

Pritam Kumar Mittal And Ors. vs . Saurabh Tanwar And Anr, Judgement Dt. ... on 29 January, 2022

Pritam Kumar Mittal and Ors. Vs. Saurabh Tanwar and Anr, Judgement dt. 29.1.2022

IN THE COURT OF DISTRICT JUDGE (COMMERCIAL COURT)
NORTH WEST DISTRICT, ROHINI COURTS, DELHI

CS (COMM.)/207/2021
CNR No. DLNW01-002288-2021

1.

Pritam Kumar Mittal S/o Sh. Shyam Sunder Bagri R/o Flat No. 3, Chardham Apartment, Sector 9, Rohini, Delhi-110085.

2. Smt. Surekha Mittal W/o Sh. Arun Kumar Mittal R/o F2-17/18, Sector-1, Rohini, Delhi-110085.

3. Ajay Kumar Mittal S/o Sh. Shyam Sunder Bagri R/o B-10, Shakti Apartment, Sector 9, Rohini, Delhi-110085.Plaintiffs Versus

1. Saurabh Tanwar S/o Sh. Suresh Kumar Tanwar R/o M-18, Guru Harkishan Nagar, Paschim Vihar, Delhi-110087.

Also at:

Shop No.4, Ground Floor, Vaishali, Pitampura, Delhi-110034.

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2. North Delhi Municipal Corporation through The Deputy Health Officer Keshav Puram Zone, A-1, Keshav Puram, near Hathoda Ram Park, Delhi - 110035.Defendants Date of institution : 17.3.2021 Date of arguments : 11.1.2022 Date of judgement : 29.1.2022 SUMMARY JUDGEMENT U/O XIII A CPC

1. By this order I shall dispose of an application for summary judgement under Order 13A CPC filed by the plaintiff.

2. Plaintiff had filed the present suit for possession, recovery of arrears of rent mesne profits and damages. Defendant no.1 filed written statement. Defendant no.2 is MCD, which filed a report in respect of the suit property. After completion of pleadings, plaintiff filed an application under Order 13A CPC praying for summary judgement.

3. Plaintiff's case in brief is that Pritam Kumar Mittal, Smt. Surekha Mittal and Ajay Kumar Mittal are the owners of property bearing no. 4, Vaishali, Pitampur, Delhi-110034 admeasuring 300 sq. yds. and the ownership of the said demised premises was duly transferred in favour of the aforementioned plaintiff, by virtue of three separate sale deeds Pritam Kumar Mittal and Ors. Vs. Saurabh Tanwar and Anr, Judgement dt. 29.1.2022 which are duly registered as Document no. 23455, in Additional Book No.1, Volume No. 3895 on pages 84 to 93 dated 07.10.2003, Document no. 10336 in Additional Book No. 1, Volume No. 1974, on pages 91 to 99 dated 25.08.2008 and Document No. 165, in Additional Book No. 1, Volume No. 120, on pages 50 to 59 dated 26.12.2005/02.01.2006, all with the office of the Sub-Registrar, Sub District No. VI, Delhi respectively.

4. As per plaint, the plaintiffs gave the demised property on rent to the defendant no.1 for a period of 9 years commencing from 10.07.2018 for a monthly rental of Rs.4,51,000/- A lease deed qua the demised property was executed on 27.07.2018 and duly registered on 27.07.2018 with office of the Sub Registrar VI A, New Delhi vide Registration No. 10, 778 un Book No.1 Vol. No. 7, 705 at Pages 84 to

91.

5. It is further averred that thereafter, defendant no.1 was in uninterrupted and sole possession of the demised property until the same was sealed on 24.02.2020 by North MCD (Defendant no.2) under the provision of Section 423 of the DMC Act, 1957 vide order no. DHO/KPZ/2020/2088 dated 20.02.2020 due to faults and illegal acts solely attributable to the defendant no.1, as it transpired that defendant no.1 had not only cheated and made false representation to Pritam Kumar Mittal and Ors. Vs. Saurabh Tanwar and Anr, Judgement dt. 29.1.2022 the plaintiffs that defendant no.1 has all requisite licnese to run his restaurant business but defendant no.1 also hampered and jeopardized the well-being and health of various individuals as defendant no.1 was running his food business in the name of SANKALP RESTAURANT, at the demised property, without obtaining the MUNICIPAL HEALTH TRADE LICENSE.

