M/s. Precision Steels Vs Reeta Salwan

Court: Delhi High Court

Date of Decision: Nov. 27, 2013

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 11 Rule 1, Order 11 Rule 2, Order 12 Rule 6, Order 6 Rule 6, Order 8 Rule 2
Evidence Act, 1872 â€" Section 92
Transfer of Property Act, 1882 â€" Section 106, 111

Citation: (2014) 2 AD 472 : (2013) 205 DLT 695

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Chetan Sharma and Ms. Sangmitra Sawant, for the Appellant; Sanjiv Sindhwani and Mrs. Renuka Arora and Mr. Kunal Kohli, for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Sahai Endlaw, J.
The appeal impugns the judgment and decree (dated 8th November, 2013 of the Court of Additional District

Judge (ADJ)-06, West District, Tis Hazari Courts, Delhi in CS No. 139/2012 filed by the respondent/plaintiff) on admissions, of ejectment of the

appellant from property No. 104, Rewari Line Industrial Area, Phase I, also known as Mayapuri Industrial Area, Phase-I, New Delhi, earlier in

the tenancy of the appellant under the respondent/plaintiff. Though this is a first appeal and comes up for the first time today but since the counsel

for the respondent/plaintiff has appeared on caveat and this being a dispute between the landlord and tenant regarding vacation of the premises, the

law whereon, owing to long history and plethora of such litigations, stands crystallized and since copies of the entire trial court record have been

filed along with the memorandum of appeal, with consent, the counsels have been finally heard on the appeal.

2. The respondent/plaintiff instituted the suit from which this appeal arises, pleading:

(i) that the respondent/plaintiff is the lessor/owner of the property to the extent of 1/3rd share therein;

(ii) that the appellant/defendant no. 1 M/s. Precision Steels, a partnership firm of the defendants No. 2 to 5 Sh. Deepak Bhasin, Smt. Sarita

Bhasin, Sh. Anshuman Bhasin and Sh. Gagan Bhasin (against whom also decree for possession has been passed but who have not joined in filing

of the appeal and who are also not impleaded as respondents) had approached the respondent/plaintiff to lease/let out 2700 sq. ft. of covered area

and open space measuring 864 sq. ft. as well as a garage room measuring 20" X 16" and the respondent/plaintiff agreed to let out the said 1/3rd

portion of the said industrial property to the defendants;

(iii) that the respondent/plaintiff through her attorney Ms. Anusuya Salwan inducted the defendants as the tenant in respect of the said portion of the

property on the monthly rent of Rs. 30,000/- vide registered Lease Deed dated 15th February, 2007 for a period of six years expiring with the

expiry of 14th February, 2013;

(iv) that the period of lease/tenancy expired by the efflux of time on 14th February, 2013 but the defendants did not hand over possession of the

property;

(v) that the possession of the defendants of the property with effect from 15th February, 2013 was thus illegal and unauthorized;

(vi) that the respondent/plaintiff vide notice dated 14th January, 2013 had asked the defendants to hand over possession of the property on the

expiry of lease on 14th February, 2013, failing which the defendants were informed that they shall be liable to pay mesne profits/damages for use

and occupation;

(vii) that the defendants had been irregular in the payment of rent and rent for the period from 15th November, 2012 to 14th February, 2013 of

Rs. 90,000/-, was in arrears.

Accordingly, the suit for the relief of recovery of possession of the tenanted premises, recovery of Rs. 90,000/-on account of arrears of rent and

for direction to issue certificates of deduction of tax and for mesne profits/damages, was filed.

3. The appellant, along with its partners aforesaid, contested the suit by filing a written statement, on the grounds:

(a) that the suit was not maintainable as it was pleaded, that the power of attorney in favour of Ms. Anusuya Salwan who had let out the property

as the attorney of the respondent/plaintiff and who had also instituted the suit and signed and verified the plaint, had been revoked by the

respondent/plaintiff;

(b) that the property aforesaid was an ancestral property and the respondent/plaintiff was a joint owner of 1/3rd portion of the same, with her son,

who was the owner of remaining 2/3rd portion of the entire property; however pursuant to the death of the son of the respondent/plaintiff, no

details had been provided with respect to the person in ownership and possession of the said 2/3rd portion of the property;

