

(2010) 02 DEL CK 0197
In the Delhi High Court
Case No : CS (OS) 585 of 2009

Vyom Garg and Another

APPELLANT

Vs

Shyam Lal Aggarwal and Sons and Others

RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 39 Rule 10
Registration Act, 1908 — Section 47
Transfer of Property Act, 1882 — Section 107

Citation : (2010) 02 DEL CK 0197

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Anil K. Khaware and Rakesh Kumar Tripathi, for the Appellant; Som Dutta Sharma, for the Respondent

Judgement

S. Ravindra Bhat, J.

IA No. 4099/2009, IA No. 11927/2009 & IA No. 10379/2009

1. This order will dispose of three applications bearing IA No. 4099/2009 (application for temporary injunction to restrain the defendants from altering the status quo or creating third party rights in respect of the premises); IA No. 11927/2009 (by the plaintiff seeking a decree on admissions Under Order XII Rule 6 CPC) and IA No. 10379/2009 (again by the plaintiff, under provisions of Order XXXIX Rule X CPC for a direction to deposit admitted amounts to the defendants, in Court).

2. The plaintiff contends that the suit premises being No. 7 (old No. 803/3), Arjun Nagar, Kotla Mubarakpur, New Delhi measuring 174 sq yds and consisting of lower ground floor (basement and ground floor) - hereafter referred to as "suit premises" - were let out to the first defendant on rent. The plaintiff's case is that two agreements were entered into; the first concerned the ground floor and basement, was executed on 1st September, 2007. It is stated that the second agreement also concerned with the basement and was similarly executed on 1st

September, 2007. According to the plaintiff, the total rent payable by the defendant for both the premises was Rs. 2,75,000/- p.m. (explained as Rs. 2,10,000/- in respect of the first tenancy and Rs. 65,000/- p.m in respect of the second tenancy.) The plaintiffs further state that the agreements were unregistered and that the tenure of the lease was nine years. It is also contended that the tenancy commenced from 1st September, 2007 and the equivalent of three months' rent was deposited by the tenant, including the amount of Rs. 2 lakhs equivalent to the plaintiff was at the rent.

3. The plaintiff submits that the defendant was irregular in payment of rent and that consequently a legal notice was issued on 18th July, 2008. The plaintiff claimed damages of Rs. 1 lakh p.m. w.e.f. 1st August, 2008 in respect of the lower ground floor (basement of the premises). It is alleged that the defendant lessee did not pay any amount. The suit contends that the arrears of rent @ Rs. 2,10,000/- p.m remained outstanding w.e.f 1st October, 2007 in respect of the ground floor of the premises till 31st December, 2008. The plaintiff, however, submits that Rs. 65,000/- in respect of the basement part of premises for each month was paid upto 31st July, 2008.

4. In these circumstances, the plaintiff states that a notice terminating the tenancy which was a month to month lease, was issued on 11th October, 2008 as he was no longer interested in continuing with the defendant as his tenant. The plaintiff seeks a decree for possession of the premises as well as decree for recovery of arrears and damages and mesne profit since the defendant continues to be in possession of the suit property.

5. The plaintiff seeks a temporary injunction to restrain the defendants from parting possession or maintain status quo. In the application IA No. 11927/2009 it is contended that the basic facts entitling the suit to be decreed on admissions are present. It is pointed out that in the written statement the defendant has not contested the creation of the tenancy or that it was through an unregistered document. It is also submitted that the defendant has not disputed issuance and receipt of the legal notice. Learned Counsel emphasizes that in these circumstances, the Court is entitled to direct a decree on the basis of the defendants' admission and on the basis of the uncontroverted materials on record.

6. Learned Counsel has relied upon some judgments of this Court concluding the one reported as Raj Gopal (Huf) Vs. State Bank of India, and Gulab Singh and Sons Pvt Ltd. Vs. The New India Assurance Co. Ltd., It is further stated that as such the controversies which the defendant is highlighting do not amount to triable issues and that the admissions are unambiguous as contemplated by the Supreme Court in Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Others,

7. The plaintiff further states that in view of the admitted facts defendant should be directed to deposit at least the equivalent amount rent total Rs. 27 lakhs

during the pendency of the proceedings.

8. The defendant in the written statement as well as in the replies to the application contests the suit and states that there are serious disputes and controversies which the Court should not disregard. It is submitted that the case set up by the plaintiff about two tenancies is misconceived and that in fact one tenancy was created. The defendant submits that contrary to the averments in the suit, Rs. 65,000/- was paid through cheques and balance sum of Rs. 2,10,000/- was paid each month in cash. Learned Counsel emphasized that the plaintiff never disputed the receipt of Rs. 65000/- p.m which could not have been acknowledged without receiving the other substantial amount of Rs. 2,10,000/-.

9. The defendant urges in the written statement- as well as in the contentions made in the course of the hearing today that the lease is not registered one and, therefore, is null and void. It is submitted that in terms of the understanding between the parties the plaintiff could not have terminated the tenancy and initial period of three years (termed as the "lock-in-period"). Learned Counsel also points out that in the written statement the defendant has categorically submitted having spent Rs. 40 lakhs towards renovation of the premises and that he (i.e. the defendant) is entitled to claim substantial part of such amounts. The defendant further submits that the plaintiff had taken steps to disconnect electricity supply and that to have the same restored, a civil suit was filed, in which no favorable order was made. It is stated that the defendants' show room had to be, as a consequence, shut down w.e.f. 2nd September, 2008. The Learned Counsel further stated that even though the issuance of the notice and its receipt is not denied, the written statement disputes its legal efficacy as it did not comply with the terms of lease entered into between the parties.