6. It is further stated that the said factum of the sealing by the Health Department of North MCD of the demised property or about not acceding to request of de-sealing made by the defendant no.1 was informed to the plaintiffs belatedly by defendant no.1. Defendant no.1 had then assured and represented to the plaintiffs that henceforth, defendant no.1 shall not use the demised property for the said business.

7. It is further stated that thereupon after coming to know about the sealing of the demised property by defendant no2, the plaintiff no.1 namely Pritam Kumar Mittal, immediately moved an application dated 16.06.2020, which was duly received on the same date by the concerned office of the North MCD, whereby he in his personal capacity and on behalf of the other plaintiffs, had requested to North MCD for the de-seal of their above mentioned demised property.

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8. It is further stated in the plaint that subsequently the plaintiffs had furnished the requisite documents in the form of Indemnity Bond and affidavits in the prescribed format of North MCD for getting the demised property de-sealed and accordingly, the health department of North MCD de-sealed the demised property vide communication dated 07.08.2020 being no. DHO/KPZ/2020/256.

9. Further averred that key/possession of the demised property was handed over by the MCD officials to the defendant no.1 only as the defendant no.1 was in the sole possession of the demised property and since taking on rent of the demised property the defendant no.1 had put his own locks on the demised property and of which the plaintiffs had no key(s).

10. It is further averred that thereafter, the plaintiffs had approached the defendant no.1 and asked the defendant no.1 to vacate the demised property and return the possession of the same to the plaintiffs after vacating the goods of the defendant no.1 from the demised property. But, defendant no.1 refused for the same and further represented to the plaintiffs that the defendant no.1 shall clear all statutory dues qua the demised property and also pay the pending rental from February 2020 and repeatedly kept assuring the plaintiffs that defendant no.1 shall not, in any circumstances, operate the Pritam Kumar Mittal and Ors. Vs. Saurabh Tanwar and Anr, Judgement dt. 29.1.2022 restaurant business till he gets a valid health license.

11. It is further stated in the plaint that defendant no.1 further informed the plaintiff that the defendant no.1 has already applied to get the health license from North MCD and had further informed the plaintiffs that the defendant no.1 has already been given/issued a provisional certificate and showed some receipt purportedly issued by North MCD but the plaintiffs still refused. Even thereafter, the defendant no.1 then said that he shall not run the business of restaurant till licenses are made available by authorities and that the defendant no.1 would run the business of the restaurant from the demised property only after the defendant no.1 obtains the requisite valid health license from North MCD along with other statutory licenses.

12. It is further averred in the plaint that accordingly, on the repeated assurances of defendant no.1, the plaintiffs bonafidely agreed that the defendant no.1 shall continue with the tenancy of which possession was already with defendant no.1, but it was made clear by the plaintiffs that no restaurant business can be run from the demised property until defendant no.1 gets a valid and requisite health license of North MCD issued in favour of the defendant no.1 and all such other statutory and compulsory licenses and accordingly, no restaurant Pritam Kumar Mittal and Ors. Vs. Saurabh Tanwar and Anr, Judgement dt. 29.1.2022 business was being run by defendant no.1, from demised property till October 2020 but the demised property continued to be in the sole possession of the defendant no.1.

13. It is further averred that thereafter on November 10, 2020, the defendant no.1 approached Pritam Kumar Mittal (plaintiff no.1) on his mobile number from his mobile number (9999903646) and defendant no.1 started negotiating qua the pending rent to which Pritam Kumar Mittal stated that all pending rentals are to be cleared at the earliest and all dues water, electricity, TDS etc. be also cleared on immediate basis. Thereafter, on 13.11.2020 Pritam Kumar Mittal received an SMS

from TATA service provider on his above mentioned mobile that the pending electricity bill from February, 2020 to October, 2020 stood cleared with respect to the demised property.

