term guest house, however, the same cannot mean that the letting out is for a purpose of a guest house as a commercial guest house and which were the facts in the case of NDMC v. Sohan Lal Sachdev (supra) before the Supreme Court. In the case of DDA v. Maharaja Hotel (supra), there was a finding of the fact that the hotel was being run in the premises and which was called running of a guest house and therefore the same amounted to a non-conforming use or commercial use. Again the said judgment has no application in the facts of the present case as letting out the premises was only and only for residential purpose.

12. A second appeal u/s 100 CPC can only be entertained if there arises a substantial question of law and no substantial question of law arises in this second appeal. Once, the Appellant has not led any evidence, and the Respondents/owners have filed and exhibited the lease deed, Ex. PW1/2 which showed that the letting out was only and only for a residential purpose, I fail to understand how it can be said that there is a misuse of the residential premises as per Clause 2(7) of the lease deed dated 7.4.1955. All I can say is that the lease deed in favour of the tenant was of the vintage year 1974, Smt. Mohini Balwant Singh died in the year 1983 and the entire travails of the Respondents unfortunately commenced when they applied for mutation of the property in the name of the Respondents. It is thereafter that the Respondents were sent these notices of misuse. I really wonder why the difficulties of a citizen should commence all of a sudden by the Appellant's waking up only when mutation is applied by legal heirs. After all the property was let out since 1974, i.e. almost a decade earlier and if really there was misuse, the Appellant could have found out the same by inspection of the premises. Obviously, why citizens face difficulties in getting even ordinary work of mutation done from the Appellant is not a reason which we have to go very far to seek.

13. Before concluding, I must deal with the application under Order 41 Rule 27 which is filed by the Appellant for leading additional evidence. This application for

leading additional evidence was not even filed before the First Appellate Court and has been filed only before this Court in Regular Second Appeal. The object of leading additional evidence is not to allow a litigant to lead evidence at his leisure and pleasure. The purpose of additional evidence is that the Court requires it to do justice or there were some grave circumstances whereby the evidence which is now sought to be led was not available and has subsequently become available and therefore it has to be led. Admittedly, through the application for additional evidence what is sought to be got proved is an inspection report of 22.12.1982, and which was all along in control and possession of the Appellant and who chose not to lead any evidence with respect to the same. I therefore refuse to set back the clock for over 25 years and again send this case back to the Trial Court at the stage of evidence for the agony of the Respondents to be continued further.

14. I have, however to satisfy my judicial conscience, gone through this "report" dated 22.12.1982. As per this "report" one officer in the office note has simply noted that part of the premises is used as an office and part of the premises is used as a residence. In this "report" it is also mentioned that since in the telephone directories of the Golf Link at the address of the premises the name of tenant, M/s. Boehringer Knoll Ltd. is shown, therefore the premises are deemed to be misused for non-residential purposes. Firstly, this "report" seems to be quite clearly an ex parte report without noting of any specific persons' presence on behalf of M/s. Boehringer Knoll Ltd. I do not find any signatures of any of the officers of the tenant, M/s. Boehringer Knoll Ltd. in confirmation of what is written in the report. In fact, the "report" does not even mention the name of even a single employee/officer of M/s. Boehringer Knoll Ltd. before whom the inspection was conducted. The report does not mention as to who and how many are the employees, what were their names and who were allegedly found when the inspection was conducted on 22.12.1982. In fact, the inspection cannot be said to be an inspection at all because the "report" of half page is only a note signed by an officer of the Appellant without anything further and having the defects as stated above and thus it cannot at all be termed as an inspection report as the expression connotes.

15. The facts of the present case show that Respondents are unnecessarily harassed right from 1984, i.e. for over 25 years with respect to its claim for mutation and which till date has been refused for the reason of the alleged misuse. The litigation since 1987 is pending in the Court. For this harassment to the Respondents, I deem it fit to exercise my power under Volume V of the Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part 1 Rule 15 which allows this Court to impose actual costs as per the circumstances of a particular case. I am strengthened in this regard by the observation of the Supreme Court in Para 37 of the decision in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), , where a three judge Division Bench of the Supreme Court has said that it is high-time that actual costs be imposed. Accordingly, in view of the aforesaid rules as applicable to this Court

and para 37 of the decision in the case of Salem Advocate Bar Association (supra), I direct that the Respondents will be entitled to costs of these proceedings being the fees paid to their lawyers for this appeal. Let the Respondents file in this Court an affidavit within a period of 4 weeks from today with respect to the fees paid to their lawyers along with the certificates of the lawyers that they have received fees for this appeal. This amount of the costs paid to lawyers as stated in the affidavit will be the costs of the appeal awarded in favour of the Respondents, and which costs shall be paid within a period of 8 weeks from today.

16. Before concluding with the matter, I must state that an endeavor was made by this Court so that the Appellant may realize its unfair and obdurate stand which was causing harassment to the Respondents. On 26.8.2011, therefore, the following order was passed if the matter could be otherwise sorted out:

Present: Mr. Jatan Singh and Mr. Kunal Kahol, Advocates

for the Appellants.

Mr. J.M. Sabharwal, Sr. Adv. with

Mr. S.K. Sabharwal and Ms. Seema Singh,

Advocates for Respondents.

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Learned Counsel for the Appellants, after some arguments, seeks to take instructions from the Appellants, inasmuch as firstly it is doubtful as to whether during the alleged period of misuse, was any notice ever given to the lessee of misuse of the property and connected with this issue is, whether the Appellant can at any point of time without any limitation raise an issue of misuse charges. The second aspect is that once the lessee has filed and proved on record a lease deed showing the letting only for residential purposes, can misuse charges be claimed from the lessee, who may not be responsible for the alleged misuse. Finally, all these aspects need to be considered in the light of the fact that today generally, the leases have been converted from lease hold to free hold on payment of certain conversion charges. In view of the overall conspectus emerging from the facts of the present case, the Appellant is well advised to consider as to whether seriously there is a need for any action against the Respondents. Learned Counsel for the Appellant states that he will have a free and frank discussion with the officers of the Appellants.

List for further consideration on 14th September, 2011.

Dasti to counsel for the parties.

17. Obviously, this has had no effect on the concerned officers of the Appellant and the counsel for the Appellant states that he has instructions to argue the appeal on merits.

18. In view of the above, there is no merit in the appeal. There is no substantial question of law which requires determination. The appeal is accordingly dismissed with the costs as quantified above.