(2015) 08 DEL CK 0329

In the Delhi High Court

Case No : CS (OS) 5/2012

Yashwant Singh APPELLANT

Vs

Ashutosh Verma RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:
Specific Relief Act, 1963 — Section 6

Citation : (2015) 08 DEL CK 0329

Hon'ble Judges : Jayant Nath, J.

Bench : Single Bench

Advocate : Rajiv Bansal, Mohit Chaudhary, Prabhat Kumar and Damini Chawla, Advocates, for the Appellant; B.B. Gupta, Udyan Srivastava and R.C. Pathak, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Jayant Nath, J.

IA No. 16872/2014

1. The present application is filed by the plaintiff for permission to lease out a portion of property i.e. basement, ground and second floor of A-24, Kailash Colony, New Delhi.

2. The present suit is a complex web of facts. I may only mention some of the relevant facts. The plaintiff is stated to be the registered power of attorney holder of Shri Sateesh Kumar, who is the absolute owner of the said property measuring 1000 sq. yards in the prime area in South Delhi. The defendant is stated to be a lawyer though as per the plaint not in active profession and is said to be running a concern by the name of ''Ashutosh Verma and Associates Capitals'' which is stated to be in the property broking business and in the business of lending money.

3. The suit is filed by the plaintiff seeking the following reliefs:-

"(a) Pass a decree of eviction in favour of the plaintiff and against the defendant, so as to evict the defendant and all his agents, servants, friends, relatives, associates and anyone else acting on his behalf, from the property being the first floor of the property being A-24, Kailash Colony, New Delhi;

(b) Pass a decree of permanent and mandatory injunction in favour of the plaintiff and against the defendant, his assigns, heirs, successors, legal representatives, his servants, agents, or anyone acting or claiming through him from interfering in any part and portion of the property being A-24, Kailash Colony, New Delhi;

(c) Pass a decree of declaration, declaring that the "Lease Agreement" dated 19.09.2011 between the plaintiff and defendant No. 1 as null and void non-est in the eyes of law and was never acted upon, and/or

(d) Pass a decree of declaration, declaring that the "Memorandum of Understanding" dated 11.3.2010 between the plaintiff and defendant No. 1 as null and void non-est in the eyes of law, and/or

(e) Pass a decree of declaration, declaring that the "Supplementary Memorandum of Understanding" dated 20.1.2011 between the plaintiff and defendant No. 1 as null and void non-est in the eyes of law, and/or

(f) Pass a decree of declaration, declaring that the "Deed of Lease" dated 20.1.2011 between the plaintiff and defendant as null and void non-est in the eyes of law, and/or

(g) Pass a decree of declaration, declaring that the arrangement of issuance of ''money receipt of cash'' (or by whatever name called), in lieu of interest on the sum borrowed as indicated in paragraph No. 3 G, as null and void non-est in the eyes of law, and/or

(h) Pass a decree of cancellation, cancelling the "Memorandum of Understanding" dated 11.3.2010 between the plaintiff and defendant, and/or

(i) Pass a decree of cancellation, cancelling the "Supplementary Memorandum of Understanding" dated 20.1.2011 between the plaintiff and defendant, and/or

(j) Pass a decree of cancellation, cancelling the "Deed of Lease" dated 20.1.2011 between the plaintiff and defendant, and/or

(k) Pass a decree of cancellation, cancelling the arrangement of issuance of "money receipt of cash" (or by whatever name called), in lieu of interest on the sum borrowed as indicated in paragraph No. 3G, as non enforceable, null and void non-est in the eyes of law, and/or

(l) Pass a decree of damages in favour of the plaintiff and against the defendant to the extent of Rs. 50 lacs, in view of the facts of the present case; and/or

(m) Pass a decree of awarding cost of the present litigation; and/or

(n) Pass any other appropriate orders, directions that this Hon''ble Court may deem fit in the facts and circumstances of the present case."

4. As per the averments in the plaint the plaintiff holds a registered power of attorney dated 17.8.2001 from the said Sateesh Kumar who purchased the property on 7.12.1966. In 2004 it is stated that a loan for approximately Rs. 5 crores was applied from Indian Bank for the purpose of construction on the property. Due to alleged delayed release of the loan, the construction was completed in 2010. A building comprising of four floors including basement has been constructed each floor having 4000 sq. feets construction and having a total area of 16,000 sq. feet. It is urged that on account of the acts of the bank, there was a default in repayment. The parties hence entered into a MOU on 11.3.2010 whereby the defendant agreed to extend financial assistance to the plaintiff of Rs. 2,78,70,000/-. There are allegations of breach of the terms of the MOU by the defendant. On 22.01.2011 a lease deed was executed between plaintiff and the defendant pertaining to the first floor of the said property. There are allegations that defendant has replaced some clauses fraudulently. It is averred that rent of Rs. 3.5 lacs per month was to be paid by the defendant and that the defendant is in default of the same.