(c) that no particulars as to how the respondent/plaintiff was the owner of 1/3rd portion of the property had been pleaded and no document of

ownership had been filed;

(d) that since 1/3rd share of the respondent/plaintiff was undivided, a proceeding for recovery of possession required the consent of the other co-

owners who were necessary parties to the suit;

(e) that the appellant had initially entered into a Lease Deed dated 24th January, 1992 with the respondent/plaintiff for the portion of the property

in its occupation; the said Lease Deed was renewed several times and last on 15th February, 2007;

(f) that in terms of the Lease Deed dated 15th February, 2007, the period of the lease could be extended by mutual consent for another three

years through a separate lease deed;

(g) that even after the expiry of the Lease Deed dated 15th February, 2007, there had been an understanding between the respondent/plaintiff and

the appellant that the appellant shall continue in possession of the demised premises as tenant till the time the appellant wants to and the tenancy

was at will;

(h) that the respondent/plaintiff acting with mala fide intention had got the suit filed for the purpose of harassing the appellant and for making

wrongful gains for herself;

(i) that the Court should examine the respondent/plaintiff under Order 10 of the CPC (CPC), 1908 in order to examine as to whether the special

power of attorney dated 12th November, 2003 had been revoked and whether the respondent/plaintiff had authorized her attorney to file the

present suit; the said examination of the respondent/plaintiff was necessary in view of the law laid down by the Supreme Court in Janki Vashdeo

Bhojwani and Another Vs. Indusind Bank Ltd. and Others, to the effect that attorney cannot depose or give evidence on the basis of facts within

the personal knowledge of the principal;

(j) denying that the respondent/plaintiff was the lessor/owner of the property;

(k) that on the request of the respondent/plaintiff, the rent was being paid to her attorney due to internal arrangement between the

respondent/plaintiff and her attorney and the appellant had so paid the rent to the attorney;

(l) that since the power of attorney in favour of the attorney Ms. Anusuya Salwan had been cancelled and the respondent/plaintiff had not herself

demanded possession, the appellant was not liable to deliver possession;

(m) denying that the appellant was liable to pay mesne profits/damages.

4. The respondent/plaintiff filed an application under Order 12 Rule 6 of the CPC for a decree for ejectment/possession on admissions. Reply

thereto was filed on behalf of the appellant.

5. The appellant filed an application under Order 11 Rules 1 & 2 of the CPC for a direction to the respondent/plaintiff to reply to the interrogatory

annexed to the said application.

6. The learned ADJ has by the impugned judgment and decree, allowed the application of the respondent/plaintiff under Order 12 Rule 6 of the

CPC, finding/observing/holding:

(I) that the appellant had not disputed the execution of the registered Lease Deed dated 15th February, 2007;

(II) that a bare perusal of the said Lease Deed showed that the said Lease Deed was executed by the respondent/plaintiff through the same

attorney who had filed the suit and signed and verified the plaint;

(III) that the said Lease was for a period of six years which was extendable by mutual consent for another three years through separate lease deed;

(IV) that Clauses 20 & 21 of the Lease Deed made it clear that the expression "lessor" used in the Lease Deed, would mean the attorney of the

respondent/plaintiff and all the correspondence pertaining to the lease shall be made by the attorney only;

(V) that the appellant had not challenged any clause of the Lease Deed either during the subsistence of the Lease Deed or even thereafter;

(VI) that thus the relationship of landlord and tenant was established between the parties;

(VII) that though the appellant had pleaded that the power of attorney in favour of the attorney had been revoked but neither in the written

statement nor in the reply to the Order 12 Rule 6 application, the appellant had stated that as to when it came to know about this fact and when the

power of attorney was revoked as per its knowledge;

(VIII) that the respondent/plaintiff had filed on record number of cheques issued by the appellant in the name of the attorney of the

respondent/plaintiff towards payment of rent with the last of the said cheques being dated 15th August, 2012 and which showed that the appellant

never disputed the status of the attorney of the respondent/plaintiff;

(IX) that merely by raising a vague plea, the appellant cannot dispute the jural relationship of landlord and tenant which stood established from the

registered Lease Deed admitted by the appellant also;

