

(2001) 02 DEL CK 0156

Delhi High Court

Case No: F.A.O. No. 208 of 2000 and C.M. No"s. 915-17 of 2000

Shriram Refrigeration
Industries Ltd.

APPELLANT

Vs

S.K. Bhatia

RESPONDENT

Date of Decision: Feb. 19, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 20 Rule 12, Order 37 Rule 1, Order 37 Rule 4, Order 47 Rule 4, 152
- Limitation Act, 1963 - Section 5

Hon'ble Judges: S.K. Mahajan, J

Bench: Single Bench

Advocate: J.K. Seth and Shalini Kapur, for the Appellant; K.S. Katari, for the Respondent

Judgement

S.K. Mahajan, J.

C.M. 917/2000 (Exemption)

Allowed subject to all just exceptions.

C.Ms. 915-916/2000

Since the application of the plaintiff/respondent for review of the judgment/decreed was decided by the Trial Court without notice to the appellant, the appellant was not aware of the order appealed from. Accordingly for the reasons stated in the application, the appellant has disclosed sufficient cause for condensation of delay in filing the appeal. I accordingly allow these applications and condone the delay in filing the appeal.

F.A.O. 208/2000

Admit.

With the consent of the parties, matter has been heard and is being disposed of finally.

2. By judgment and decree dated 14th December, 1998, the suit for possession was decreed against the appellant herein and a decree for Rs. 122,826/- being the arrears of rent was also passed against the appellant. The learned Trial Court while deciding the question of damages held that it would be sufficient to award mesne profits @ Rs. 10,000/- per month from 1st September, 1993 to 30th November, 1993 amounting to Rs. 30,000/-. It was also observed by the Court that the suit did not include any prayer for mesne profits, pendente lite or future. It is submitted by the appellant that decree of the Court was satisfied inasmuch as the arrears of rent and damages along with interest were paid by the appellant. On 9th February, 1999 respondent filed an application u/s 152 of the CPC for modification of the judgment and decree passed by the Trial Court on the ground that in the body of the plaint, the respondent had mentioned that he was entitled to mesne profits at the rate at which the Court may decide to grant after holding an enquiry into the same, however, not making a prayer in the suit for granting mesne profits, pendente lite and future was only a typographical mistake and the Court should, Therefore, modify the decree passed by it. The learned Trial Court by order dated 25th May, 1999 held that the application u/s 152 of the Code was not maintainable and treating the said application under Order 37, Rule 1 reviewed the decree and directed the payment of mesne profits from the date of filing of the suit till 30th November, 1993 @ Rs. 10,000/- per month. In the meantime, an application was filed by the appellant on 15th April, 1999 contending, inter alia, that the respondent in spite of repeated requests of the appellant was not taking possession of the premises and the respondent Therefore, should be directed to take possession of the premises and the respondent Therefore, should be directed to take possession in terms of the decree passed by the Court. The possession of the premises was delivered sometimes in May, 1999 to the respondent. An application under Order 20, Rule 12 was filed on 10th August, 1999 by the respondent. Notice of this application was issued to the appellant and it is the contention of the appellant that it was only from this notice that he became aware of an order passed on 25th May, 1999 reviewing the decree and on inspection of the file came to know about the exact order passed by the Court on 25.5.1999 and filed the present appeal against the order dated 25th May, 1999 along with an application u/s 5 of the Limitation Act for condensation of delay in filing the appeal.

3. After having heard learned Counsels for the parties, I am of the view that once the Court had held that an application u/s 152 of the Code was not maintainable and having treated the same to be an application under Order 47 of the Code for review of the judgment and decree, the court could not allow that application without notice to the appellant herein. Under the provisions of Order 37, Rule 4 where it appears to the Court that there was no sufficient ground for review, it can direct the application to be rejected and where the Court is of the opinion that the application

for review should be granted, it shall grant the same, provided that no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

4. A bare perusal of Rule 4 of Order 47 shows that if the Court is of the opinion that the application for review is to be granted, notice is necessarily to be given to the opposite party. It is admitted case of the parties that the learned Trial Court before allowing the application of the respondent did not issue any notice to the appellant herein. There is thus a clear illegality in the order passed by the learned Trial Court. I consequently allow this appeal and set aside the order of the Trial Court dated 25th May, 1999. The matter is remanded back to the Trial Court to decide the application of the respondent u/s 152, CPC, treated by the Court as application under Order 47 of the Code of Civil Procedure, after hearing the appellant herein. Parties are directed to appear before the Trial Court on 10th April, 2001. Appeal and the C.Ms. stand disposed of.

5. Admittedly the appellant had stayed in the premises up to almost the end of May, 1999. He is, Therefore, liable to pay rent/mesne profits for the period he remained in possession. Without prejudice to the rights and contentions of the parties, I direct the appellant to pay to the respondent or deposit in the Trial Court the entire arrears of rent, if not ready paid, from the date of filing of the suit till the premises was vacated at the rate of Rs. 3,722.40p. per month Along with interest @ 18% per annum within eight weeks from today. Trial Court record be sent back forthwith.

6. Appeal and C.Ms. disposed of.