10. From the above discussion, it is apparent that the plaintiff lesser and the defendant No. 1 lessee are at ad idem on the following facts:

1. That the entire premises Constituting the ground floor and basement of the suit property was let out sometime in September, 2007 to the first defendant.
2. The total rent payable in respect of the two premises was Rs. 2,75,000/- p.m.
3. The defendant paid a security deposit and a further sum was deposited, amounting to Rs. 10 lakhs at the time of commencement of the tenancy.
4. The defendant paid rent at Rs. 65,000/- p.m through cheques upto 31st July, 2008.
5. The relationship was established through documents which are unregistered.
6. The plaintiff issued legal notice on 11th December, 2008 terminating the arrangements.

11. In order to enable the Court to draw a decree under Order 12 Rule 6, CPC, the admissions in the pleadings or the materials on record as existing must be categorical as to be categorized as "ambiguous" Refer Uttam Singh Dugal and

Co. Ltd. Vs. Union Bank of India and Others, Supreme Court 2740. Here the defendant tenants' position appear to be that the plaintiff did not have the right to terminate the tenancy since, in terms of the agreement dated 1st September, 2007 they were entitled to continue at least for three years. The defendant also submits that a sum of Rs. 40 lakhs was spent towards renovation of the premises and that the facts urged in the suit with regard to the payment of rent are disputed. According to the defendant, these constitute serious controversies as to warrant a trial.

12. Now, it is well settled through a series of judgments that in the absence of a registered lease deed the tenancy is deemed to be on monthly basis referred to Section 107 of the Transfer of Property Act and the Division Bench ruling in Dunlop India Ltd. Vs. Shri Sunil Puri and others, The defendant has right in contending that the terms of the lease deed cannot be looked into since they are unregistered. Section 107 as well as Section 47 of the Registration Act is such as to rule out the courts' scrutiny into their terms of such unregistered lease deed. The only exceptions in such cases are that the document may be looked into for a collateral purpose. However, as ruled in Satish Chand Makhan and Others Vs. Govardhan Das Byas and Others, the terms of such unregistered lease deed cannot be categorized as a collateral purpose. Although the Court has looked into the lease deed, it is only to render findings as to the commencement of the tenancy. Thus the defendant cannot rely on the terms of the lease deed to state that the notice issued by the plaintiff was invalid. The consequence of the document not being registered is that u/s 107 the tenancy is deemed to be a monthly one.

13. In the present case the defendant has relied upon the judgment reported as Mercury Travels (India) Ltd and Others Vs. Shri Mahabir Prasad and anr, . It is submitted that the existence of two documents would not necessarily lead to the conclusion that there were two tenancies and that in fact there was one tenancy in the present case. This Court is of the opinion that as to whether there were two tenancies or one tenancy is not an issue as to inhibit it from exercising the power under Order 12 Rule 6. There is no dispute about the fact that two premises - ground floor and basement were let out; the plaintiff admits to receiving Rs. 65,000/- - which are deemed to be the rent agreed in respect of the basement. The defendant however contends that even the sum of Rs. 2,10,000/- for the rest of the premises were paid but in cash. Although the defendant asserts this in the written statement, there is material in the documents placed before the Court. The defendant has relied upon the receipts issued by the plaintiff towards the sum of Rs. 65,000/- paid.

14. As far as reliance upon the Division Bench judgment in Puran Chand Packaging Industrial Pvt. Ltd. Vs. Smt. Sona Devi and Another, is concerned, this Court is of the opinion that the observations there were in the context of the defendants' assertion that the plaintiff continued to accept amounts even after the notice of termination was issued and such facts constituted triable issues

disentitling the court to issue a decree under Order 12 Rule 6 CPC. In the present case no such issue of fact has been raised by the defendant although it is stated that the termination notice is not in compliance with the terms of the lease deed. As discussed earlier, the terms of the lease deed cannot be scrutinized by the Court since the documents are unregistered. It is concluded, therefore, that the tenancy was a monthly one. To sum up the above discussion, this Court is of the opinion that there are elements that constitute unambiguous admission or admissions which empower this Court to draw a decree for possession in terms of Order 12 Rule 6. The defendant does not deny that the tenancy or tenancies were created w.e.f. 1st September, 2007; the documents are unregistered; the issuance and receipt of the termination of notice dated 11th December, 2008 is likewise not denied. These, in the Court's opinion, are sufficient to entitle the plaintiff to the decree for possession sought in terms of the claim in para 22(1).

15. Let a decree for possession in the above premises be drawn. The defendant is hereby directed to hand over vacant possession of the premises to the plaintiff within four weeks from today and file a compliance affidavit as a condition of further contest of the suit within six weeks from today.

16. As far as the IA No. 10379/2009 is concerned, this Court is satisfied that in view of the termination of the tenancy w.e.f. 11.12.2008, the occupation without payment of rent or damages is not justified. In the circumstances, the defendant is hereby directed to pay the amount of Rs. 2,75,000/- per month w.e.f 1st January 2009 till 28th February 2010. The said amount shall be paid within eight weeks from today. Let a decree to the said effect be drawn without prejudice to the rights and contentions of the parties as to the correct damages to be calculated. IA is allowed in the above terms.

17. The plaintiff is directed to pay the differential amount (i.e. difference between what was paid at the time of institution of the suit and what would be the decree consequent to the directions in IA No. 10379/2009) as Court Fee, within eight weeks from today.

18. I.A. No. 4099/2009 also stands disposed of in view of the above directions.

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List before the Joint Registrar on 11th May, 2010 for further proceedings/admission/denial.

List on 13th August, 2010 for directions.