(X) that it was also not in dispute that the rent was more than Rs. 3,500/- per month and that the tenanted premises was outside the Delhi Rent

Control Act, 1958;

(XI) that the respondent/plaintiff had along with the suit filed copy of the legal notice dated 14th January, 2013 along with original postal receipts

and courier receipts;

(XII) that though the appellant had taken a plea of an understanding between the parties, after the expiry of the Lease Deed, that the tenancy shall

be in the form of ''tenancy at will'' but in view of written and registered Lease Deed, the said defence was not admissible in evidence; Clause 2 of

the Lease Deed expressly stated that the lease was for a period of six years and the period may be extended by mutual consent for another three

years through a separate lease deed; admittedly, no fresh lease deed had been executed;

(XIII) that the lease stood determined with efflux of time on 14th February, 2013 and no notice of termination of tenancy was required under law;

(XIV) that even if it were to be held that service of a notice on termination of tenancy was essential, the Supreme Court in Nopany Investments (P)

Ltd. Vs. Santokh Singh (HUF), had held that filing of the suit is itself a notice to quit on the tenant and therefore, no notice to quit, u/s 106 of the

Transfer of Property Act, 1882 is necessary to enable the landlord to get the decree for possession. Reliance in this regard was also placed on the

judgment of this Court in Jeevan Diesels and Electricals Ltd. Vs. Jasbir Singh Chadha (HUF) and Another,

(XV) that the plea of the appellant of the property being a joint property and the respondent/plaintiff having only 1/3rd share therein, was also

without any merit as even a single co-owner could file and maintain a suit for ejectment against the tenant.

7. Before noticing the contentions of the appellant in this appeal, I may state that as aforesaid, the partners of the appellant were impleaded as

defendants No. 2 to 5 to the suit but they have neither joined in this appeal as appellant nor have been impleaded as respondents. All the parties to

the suit are required to be parties to the appeal and the appeal is defective for this reason alone.

8. I may further record that though the appellant who was the defendant No. 1 in the suit was in the plaint described as a partnership firm of the

defendants No. 2 to 5 and this fact was not disputed in the written statement but in the memorandum of parties of this appeal, the appellant is

described as having its registered office and represented by its Managing Director, Sh. Deepak Bhasin who was defendant No. 2 in the suit. The

expressions ''registered office'' and ''managing director'' are used in the context of an incorporated company under the Companies Act, 1956 and

not in the context of a partnership firm. The name of the appellant is described as M/s. Precision Steels only without the suffix of ''limited'' or

''private limited'' and there is thus an anomaly in the memorandum of parties to this appeal.

9. The senior counsel for the appellant has started his argument by contending that the learned ADJ has erred in relying upon the judgment of this

Court in Jeevan Diesels & Electricals Ltd. Supra, which has been overruled by the Supreme Court in the judgment by the same name reported as

Jeevan Diesels and Electricals Ltd. Vs. Jasbir Singh Chadha (Huf) and Another, .

10. There is however no merit in the said argument.

11. The learned ADJ has relied upon the judgment of this Court in Jeevan Diesels & Electricals Ltd. supra to hold that even if a notice of

termination of tenancy was required to be issued and had not been issued, the same would be irrelevant since the tenancy even if not terminated by

a notice of termination, stands terminated on the filing of the suit. However, this was only an alternative reasoning given by the learned ADJ. The

first reasoning was that the lease in the present case being for a definite period under a registered lease deed, which had expired by efflux of time,

no termination by a notice was needed.

12. It is not in dispute that the registered Lease Deed dated 15th February, 2007 was, as per Clause 2 thereof, ""for a period of six years (the

period) w.e.f. 15th February, 2007 and expiring on 14th February, 2013 (both days inclusive)"". Section 111 of the Transfer of Property Act lists

several modes of determination of lease, one of which is by efflux of time limited thereby and another is on the expiration of a notice to determine

the lease given by one party to the other. The suit was filed on the plea of the determination of the lease by efflux of time and which plea was not

disputed. The notice dated 14th January, 2013 pleaded was only by way of reminder to the appellant tenant of its obligation to so vacate the

premises. Thus, the overruling by the Supreme Court of the judgment of this Court in Jeevan Diesels & Electricals Ltd. supra is of no avail.