14. It is further stated in the plaint that subsequently, the plaintiffs came to know that defendant no.1 had falsely represented to the plaintiffs that he shall not run his restaurant from the demised property till he gets a valid health certificate from North MCD and other licenses, but the defendant no.1 had been running his restaurant business from the demised property from second week of November, 2020 without any knowledge or permission of the plaintiffs.

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15. It is further stated that even now despite objections from the plaintiff, defendant no.1 has not vacated the demised property despite repeatedly being asked to vacate the same and further in spite of the fact that the defendant no.1 had not even paid the rent since February 2020. It is apposite to state here that for any restaurant to run, amongst others, the following license are required FSSAI License (Food Safety and Standard Authority of India), Health/Trade License, Eating House License, Shop and Establishment License, Fire Safety License, Certificate of Environment Clearance etc. but it has also come to the knowledge of the plaintiffs that defendant no.1 does not have most of the required statutory licenses to run the restaurant business from the demised property belonging to the plaintiffs.

16. It is further stated that as per the stipulations in the Lease deed dated 27.07.2018 as is evident from Clause 8, that in case of default in payment of rent for successive 02 months, the lease deed stands terminated automatically and no separate information via legal notice is warranted but in spite of that the plaintiffs in their reply dated 26.05.2020 to a malafide and ulterior notice dated 21.05.2020 issued on behalf of the defendant no.1 had categorically asserted that the plaintiffs no longer intend to keep the defendant no.1 as the lessee and that the Lease deed stood terminated w.e.f. 30.05.2020.

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17. It is further stated that although the lease deed stood terminated on 30.05.2020, but the plaintiffs gave another period of 15 days i.e. till 15.06.2020 to the defendant no.1 to vacate the demised property but the same has not been complied with till date. It is imperative to state here that though the Lease deed dated 27.07.2018 was terminated vide reply issued on behalf of the plaintiffs dated 26.05.2020 vide Para 14 but, however, still one more time the defendant no.1 was successful in alluring and befooling the plaintiffs by his repeated false representations that defendant no.1 has applied for getting the requisite licenses and certificates and the same is in process and that the defendant no.1 shall obtain all of the afore mentioned and other licenses and it is in these premises that the plaintiffs allowed the defendant no.1 to continue the tenancy on the same terms and conditions as enumerated in the lease deed dated 28.07.2018.

18. It is further averred that defendant no.1 had earlier issued a frivolous and vexed notice dated 21.05.2020 to the plaintiffs calling upon the plaintiffs to return the 3 months security deposit

besides returning articles etc. or in the alternative to compensate the defendant no.1 for a sum of Rs.2,50,00,000/□ Another sum of Rs.17,50,000/□ was also claimed towards the cost of the franchise fee Pritam Kumar Mittal and Ors. Vs. Saurabh Tanwar and Anr, Judgement dt. 29.1.2022 and another sum of Rs.50,00,000/□ for the alleged loss of business and goodwill.

19. It is further stated that the plaintiffs duly replied to the notice dated 21.05.2020 by issuing a reply dated 26.05.2020 and the plaintiffs also terminated the lease deed vide its reply dated 26.05.2020 as well as called upon the defendant no.1 to pay the outstanding rentals as also the outstanding statutory dues qua the demised property in question.

20. It is further averred that in the premises mentioned above, since it became rather apparent that defendant no.1 is habitual in cheating and making false representations to the plaintiffs and hence, the plaintiffs were left with no other alternative but to terminate the tenancy/lease which stood terminated with effect from 31.12.2020 thereby giving defendant no.1, a clear cut period of 15 days' notice to vacate the demised property, which period was to commence and to run from 15.12.2020. In view of the above, defendant no.1 was issued a legal notice dated 14.12.2020 and called upon to vacate and hand over the possession of the demised property to the plaintiffs on 01.01.2021 but the plaintiffs have rather shown extreme benevolence and permitted the possession of the demised property on 16.01.2021 by giving yet another extension of 15 days to hand over the actual and Pritam Kumar Mittal and Ors. Vs. Saurabh Tanwar and Anr, Judgement dt. 29.1.2022 vacant physical possession of the demised property.