5. It is further averred that the defendant got signatures of the plaintiff upon a supplementary agreement dated 20.01.2011 and 22.01.2011 which is null and void in the eyes of law. It appears that there is also some lease agreement dated 19.09.2011 where it was agreed that the defendant would take on lease the entire balance property. It is averred that out of an agreed sum of Rs. 42 lacs as an advance for six months'' rent only Rs. 7 lac was received. As per the plaint the possession of the said basement, ground floor, second floor and terrace was never handed over to the defendant and the plaintiff remains in possession of the same. The plaintiff states to have on 20.12.2011 entered into a lease with the Embassy of the Republic of Korea. The plaintiff also claims to have handed over possession to the said Republic of Korea on the said date. It is in this factual background that the plaintiff has filed the present suit.

6. The defendant has filed a written statement. In the written statement it is averred that the plaintiff had taken a loan of Rs. 6 crores from Indian Bank and had committed default. The said Indian Bank initiated proceedings under SARFAESI Act in 2009. It is during this period it is averred that the defendant lent Rs. 50,00,000/- between November 2009 to December 2009 to the plaintiff. In March 2010 defendant is said to have pursuant to a Memorandum of Agreement dated 11.3.2010 agreed to extend financial assistance of Rs. 2,78,70,000/- which was to be used for making re-payment of loan to Indian Bank and for finishing the work on the suit property. As per the MOA in the event of inability of the plaintiff to repay the loan by 30.6.2011 plaintiff was to hand over vacant possession of the first floor of the suit property and to get a sale deed executed in his favour for transfer of ownership for stated consideration of Rs. 5.5 crores. Necessary NOC from Indian Bank was to be obtained by the

plaintiff.

7. It is further stated that the plaintiff devised a scheme to extract more money from the defendant and upto January 2011 a total of Rs. 3,18,00,000/- has been advanced by the defendant to the plaintiff. As per the defendant on 20.1.2011 the lease deed was executed for the first floor of the suit property. No rent was payable by the defendant in the event of non repayment of the loan of Rs. 3,18,00,000/-.

8. Reliance is also placed on lease agreement dated 19.9.2011 whereby the plaintiff is stated to have handed over possession of the basement, ground floor and second floor to the defendant. It is averred that on 16.12.2011 after the defendant had spent substantial amount on renovation of the suit property, the plaintiff came with 20 goons to the building and threw away the defendant''s furniture from the basement and put his own locks. The defendant is stated to have filed an FIR No. 173/2011 with Police Station Greater Kailash-I. It is on the said date that the plaintiff was also accompanied by some foreigners, who had also visited the suit premises.

9. It is in this factual matrix that certain other suits have also been filed which have been directed to be heard alongwith the present suit. The defendant has on 28.2.2011 filed CS(OS) 508/2012 for specific performance and permanent injunction against the plaintiff and Indian Bank seeking a decree against the plaintiff herein to perform his part of the contract in terms of MOU dated 11.3.2010 and the supplementary agreement dated 20.1.2011 by executing and registering a sale deed of the first floor of the suit property.

10. Defendant has also filed CS(OS) 641/2012 under section 6 of the Specific Relief Act for restoration of possession, declaration, permanent injunction and damages in March 2012 against four defendants including Shri Sateesh Kumar, the plaintiff herein, the Embassy of Republic of Korea and SHO Greater Kailash-I.

11. Some of the applications filed by the parties were disposed off vide judgment pronounced by this Court on 21.12.2012. The said order states that the Court does not find clinching, cogent and clear evidence available on record to show that the defendant was in settled possession (of the basement, ground and second floor) except some documents filed by the defendant indicating that he was in possession for a short period in the basement. The court passed the following directions:-

(a) The plaintiff is directed not to sell, alienate, transfer or part with possession of the aforesaid floors i.e. basement, ground and second floors of the suit property without the permission of the Court.

(b) The defendant is restrained from interfering or causing hindrances in usage of the portions being basement, ground and second floors of the suit property.

(c) The plaintiff in the Supplementary Memorandum of Agreement dated 20th January, 2011 in Clause 1 has admitted that the defendant has extended financial assistance of Rs. 2,78,70,000/- to the plaintiff for the payment of bank dues and receipt of which was also acknowledged by the plaintiff and in clause 2, the plaintiff has also admitted that the defendant has subsequently extended some more financial assistance to him and now the total comes to Rs. 3.18 crores, the receipt of the same was also acknowledged and agreed to repay the consolidated amount of Rs. 3.18 crores as per clause 3 of the agreement, on or before 30th June, 2011. Admittedly, the said amount was not paid by the plaintiff, though the plaintiff has specifically admitted to receive Rs. 1.48 crores from the defendant. The said Supplementary Memorandum of Agreement is signed by the plaintiff. Without prejudice to the rights of the plaintiff to contest his plea as mentioned in his pleadings, he is directed to deposit a sum of Rs. 3.18 crores with the Registrar General of this Court within a period of 6 weeks from today.

