

(2006) 05 DEL CK 0232

Delhi High Court

Case No: Regular First Appeal 842 of 2005 and 36 and 301 of 2006

Orphic Resorts Ltd.

APPELLANT

Vs

CMDE. I.K. Malhotra and Others

 Usha (India) Ltd. Vs CMDE

I.K. Malhotra and Others

Usha Microprocess Controls Ltd.

Vs Mrs. Raj Malhotra and Others

RESPONDENT

Date of Decision: May 11, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 149
- Limitation Act, 1963 - Section 5
- Transfer of Property Act, 1882 - Section 106

Hon'ble Judges: Swatanter Kumar, J; S.L. Bhayana, J

Bench: Division Bench

Advocate: Sandeep Sethi and Rohit Puri, in RFA 7, 14 and 301/2006 and A.K. Nigam and Maulik Nanavati, in RFA 842/2005 and 4 and 36/200, for the Appellant; Jayant Nath, for the Respondent

Judgement

Swatanter Kumar, J.

CM Nos. 6450/06, 735/06, 209/06, 323/06, 17185/05 and 278/06 are the applications u/s 5 of the Limitation Act for condensation of delay of 12 to 15 days in filing the present appeals.

2. For the reasons stated in these applications which are supported by affidavits as well as the fact that there is no opposition, we allow these applications. Delay of 12 to 15 days in filing the present appeals is condoned. The CMs are disposed of accordingly with the direction that the appeals will be heard on merits.

3. CM Nos. 6451/06 in RFA 301/06, 279/06 in RFA 7/06, 17186/05 in RFA 842/05, and CM 324/06 in RFA 14/06 are the CMs u/s 149 of the CPC for enlargement of time to

pay the court fee.

4. For the reasons stated in the applications, we allow these applications and permit the applicants to make good the deficiency in payment of court fee. Let the deficiency be made good within one week from today.

5. CMs are accordingly disposed of.

6. Vide this order we will dispose of the above six appeals as common controversy, legal issue arise for determination by the Court in these appeals based on somewhat similar facts.

7. CMDE I.K. Malhotra and his wife, the plaintiffs filed a suit for recovery of possession and mesne profits against the defendants. The plaintiffs are owners cum landlords of Flat Nos. B-203, B-205, 207, Ansal Chamber-I, 3, Bhikaji Cama Place, New Delhi. These premises had been rented out by the plaintiffs to defendant No. 1 for commercial purpose at a monthly rent of Rs. 19,250/- and 14,000/- (separately for each of the remaining two flats) vide lease deed dated 16.9.98 w.e.f. 14.5.98. In terms of the lease deed, the rent was even increased but thereafter certain disputes arose between the parties. As per the case pleaded by the plaintiff, defendant No. 1 had chosen to hand over the possession by surrendering the tenancy but subsequently inducted defendant No. 2 into the premises which was an unauthorised and illegal occupant. Both the defendants have not paid rent for a considerable time i.e from 1.6.01. Compelled with these circumstances, the plaintiff filed suit for recovery of possession and for mesne profits in relation to each of the three flats. The suit was contested by the defendants by raising preliminary objections as well as on merits. It was stated that the lease deed between the parties had not been registered. No notice as contemplated u/s 106 of the Transfer of Property Act was served by the plaintiff on the defendants and defendant No. 2 was in occupation in its own right. These suits were decreed by the learned Additional District Judge, Delhi vide judgment and decree dated 25.7.05 wherein he had passed the decree for possession against defendant No. 1 and dismissed the same against defendant No. 2. For recovery of mesne profits the suit was decreed against both the defendants.

8. Aggrieved from the said judgment and decree of the Trial Court defendant No. 1 and defendant No. 2 have filed their own appeals that is how these six RFAs have been listed for hearing before the Court.

9. During the course of hearing, the learned Counsel appearing for the parties suggested that it will be in the interest of the parties to amicably settle these matters rather than appeals being considered on merits of the issues raised in the appeals. In furtherance to this intention of the parties, the cases were adjourned by the Court for permitting the parties to consider the modalities of a compromise settling all disputes arising in all the appeals. When the matters were taken up for hearing on 5.4.06, the learned Counsel appearing for the parties after taking

instructions from their respective clients and particularly the respondent No. 2 who was present in Court stated that the disputes between the parties have been amicably settled and the agreed terms and conditions as jointly stated by the learned Counsel appearing for the parties at the Bar are as under:

- (a) The decree under appeal passed by the learned Trial Court for possession against defendant No. 1, appellant M/s Usha (India) Ltd be set aside.
- (b) The parties have agreed that the respondents in these appeals (owners/Lessers) will execute fresh lease deeds for a period of three years w.e.f. the date of the order. The lease deed would be executed on the similar lines on which the lease deeds were earlier executed on 16.9.98.
- (c) Appellant M/s Orfic Resorts Ltd. shall pay all the arrears of rent within three months from today. The entire arrears may either be paid in installments or in lump-sum but within the period of three months from the date of the order. The rent shall be paid at the following agreed rates in terms of the lease deed and which were lastly paid by the appellant to the respondents i.e. Rs. 19,250/- for one flat and Rs. 14,000/- per month for each of the remaining two flats.
- (d) The appellant M/s Orfic Resorts Ltd. in terms of the fresh lease deed would regularly pay the rent to the respondents. This term is essence of the compromise and the appellants would abide by the same without fail.
- (e) All the disputes between the parties stand settled in the above terms and the parties agreed to abide by these terms and pray that the decree of the Trial Court be modified in the above terms and a decree be passed by this Court as per the above agreed terms and conditions. Having heard the learned Counsel for the parties, we are also of the considered view that the above agreed terms and conditions are otherwise just, fair and equitable and would meet the ends of justice. There is no legal impediment as to why the prayer of the parties be not accepted by the Court. This would settle all the disputes between the parties and would also prevent unnecessary future litigation.

10. Consequently, we modify the decree of the Trial Court in the above terms and pass a decree on agreed terms and conditions as afore-noticed. The parties would abide by the terms and conditions.

11. During the course of hearing, it was brought to our notice that in RFA Nos. 301/06, 7/06, 842/05, 14/06 the requisite advalorem court fee has not been paid. We direct that the deficiency be now made good within one week. In the event deficiency in payment of court fee is not made good, the registry would not supply the certified copy of this judgment to the appellants. As far as RFA 842/06 is concerned, the appellants have made up the deficiency in payment of court fee as such no further orders need be passed in that case.

12. In view of our above discussion and the agreed terms and conditions as afore-noticed, the appeals are decreed in the above terms, while leaving the parties to bear their own costs.