21. It is further stated that vide the aforesaid notice of the plaintiffs dated 14.12.2020, the plaintiffs also sought and demanded outstanding rent, damages and other charges, it is stated that in terms of Clause 8 of the Lease deed dated 27.07.2018, since no rent was paid from February 2020, the lease deed dated 27.07.2018 stood automatically cancelled in 01.04.2020 on account of non□payment of rent for 2 successive months and thereupon the defendant no.1 came to be in illegal possession of the demised property and is a trespasser in the demised property from 16.06.2020 i.e. 15 days after 30.05.2020 whereby the lease deed stood terminated. Therefore, in terms of Clause 20 of the Lease deed dated 27.07.2018, the defendant no.1 is liable to pay to the plaintiffs agreed upon damages of Rs.30,000 per day from 16.06.2020 till the date of handing over the actual and vacant possession of the demised property to the plaintiffs but for the purpose of the notice dated 14.12.2020. the period for seeking damages had been claimed from 16.06.2020 to 08.12.2020.

22. Defendant no.1 filed written statement. In para 3 and 4 of preliminary submissions, the defendant no.1 admitted having executed the lease deed in question and it was stated that on the plaintiffs' undertaking to provide and facilitate in structural and civil requisites Pritam Kumar Mittal and Ors. Vs. Saurabh Tanwar and Anr, Judgement dt. 29.1.2022 such as installation of water tank and furnishing significant documents. It is further stated that the defendant invested a handsome amount of Rs.2,50,00,000/□ for renovating the property in feasible condition, fittings, fixtures, air□conditioners, mercantiles etc. Defendant also invested Rs.17,50,00,000/□ towards franchise of the restaurant brand.

23. In para 5 of the preliminary submissions in WS, it is stated that on visiting the Municipal Office, defendant no.1 came to know that there were previous outstanding dues on the suit property towards conversion, parking charges, water bills. For issuance of licenses, all these dues were required to be cleared. The defendant no.1 was further required to submit documents such as property tax receipts, site plan, completion certificate etc..

24. In para 6 of preliminary submissions, it is stated that defendant requested the plaintiff for clearing the outstanding civic dues so that requisite licenses could be issued to defendant no.1. But defendant did not clear the aforesaid conversion, dues etc.. Therefore, North Delhi Municipal Corporation (Keshav Puram Zone) sealed the suit property on 24.2.2020.

25. In para 10 & 11 of preliminary submissions of WS, it is stated that plaintiff with an intention to lease out the suit property to a third Pritam Kumar Mittal and Ors. Vs. Saurabh Tanwar and Anr, Judgement dt. 29.1.2022 party compelled defendant no.1 to surrender the symbolic possession of the suit property in favour of plaintiff and to hand over a set of keys of the suit property. Therefore, defendant no.1 surrendered the symbolic possession to the plaintiff.

26. In para 12 of preliminary submissions, it is stated that defendant agreed to hand over the physical possession subject to the return of the security amount deposited at the time of execution of the lease deed dated 27.7.2018 and post dated cheques were issued with respect to the rent after removal of goods, furniture etc..

27. In para 13 of preliminary submissions, it is stated that despite peaceful hand over of the symbolic possession, the plaintiff through legal notice is forcing the defendant no.1 to break open the lawful seal imposed by defendant no.2 (i.e. North Delhi Municipal Corporation) and vacate the property.

28. In para 14 of preliminary submissions, it is stated that in the month of June 2020, plaintiff submitted requisite documents with defendant no.2 with request to de-seal the property. Defendant no.2 vide its communication dated 7.8.2020, called the plaintiff and defendant no.1 to be present in person for de-sealing the suit property on 8.8.2020. In para 16 of preliminary submissions, it is stated that after de-sealing of the suit property, when the defendant no.1 was Pritam Kumar Mittal and Ors. Vs. Saurabh Tanwar and Anr, Judgement dt. 29.1.2022 trying to remove his belongings, plaintiff caused hindrance with an intention to evade the liability from refunding the security deposit. In para 17 to 20, it is stated that defendant no.1 agreed with plaintiff to renegotiate the terms and conditions of continuation of tenancy and plaintiff offered not to claim any kind of dues till November 2020 with the condition that defendant no.1 must re-apply for requisite license. Therefore, defendant no.1 started stacking further stocks and goods and re-applied for license before the concerned authorities and requested the plaintiff to provide the required documents but defendant did not provide any document nor paid any pending dues.