13. Moreover, the judgment of this Court in Jeevan Diesels & Electricals Ltd. supra was relied upon by the learned ADJ to observe that the

tenancy stands terminated on the filing of the suit. It was not as if, this Court in Jeevan Diesels & Electricals Ltd. supra had laid down the said

principle for the first time. In fact, the said principle was laid down by the Supreme Court in Nopany Investments (P) Ltd. supra. The senior

counsel for the appellant agrees that the Supreme Court while overruling the judgment of this Court in Jeevan Diesels & Electricals Ltd. supra has

not held the said proposition by law to be bad and has not even adverted to the earlier judgment in Nopany Investments (P) Ltd. supra. A

judgment is a precedent, not on its facts but on the ratio laid down therein.

14. The senior counsel for the appellant faced with the aforesaid has not pressed this argument further and has moved on to his next contention.

15. The second and only other contention of the senior counsel for the appellant is that the learned ADJ has shown undue haste in passing a decree

for ejectment on admissions without trial. It is contended that a reading of the written statement of the appellant does not show any admission

having been made; on the contrary, the appellant has taken the plea of, (A) tenancy being at will; (B) power of attorney of the attorney of the

respondent/plaintiff having been cancelled; (C) oral understanding between the parties; (D) the respondent/plaintiff being not the owner of the

property. Reliance in this regard is placed on Smt. Radha Lal Vs. M/s. Jessop and Company, Muthukaruppan @ Velayutham Vs. Deivathediya

Pillai, Herieditary Trustee and Poojari of Arulmighu Sree Vembadi Sudalaimadasamy, Shree Patchiamman Temple and Shree Deivathadaiya Pillai

Tomb, and Himani Alloys Ltd. Vs. Tata Steel Ltd., . It is argued that the appellant ought not to be so summarily ejected from the premises in its

tenancy since the year 1992, without trial.

16. Such arguments are usually made by counsels for tenant, to delay/defer the evil day of leaving the premises in their occupation, knowing fully

well that once a matter is put to trial, the Courts being burdened with matters several times more than their capacity, trial takes long.

17. It is not as if the CPC requires all matters to be decided only after trial, unless admissions are made. Order XIV of the CPC requires the Civil

Court, after the pleadings have been completed, to frame issues. Such issues are to be framed on material propositions of law or fact which a

plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. Order XV of the CPC prescribes

the course of action to be followed where the parties are found not at issue on any question of law or of fact and requires the Court to at once

pronounce judgment.

18. I have thus put to the senior counsel for the appellant/defendant, whether not, irrespective of whether admissions had been made by the

appellant/defendant or not, the Court is entitled to see whether the pleas aforesaid of the appellant raised any material proposition of law or fact in

order to constitute a defence and if not, whether the Court is not entitled to pass a decree even under Order XV of the CPC.

19. Attention of the senior counsel for the appellant is also invited to Abdul Gafur and Another Vs. State of Uttarakhand and Others, T.

Arivandandam Vs. T.V. Satyapal and Another, and the Division Bench judgment of this Court in P.P.A. Impex Pvt. Ltd. Vs. Mangal Sain Mittal,

laying down that if on a meaningful, not formal reading, the pleading is found to be manifestly vexatious and meritless, not disclosing a right to sue

or defend and implausible, the court should exercise its powers and should not allow it to create an illusion and such defences should not be

needlessly permitted to go to trial. It was enquired, whether mere clever drafting by Advocates can compel the Courts to put the suit to trial and

whether not the court is entitled to not see through and clear the maze sought to be raised and see what the real defence is.

20. No answer has been forthcoming from the senior counsel for the appellant/defendant who merely keeps repeating that the suit should be put to

trial.

21. I will in the aforesaid light, proceed to consider whether the pleas aforesaid of the appellant/defendant raise any issue of law or fact.

22. As would be apparent from the narrative of the written statement of the appellant/defendant, the appellant/defendant has not denied the

registered Lease Deed dated 15th February, 2007. The same has been executed by the respondent/plaintiff through the same attorney who has

instituted the suit and signed and verified the plaint on behalf of the respondent/plaintiff. The senior counsel for the appellant/defendant also admits

that the rent till the end was paid to be respondent/plaintiff through the same attorney.

