

(2012) 04 DEL CK 0497

Delhi High Court

Case No: Regular First Appeal No. 178 of 2012

Satish Kumar Sushil

APPELLANT

Vs

Bal Govind Rohtgi

RESPONDENT

Date of Decision: April 16, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 6, 96
- Punjab High Court Rules and Orders - Rule 15
- Transfer of Property Act, 1882 - Section 106

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: S.P. Batra, for the Appellant; Ankit Jain, for the Respondent

Final Decision: Dismissed

Judgement

Valmiki J Mehta, J.

The challenge by means of this Regular First Appeal (RFA) filed u/s 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 14.10.2011 decreeing the suit of the respondent/landlord/plaintiff for possession on an application under Order 12 Rule 6 CPC. In Delhi, where the tenancies have rent in excess of Rs. 3,500/- per month and such tenancies are not tenancies for fixed period under a registered lease, i.e. they are monthly tenancies, then such tenancies can be terminated by means of service of legal notice u/s 106 of the Transfer of Property Act, 1882.

2. Before me, learned counsel for the appellant does not dispute that there is a relationship of landlord and tenant between the parties and that the rate of rent is Rs. 4,000/- per month.

3. So far as the issue of termination of tenancy is concerned, I have held in the judgment reported as M/s. Jeevan Diesels & Electricals Ltd. vs. M/s. Jasbir Singh Chadha (HUF) & Anr. 2011 (183) DLT 712 that even if it is not proved that a legal

notice was served prior to filing of the suit, service of summons of the suit can be taken as a notice u/s 106 of the Act. An SLP against the said judgment being SLP No. 15740/2011 has been dismissed by the Supreme Court on 7.7.2011.

4. The trial Court, in my opinion, therefore, rightly held that there was no disputed question of fact which required trial and the suit so far as the relief for possession was concerned, was rightly decreed. The suit is of course continuing so far as the relief for mesne profits is concerned.

5. Learned counsel for the appellant before this Court vehemently canvassed two arguments. The first argument was that the suit was without cause of action and the second argument was that the trial Court did not have pecuniary jurisdiction to try the suit.

6. In my opinion, the arguments are without any basis, inasmuch as, I fail to understand as to why there is no cause of action, inasmuch as, once the tenant's tenancy is terminated and the rent is above Rs. 3,500/- per month whereby the protection of Delhi Rent Control Act, 1958 is not available, surely there is a cause of action to file suit for possession and mesne profits.

7. So far as, the second argument of lack of pecuniary jurisdiction is concerned, again this argument is without any merit, inasmuch as, once the tenancy is terminated the appellant/tenant is liable to pay mesne profits and the amount which is claimed as mesne profits determines the pecuniary jurisdiction of the Court.

8. The Supreme Court in the case of [Rameshwari Devi and Others Vs. Nirmala Devi and Others](#), has held that it is high time that actual and realistic costs be imposed in order to preempt and prevent dishonesty in litigation. Earlier, a Division Bench of three Judges in the case of [Salem Advocate Bar Association, Tamil Nadu Vs. Union of India \(UOI\)](#), has also observed that it is high time that actual costs be awarded. I am also entitled to impose actual costs by virtue of Volume V of the Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15. Unfortunately, there are certain tenants who refuse to vacate the premises in an obdurate fashion and also insist on contesting the litigation on frivolous grounds. The present appeal is one such litigation. In view of the aforesaid, there is no merit in the appeal and the same is accordingly dismissed with costs of Rs. 30,000/- and which costs shall be paid within a period of four weeks from today.