29. In para 21 of preliminary submissions, it is stated that in order to avoid the closure of business, defendant no.1 cleared electricity dues till November 2020, though plaintiff was required to clear the same.

30. In para 22 of preliminary submissions, it is stated that the impugned lease deed dated 27.7.2018 ceased to be effective due to renegotiation of terms and surrender of symbolic possession of property in the month of February 2020. Further, at the time of de-sealing the property on 8.8.2020, the key and the possession of the suit property was handed over by defendant no.2 to the plaintiff.

31. In para 23 and 24, it is stated that plaintiff started forcing to enhance the rent and consequently, in view of likelihood of re-sealing Pritam Kumar Mittal and Ors. Vs. Saurabh Tanwar and Anr, Judgement dt. 29.1.2022 of suit property, defendant no.1 served a legal notice dated 7.1.2021 calling upon the plaintiff to furnish necessary documents and compliance of assurances made during negotiation.

32. In reply on merits, the defendant no.1 repeated the aforesaid preliminary submissions. He admitted the lease deed dated 27.7.2018 for a period of 9 years. He has nowhere specified in the written statement as to how much rent has been paid by him. In the written statement itself, defendant no.1 raised a counter claim praying for passing a decree in the sum of Rs.2,67,50,000/- which included the amount of infrastructure and investment incurred for development of restaurant in the suit property and a sum of Rs.17,50,000/- paid to franchise owner of restaurant. He also claimed Rs.1 crore as damages and compensation for loss of business.

33. I may clarify here that the counter claim, which is filed without court fee, is beyond the pecuniary jurisdiction of this court and therefore, this court cannot entertain the same.

34. Summons of suit were also issued to defendant no.2 i.e. North DMC. Instead of filing a proper written statement, a report was filed by defendant no.2. Ld. Counsel for defendant no.2 submitted that North DMC is not the party to the dispute and therefore, only a report is being filed. I am reproducing the report as under :

Pritam Kumar Mittal and Ors. Vs. Saurabh Tanwar and Anr, Judgement dt. 29.1.2022 "In the above mentioned case, it is respectfully submitted that as per records, during the routine inspection on 16.12.2019, the trade of Eating House with 86 seats under the name and style of M/s Sankalp Restaurant was found running at the upper ground floor of the property in question. Since, the trade is running without having Municipal Health Trade License and also under insanitary & unhygienic condition, a show cause notice vide no. DHO/KPZ/2019/1712 dated 18.12.19 was issued to M/s Sankalp Restaurant. After following the due process of law, the Restaurant was sealed on 24.02.2020. The owner and the tenant have applied for de-sealing. Their application was processed and under the orders of competent authority, the property was de-sealed on 08.08.20 subject to the condition that no trade will run in the premises without obtaining Municipal Health Trade License.

Further, on a complaint the property was inspected on 24.12.20. During the inspection, it was found that the same trade is running without obtaining Municipal Health Trade License. As such, a show

cause notice dated 28.12.20 was served and after following due process of law, the property in question was again sealed on 03.03.21. The property was inspected on 27.08.21 and during the inspection the seal affixed by the department was found intact.

Submitted please.

Dr. Nageshwar Marandi Dy. Health Officer Keshav Puram Zone"

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35. In view of the aforesaid pleadings, the plaintiff filed an application under Order 13A CPC. Notice of this application was given to defendant no.1 and plaintiff filed its reply. Arguments on the application were heard.

36. Perusal of pleadings shows that plaintiff had rented the suit property to defendant no.1 for a period of 9 years commencing from 10.7.2018 at a monthly rental of Rs.4,51,000/□vide a duly registered lease deed (Annexure B). I would like to reproduce Clause 17 of the lease deed as under :

"That prior to execution of this agreement, the LESSEE will apply & obtain the all the relevant permission(s)/approvals for the smooth functioning of his business in the said demised Premises at his own level & expenses and will also get the same renew from time to time (if required)."

