

Ram Swaroop Jain & Anr vs Sanjeev Jain on 17 February, 2023

Author: Manmeet Pritam Singh Arora

Bench: Manmeet Pritam Singh Arora

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ RC.REV. 113/2019

RAM SWAROOP JAIN & ANR

..... Petitioner

Through: Mr. Sandeep Mittal and Mr. Ram
Bhakt Aggarwal, Advocate

versus

SANJEEV JAIN

.....

Through: Mr. Rajesh Sharma, Adv
Respondent in person

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% 17.02.2023 Allowed, subject to all just exceptions.

Accordingly, this application is disposed of.

1. This is an application filed by the Applicant/Respondent i.e., the landlord, stating that the Petitioner, tenant herein has not complied with the order dated 08.07.2022 and 02.09.2022 passed by this Court wherein use and occupation charges were fixed at Rs. 50,000/- per month and were held to be payable from 01.06.2019.

2. He states that as per the said order, the tenant herein was directed to pay arrears of rent from June, 2019 to June, 2022, within a period of eight weeks. He states that the said arrears of Rs. 18.50 lakhs have been not been paid till date.

3. He further relies upon the order dated 02.09.2022, wherein the Petitioner undertook to this Court to clear the arrears in accordance with the order dated 08.07.2022.

4. He states that the Petitioner has also defaulted in making payments for the months of July and August, 2022.

5. He states that the tenant has made payment of use and occupation charges only for the months of September, 2022 to January, 2023.

6. He states that this Court in its order dated 08.07.2022 clarified that the stay on eviction order dated 28.11.2018 was subject to the Petitioner making payment of user and occupation charges. He

states that in these circumstances the Respondent, landlord approached the executing court for the issuance of warrants of possession. He states that despite it being an admitted fact that the order dated 08.07.2022 and 02.09.2022 has not been complied with the tenant herein has wrongfully opposed the execution proceedings.

7. Issue notice. Learned counsel for the Petitioner, tenant accepts notice. He does not dispute the aforesaid facts as set out by the Respondent.

8. He relies upon an application bearing CM APPL. 38564/2022 filed by the tenant on 30.08.2022, seeking reduction of the use and occupation charges determined on 08.07.2022. He states that it is on the basis of the pendency of the said application that the Petitioner herein has not complied with the directions of the Court regarding payment of arrears standing at Rs. 19.50 lakhs.

9. In rejoinder, learned counsel for the Respondent states that the said application CM APPL. 38564/2022 was listed before this Court on 02.09.2022 and the Court's directions issued vide order dated 08.07.2022 were reiterated and infact, the Petitioner undertook to comply with the said order. He states that in view of the aforesaid non-compliance, the observation made by this Court on 19.12.2022 that the interim order to continue are interfering in the landlord's right to have the eviction order executed, which was the express intent of the order dated 08.07.2022.

10. This Court has considered the submissions of the parties.

11. The relevant portion of the order dated 08.07.2022 reads as under:

"The present application has been filed on behalf of respondent seeking fixation of use and occupation charges from the date of eviction order dated 28.11.2018 in terms of the judgment of the Hon'ble Supreme Court in the case titled as Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd., (2005) 1 SCC 705. The respondent submits that the premises in question are located in a prominent commercial locality and seeks use and occupation charges @Rs.1,50,000/- per month and in support thereof he relies upon rent deed dated 26.02.2019 which is for shop no. 923, Maliwara, Chandni Chowk, Delhi-6 in the same vicinity. It is pointed out that as per the said rent deed, the rent is Rs.1,50,000/- per month. The respondent has also relied upon the lease deed dated 17.05.2018 for a property just opposite the tenanted premises on the same road in Main Bazar Maliwara i.e. bearing shop no. 1193, Maliwara, Chandni Chowk, Delhi-110006 admeasuring 5.5 sq.yds. in respect of which the rent is stated to be @ Rs. 65,000 per month.

It is pointed out that the dimensions of the present suit are around 140 sq ft. which is about three times the dimensions of the shop in question which is fetching rent of Rs.65,000/- per month.

Keeping in mind the facts and circumstances, the petitioner is directed to pay the use and occupation charges @ Rs.50,000/- per month w.e.f. six months from the date of expiry of the eviction order. Let the same be paid by the petitioner every month before the 7th day of the month

and the arrears be cleared within a period of eight weeks from today.

Let the main petition be listed for final hearing on 19.12.2022.

The stay on the operation of the impugned order dated 28.11.2018 shall continue, subject to the petitioner paying the use and occupation charges as aforesaid."

12. The relevant portion of the order dated 02.09.2022 reads as under:

"There is a typographical error in the order dated 08.07.2022, passed by this Court. It is clarified that the petitioner has been directed to pay the use and occupation charges @ Rs.50,000/- per month w.e.f. six months from the date of passing of the Eviction Order dated 28.11.2018.

Learned counsel for the petitioner assures that the arrears of use and occupation charges will be cleared within the time period granted vide order dated 08.07.2022. He further assures that use and occupation charges @ Rs.50,000/- per month shall be paid on an ongoing basis before the 7th day of every month, till disposal of the present petition. Learned counsel for the petitioner also undertakes that during the pendency of the present petition, the premises in question will not be sub-let and no third party rights whatsoever will be created in respect of the said premises. List on 19.12.2022, the date already fixed."

13. In view of the admitted fact that the Petitioner has not complied with the order dated 08.07.2022 and his undertaking dated 02.09.2022, it is evident from the record that the interim order dated 22.02.2019 stands vacated and the eviction order dated 28.11.2018 has become executable.

14. The Petitioner, tenant admits that there are arrears of Rs. 19.50 lakhs and he is unwilling to pay the said amount.

15. The order dated 08.07.2022 is binding on the Respondent and he undertook to the Court to comply with the same on 02.09.2022. The stand taken by the tenant before the executing court that the stay order dated 22.02.2019 subsists is patently incorrect.

16. In view of the non-payment, the order dated 22.02.2019 is vacated and the tenant is at liberty to execute the eviction order dated 28.11.2018.

17. With the aforesaid clarification, the application is allowed. The execution proceedings may be proceeded with.

18. List on the date already fixed i.e., 26.04.2023.

MANMEET PRITAM SINGH ARORA, J FEBRUARY 17, 2023/msh/aa