(d) The plaintiff is also directed to deposit a sum of Rs. 34,10,000/- admittedly received by him in cash through his peon, with the Registrar General of this Court within the same period. The Registrar General shall keep the aforesaid amounts in FDRs initially for a period of one year."

12. The plaintiff thereafter filed IA No. 1551/2013 seeking permission to rent out the basement, ground floor and second floor with terrace rights. This Court dismissed the said application declining permission to the plaintiff to rent out as sought. Against the said order an appeal being FAO(OS) 377/2014 was filed. On 26.8.2014 the appeal was withdrawn with permission to file a fresh application seeking permission to let out the said portion of the suit property. The Division Bench directed that if such an application is made seeking only one prayer concerning the letting out of the basement, ground floor and second floor the same would be adjudicated by this Court as per law.

13. The present application is filed pursuant to the liberty granted by the Division Bench. In the application it is averred that the plaintiff is hard pressed for funds and has to fulfil his obligations regarding the bank loan. The loan amount it is averred has become NPA and the property was once put to auction. It is averred that on account of high interest rate being charged by the bank the plaintiff is still to repay a sum of Rs. 3.75 crores to the bank. It is averred that the area is a prime area on the main road in front of Nehru Place, which would fetch a rent of 27 to 35 lacs per month. Hence the present application.

14. I have heard learned counsel for the parties and perused the record.

15. Learned counsel for the plaintiff has reiterated that the plaintiff is in urgent need of funds. It is averred that it would be in the interest of justice if the property is allowed to be rented.

16. Learned counsel appearing for the defendant has strenuously opposed the present application. He has stated that huge amount of loan of Rs. 3.18 crores have been taken by the plaintiff from the defendant. Despite MOU dated 19.9.2011 the plaintiff has defaulted in handing over possession of the portion of

which partition is sought. It is also vehemently argued that the plaintiff is in default of order dated 21.12.2012 whereby he was directed to deposit a sum of Rs. 3.18 crores with the Registrar General of this Court. It is averred that as the plaintiff is in default and for which a contempt petition is also pending no permission can be grated to the plaintiff to rent out the property.

17. The counsel has further submitted that the present relief sought by the plaintiff cannot be granted on principles of res judicata which even apply to applications. Reliance is placed on order of this Court dated 9.10.2013 where a relief of permitting the plaintiff to mortgage/lend/sell the property (other than the first floor) was declined.

18. In rejoinder, the learned counsel for the plaintiff has submitted that order dated 09.10.2013 was directed to be kept in abeyance on 11.11.2013.

19. The admitted position in this case is that as per the order of this Court dated 21.12.2012 the plaintiff is in possession of the suit property other than the first floor. Defendant has in their written statement admitted that the plaintiff has taken a loan of Rs. 6 crores from Indian Bank. The defendant also admits that proceedings under the SARFAESI Act have also been initiated against the plaintiff. In my opinion, it is in the interest of both the parties that the suit property, other than the first floor be permitted to be rented out and the proceeds from the rentals are used for repayment of the dues of the Indian Bank. Admittedly, as per the defendant, a loan from the bank is outstanding. It would be futile to let the suit property lie vacant. A valuable asset can be put to constructive use till appropriate adjudication of the suits which are pending between the parties. Such a step will help in reducing the liability on the property.

20. The plaintiff has made out a prima facie case. Balance of convenience is also in favour of letting out of the property.

21. In view of the above facts, I pass the following directions:-

(a) The plaintiff is permitted to let out the suit property other than the first floor, either floorwise or jointly to one tenant.

(b) The letting shall only be by means of registered lease deed. Prior to execution of the lease deed and handing over physical possession of the suit property or any portion thereof to the tenant, plaintiff shall 10 days before place on record of this Court with an advance copy to the counsel for the defendant to be delivered dasti, the proposed lease deed containing full terms and conditions as are usually agreed upon.

(c) The plaintiff and the proposed tenant shall both also along with the proposed lease deed file an affidavit in Court stating that the proposed lease deed envisages all the terms and conditions agreed upon between the parties and there are no other stipulations or conditions agreed upon.

(d) The maximum period of the lease deed shall be five years.

(e) The proposed tenant shall also give an affidavit undertaking to this Court to vacate the suit property on expiry of the lease.

(f) The rent received by the plaintiff, shall after deduction of Income Tax, property tax etc. be used exclusively for repayment of the dues of Indian Bank. The plaintiff may retain 5% of the rent received for maintenance and other expenses relating to the property subject to a maximum of Rs. 50,000/- per month.

(g) The plaintiff shall file in court appropriate proof, including statement of Indian Bank, to show repayments to the Bank as directed herein, every three months.

(h) In case, the loan of Indian Bank gets exhausted, the amount received as above, shall be deposited in Court.

Application stands disposed of on the above terms.

CS(OS) 5/2012

List on 20th August, 2015 before the Joint Registrar for further proceedings.