23. It has as such been enquired as to on what basis/fact/development the plea, of Ms. Anusuya Salwan being no longer the attorney of the

respondent/plaintiff, has been taken. No particulars have been given in the written statement. The senior counsel for the appellant is unable to even

today inform the basis on which the plea, of the power of attorney having been cancelled, has been taken.

24. It is thus clear that the plea of cancellation by respondent/plaintiff of power of attorney is a vague plea, merely to put the respondent/plaintiff to

proof. A pleading is to contain material particulars and denial has to be specific (Order VI and Order VIII Rules 2 to 5) and not evasive. When the

appellant/defendant entered into lease deed with respondent/plaintiff through same attorney and dealt in relation to tenancy premises till institution

of the suit with the respondent/plaintiff through the same attorney, for the appellant/defendant to plead cancellation of power of attorney, the

appellant/defendant was required to plead knowledge of such cancellation, else the said plea would not be considered material, so as to invite an

issue. I have recently in Kawal Sachdeva Vs. Madhu Bala Rana and Others dealt in detail on the said subject and thus do not feel the need to

elaborate further.

25. I may notice that the appellant/defendant in its written statement, in para 9, has in fact by pleading as under:

9. That acting with malafide intention, the Plaintiff through its alleged Power of Attorney Holder has got the present suit filed against the Defendants

for the purpose of harassing the Defendants and for making wrongful gains for herself.

admitted that the power of attorney was valid till the institution of the suit.

26. As far as the plea, challenging the ownership of the respondent/plaintiff is concerned, it is the settled position in law that in a suit between a

landlord and tenant, it is only title as landlord which is relevant and not the title as owner. As far back as in Sri Ram Pasricha Vs. Jagannath and

Others, it was held that under the general law, in a suit between landlord and tenant, the question of title to the lease property is irrelevant. Recently

also in State of A.P. and Others Vs. D. Raghukul Pershad (D) by L.Rs. and Others, it was held that relief of eviction of a tenant is not based on

the title of the landlord to the leased premises and even if an averment to the said effect, of landlord being owner, is made in the plaint, as long as

no relief of declaration of title is claimed and only the relief of eviction of tenant on the ground that lease has come to an end is claimed, the Court is

not called upon to decide the question of title.

27. I have enquired from the senior counsel for the appellant/defendant as to how, the plea of the tenancy being at will, arises when the admitted

registered lease deed is for a definite term expiring on 14th February, 2013. Section 92 of the Indian Evidence Act, 1872 bars admission into

evidence of any plea contradicting or varying the terms of any contract required by law to be reduced in the form of a document and which

document has been proved in accordance with law. The registered lease deed by admission stands proved, the appellant cannot seek to go to trial

to contradict the terms thereof.

28. Yet again, no answer is forthcoming.

29. The same is the position with respect to the plea of lease having been extended by mutual consent after the expiry of term thereof on

14.02.2013. It is worth mentioning that the suit from which this appeal arises was instituted on 05.03.2013. No particulars have been given as to

when the extension was agreed and between whom and why no lease deed was executed as was agreed to be executed in the event of parties

mutually agreeing.

30. As far as the judgments relied upon by the appellant/defendant are concerned, they are of a bygone era and the appellant/defendant

intentionally chooses to ignore the recent trend of judgments, and which practise is not expected from the senior counsels of this Court.

31. The senior counsel for the appellant/defendant, after having failed to convince this Court, stated that time of two years be granted to the

appellant to vacate the premises. It is stated that the appellant is willing to give an undertaking to this Court to the said effect.

32. The senior counsel for the respondent/plaintiff at the outset stated that the appellant being in arrears of rent of even the admitted amount, is not

entitled to any discretion. He also contended that the respondent/plaintiff has let out the adjoining portion of the property of nearly the same size at

a rent of Rs. 1,50,000/- per month and would consider the request for grant of time only if the appellant is willing to pay mesne profits/damages for

use and occupation for such time on the prevalent market rate.

33. The matter was thus passed over to enable the counsel for the appellant to take instructions.

34. The counsel for the appellant has however informed that the appellant is not willing to the aforesaid. Resultantly, the appeal is dismissed on

merits, leaving the parties to bear their own costs.

Decree sheet be drawn up.