37. Therefore, there is no substance in the arguments of defendant no.1 that the responsibility for seeking permissions and approvals was upon plaintiff. As per para 30 of the plaint, the plaintiff had sent a legal notice dated 14.12.2020 (Annexure L) terminating the tenancy, claiming he vacant possession of the suit property and arrears of rent and dues. In para 19 on reply on merits of WS, defendant has not denied having received the said notice rather he stated that he had Pritam Kumar Mittal and Ors. Vs. Saurabh Tanwar and Anr, Judgement dt. 29.1.2022 given symbolic possession of the suit property in the month of February 2020 and thereafter, defendant no.2 handed over the key of the suit property to plaintiff on 8.8.2020. He has not placed on record any document to show that he had delivered symbolic possession of the property to the plaintiff in February 2020. In para 8 of the plaint, it is mentioned that the property was de□sealed by North MCD on the efforts of the plaintiff. In para 5 of the reply on merits of written statement, this fact has not been specifically denied.

38. However, despite this fact, the defendant no.1 did not procure requisite licenses/approvals and continued to run the business. As per report of MCD reproduced above, the property was inspected on 24.12.2020 and it was found that same trade is running without obtaining Municipal Health Trade License. Therefore, a show cause notice dated 28.12.2020 was served and property was sealed again on 3.3.2021. The defendant no.1 has not been able to convince as to when the responsibility to take necessary license was upon him in terms of condition no.17 reproduced above, why he did not take the necessary license for running the restaurant. Defendant has not placed anything on record

that he has paid the arrears of rent to plaintiff. The case of defendant is that he had invested a lot of money in the business, infrastructure and the building but no details of the Pritam Kumar Mittal and Ors. Vs. Saurabh Tanwar and Anr, Judgement dt. 29.1.2022 same have been placed on record. Second plea is that goods of defendant no.1 are lying in the premises. This plea is of no value.

39. Defendant no.1 further submits that the plaintiff wants to get the premises desealed under the garb of court order. I am of the opinion that the possession of the suit property can be delivered to plaintiff even without an order of de sealing.

40. It is specifically mentioned in para 15 to 19 of the preliminary submissions that the defendants stocks and goods were stacked by him in the premises. Therefore, it is clear that the defendant no.1 continues to be in possession of the suit property, though it has been sealed by MCD.

41. In view of the above discussions, I am convinced that the defendant has no real prospect of successfully defending the claim in respect of the plaintiffs prayer of possession. Therefore, there is no compelling reason why the claim in respect of recovery of possession should not be decreed.

42. In view of the termination of the lease by the plaintiff for non payment of rent, I pass a decree of possession in favour of plaintiffs and against defendant no.1 directing him to hand over the possession of the suit property bearing no. 4, Vaishali, Pitam Pura, Delhi-110034 measuring 300 square yards to the plaintiffs, which is more specifically Pritam Kumar Mittal and Ors. Vs. Saurabh Tanwar and Anr, Judgement dt. 29.1.2022 shown in red colour in the site plan annexed as Annexure-1. It is made clear that nothing stated herein shall authorize plaintiffs or defendant no.1 to break open the seal of MCD. The plaintiffs are at liberty to seek the legal remedy for de sealing the suit property in accordance with applicable rules and law. If the suit property is de sealed by defendant no.2, the same shall be delivered to plaintiffs. It is clarified that the suit property would be deemed to be in de jure possession of the plaintiffs from the date of this judgement. Whenever defendant no.2 intends to de seal the property, it will give a notice to defendant no.1. In such case defendant no.1 would be at liberty to take out his goods from the suit premises on the day of de sealing.

43. Plaintiffs have claimed arrears in the sum of Rs.90,78,642/- to the plaintiffs as arrears of rent, damages, TDS amounts etc.. However, bifurcation of the same has not been given in the plaint. Therefore, the suit in respect of the arrears of rent etc. will continue.

44. Application under Order XIII A CPC is accordingly partly allowed. Decree sheet be drawn.

Announced in the open court on 29.1.2022.

(Vinod Kumar) District Judge (Commercial Court) North West District Rohini Courts, Delhi