

Sharvan Aggarwal vs Kailash Rani on 9 January, 2012

Author: Valmiki J. Mehta

Bench: Valmiki J.Mehta

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA No.19/2012

% 9th January, 2012

SHARVAN AGGARWAL Appellant
Through: Mr.J.P.Sengh, Sr. Adv. with
Mr. K.L.Nandwani &
Ms. Ankita Gupta, Advs.

VERSUS

KAILASH RANI Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment dated 14.11.2011 of the Trial Court decreeing the suit of the respondent/landlord under Order 12 Rule 6 CPC, limited to the relief of possession. The suit on the aspect of payments of mesne profits is pending trial and disposal before the Trial Court.
2. The plaintiff/respondent in the plaint pleaded that the suit premises being A-103/7, Wazirpur Industrial Area, Delhi were let out to the appellant/defendant at `51,000/- per month vide rent agreement dated 1.10.2006 for a period of three years. It was pleaded that in spite of the tenancy having expired by efflux of time, the premises were not vacated and therefore the respondent/plaintiff by a notice dated 31.3.2010 terminated the tenancy with effect from 30.4.2010. The subject suit for possession and mesne profits thereafter came to be filed.
3. In a suit for possession of a premises which is outside the protection of Delhi Rent Control Act, 1958, the following three requirements have to be established:-

- i) There is a relationship of landlord and tenant between the parties;
- ii) The rate of rent is more than `3,500/- per month; and
- iii) The monthly tenancy is terminated by means of a legal notice under Section 106 of the Transfer of Property Act, 1882 (hereinafter referred to as „the Act „).

4. In the present case, the premises were originally let out to the appellant/defendant by Sh. K.L.Chawla, who is the late husband of the respondent. It is not disputed that the respondent/plaintiff is one of the legal heirs of late Sh.K.L.Chawla and therefore will succeed as a co-owner to the suit property. The deceased Sh.K.L. Chawla was also survived by his son-Sh. Desh Raj Chawla. It is now settled law, as per the ratio of catena of judgments of the Supreme Court, that a co-owner is entitled to file a suit for possession, unless, it is shown that the other co-owner is objecting to such a suit. It is not an issue in the present case that there is any objection by Sh.Desh Raj Chawla to the subject suit for possession filed by the respondent/plaintiff. An owner of a property is always a landlord and the owner of a property is entitled to receive possession from an unauthorized occupant. Since the respondent/plaintiff is the widow of late Sh. K.L.Chawla, I am of the opinion that the Trial Court has rightly held that there is a relationship of landlord and tenant between the parties.

5. So far as the rate of rent is concerned, though the respondent/plaintiff claimed the rent to be `51,000/- per month, the appellant/defendant claimed that original rent was `11,000/- per month and which was subsequently enhanced to `13,500/- per month. Therefore, even if we accept the stand of the appellant/defendant, the rate of rent is more than `3,500/- per month, and thus the premises are outside the protection of the Delhi Rent Control Act, 1958 and consequently the suit for possession could have been filed terminating the monthly tenancy.

6. So far as the aspect of service of notice terminating tenancy under Section 106 of the Act is concerned, counsel for the appellant/defendant has very strongly argued that the premises in question were let out vide rent agreement dated 17.12.2003 for manufacturing purposes, i.e. for "Steel Hot Rolling etc" and therefore in terms of Section 106 of the Act, such a tenancy can only be terminated by a six months notice, and, since the notice which has been issued in the present case terminating the tenancy was for a notice period of only one month, the same was defective and therefore the suit was pre- mature.

7. I have in the recent judgment reported as M/s.Jeevan Diesels & Electricals Ltd. vs. M/s. Jasbir Singh Chadha (HUF) & Anr. 2011 (182) DLT 402 held that even if it is not proved that a legal notice was served prior to filing of the suit, service of summons of the suit can be taken as a notice under Section 106 of the Act. I have also held in the judgment of M/s.Jeevan Diesels (Supra) that if along with the plaint, copy of the notice is served on the tenant and once again, this can be taken as service of notice. The aforesaid aspects can be taken note of under Order 7 Rule 7 CPC. I have held that Court should take a pragmatic view in view of the legislative intendment as demonstrated by Act 3 of 2003, amending Section 106 of the Act. An SLP against the said judgment being SLP No.15740/2011 has been dismissed by the Supreme Court on 7.7.2011.

8. The argument as raised on behalf of the appellant/defendant that the lease in this case should be held to be for a manufacturing purpose because it is so provided in para 3 of the lease deed dated 17.12.2003, is an argument which I reject inasmuch as the lease deed dated 17.12.2003 is not a registered document, and therefore, the terms of the lease deed cannot be looked into in view of the Section 49 of the Registration Act, 1908. I also do not agree with the argument of the learned senior counsel for the appellant that a letting purpose is a collateral purpose within the expression under Section 49 of the Registration Act, 1908. Surely, the purpose of letting out is very much a main term of a lease deed, and by no stretch of imagination the same can be said to a collateral purpose. I therefore hold that the lease deed dated 17.12.2003 cannot be looked into and once the same cannot be looked into, there is no basis to hold that the lease was created for a manufacturing purpose.

9. Even for the sake of argument if I accept that the lease was created for manufacturing purpose, then applying the ratio of M/s.Jeevan Diesels (Supra), a period of six months has definitely expired since the filing of the subject suit. The subject suit was filed on 1.5.2010, and the appellant/defendant was served in September, 2010, therefore, the appellant/defendant in any case had a six months notice to vacate the premises. Ultimately, which would be the date from which mesne profits would be payable, is an issue which will be gone into by the Trial Court while deciding the issue of mense profits, however for the present, it cannot be said that the suit cannot be decreed so far as the limited relief of possession is concerned.

10. In view of the above, I do not find any merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J JANUARY 09, 2012 ak