

Shri Nitin Garg vs Sh. Naresh Arora on 13 January, 2012

Author: Indermeet Kaur

Bench: Indermeet Kaur

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Judgment: 13.01.2012

+ C.R.P. 03/2012 & CM No. 783/2012

SHRI NITIN GARG Petitioner.

Through: Mr. Shiv Charan Garg,
Advocate.

Versus

SH. NARESH ARORA Respondent

Through: Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Order impugned before this Court is the order dated 08.09.2011 vide which the application filed by the defendant under Order 7 Rule 11 of the Code of Civil Procedure (hereinafter referred to as the „Code“) seeking a rejection of the plaint had been declined.

2. Contention of the plaintiff was that the prayers as made in the plaint cannot be granted and as such the plaint clearly discloses no cause of action. Perusal of the record shows that the present suit is a suit for permanent and mandatory injunction. There are eight prayers mentioned in the said plaint; they read as under:-

"A. That grant a decree of permanent injunction in favour of the plaintiff and against the defendant thereby restraining the defendants, their agents, labour etc. from demolishing the latrine and bath on the ground floor of the property No. 29/2, Nangia Park, Shakti Nagar, Delhi along with costs of the suit. B. That a decree of mandatory injunction may kindly be passed in favour of the plaintiff and against the defendant, thereby directing the defendant to reconstruct the latrine and bathroom of size 16 X4 at their original position in the premises No. 29/2, Nangia Park, Shakti Nagar, Delhi shown as red colour in the site plan attached with the original suit, immediately in the interest of justice.

C. That the defendants be directed to demolish the wall constructed blocking the door shown in the site plan on the north east portion of the shop. In case the defendants fail to demolish the said door, the same be got demolished by this Hon'ble Court.

D. That the portion shown as open courtyard in the site plan annexed to plaint be directed to be restored as open courtyard and roof covering be directed to be demolished. In case of failure on the part of the defendants to do so, the Hon'ble Court get the same demolished.

E. That the portion shown as toilet/bath be directed to be restored to the original position with length and breadth of 4' X 16' with a door in the bath to the open courtyard and a door in toilet toward the passage. In case the defendants failed to comply with these directions, this may kindly be got done by the Hon'ble Court.

F. That the defendants, their agents, etc. be restrained from interfering with the user by the plaintiff, his servants etc. of the latrine and bath as it existed at the time of inception of tenancy i.e. 16' X 4' with door towards courtyard in the latrine bath portion and also the door towards courtyard in the shop portion.

G. That the defendants be directed to reconstruct the naali which took the water of the shop up to service lane and was running adjoining kitchen portion, bathroom portion. In case the defendants fail to do so, the naali be got constructed in execution of the decree in the presence of Local Commissioner or Bailiff or through such other agency as may be considered appropriate by Hon'ble Court.

H. That any other and further relief as the Hon'ble Court deems fit in the circumstances of the case may also be awarded."

3. The submission of the petitioner that the bar of Section 45 of the Delhi Rent Control Act (hereinafter referred to as the „DRCA“) bars the present suit is an argument without merit; prayers made in the present plaint do not all make reference to the „essential supply of service“ which has been explained in explanation 1 of Section 45 of the DRCA; the averments made in the plaint coupled with the prayers show that all the prayers are not covered within the ambit of this explanation 1. It is settled law that to deal with the application under Order 7 Rule 11 of the Code it is only the averments made in the plaint which have to be read and not the defence set up by the defendant. Cause of action has clearly been deciphered. Impugned order suffers from no infirmity.

4. Dismissed.

INDERMEET KAUR, J JANUARY 13, 2012 A