IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE, 1908

RFA No. 40/2012

DATE OF Decision : 18th January, 2012

M/S SEWA INTERNATIONAL FASHIONS & ORS .... Appellants
Through : Md. Rashid, Advocate.

versus

MEENAKSHI ANAND ..... Respondent
Through : Mr. Naveen Kumar Chaudhary, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 17.9.2011 decreeing the suit of the respondent/landlord for mesne profits and possession.

2. The facts of the case are that the appellant/defendant was a tenant of premises being Flat No. 308, third floor, Laxmi Bhawan, 72, Nehru Place, New Delhi measuring 352 sq. ft. The lease originally commenced in October, 1979 at a monthly rent of `1161.60/-. Thereafter, pursuant to the provision of Sections 6A and 8 of the Delhi Rent Control Act, 1958, which allows enhancement of rent by 10% every three years, rent was regularly increased and the last undisputed enhancement was of `2489.30/- per month with effect from 23.4.2004. The respondent/plaintiff, thereafter, got issued another legal notice dated 7.5.2007 enhancing the rent to `3618.23/- with effect from 23.4.2007. This amount of rent includes maintenance charges of `880/- per month. With the rent being more than `3,500/- per month, the premises no longer enjoyed the protection under the Delhi Rent Control Act, 1958. The tenancy of the appellant was, thereafter, terminated by a legal

notice dated 7.9.2007, under Section 106 of the Transfer of Property Act, 1882 and on failure of the appellant/defendant to vacate the suit premises, the subject suit for possession and mesne profits came to be filed.

3. The appellant contested the suit and raised several defences. One defence was that the notice dated 7.5.2007 increasing the rent to `3618.23/- per month was not served. Another defence was that the notice was defective because this notice sought to increase the rent retrospectively.

4. Before proceeding further, I may note that whereas the respondent/plaintiff led evidence in the trial Court, however, no evidence was led on behalf of the appellant/defendant. Since in spite of imposition of costs, no evidence was led, the evidence of the appellant/defendant was closed by the trial Court, and which order has become final. This order of closing evidence was not challenged and nor were the costs imposed paid. This order of closing of evidence has also not been challenged in the present appeal.

5. The trial Court has held that the notice dated 7.5.2007 which was sent to as many as seven addresses is held to be served. It has also been held by the trial Court that although the language of the notice may be defective by which rent was sought to be increased retrospectively, however, even if the illegal demand seeking retrospective enhancement is taken away yet in any case the notice will statutorily operate to increase the rent by 10% after the expiry of 30 days from the date on which notice is given as per Section 8 of the Delhi Rent Control Act, 1958. The trial Court has thereafter considering the evidence led on behalf of the respondent/plaintiff, decreed the suit for possession and mesne profits.

6. Learned counsel for the appellant argued the following points before this Court:-
(i) The notice dated 7.5.2007 increasing the rent to `3618.23/- per month (inclusive of amount of `880/- payable as maintenance charges) was not served. While on this argument, I must note that the appellant accepted before the trial Court that an amount of maintenance charges is included in rent and this fact is noted in para 9 of the judgment at internal page 16.
(ii) The notice dated 7.5.2007 was illegal because the notice given under Sections 6A and 8 of the Delhi Rent Control Act, 1958 cannot increase the rent retrospectively.

(iii) In the present case no preliminary decree was passed under Order 20 Rule 12 CPC and therefore impugned judgment and decree is liable to be set aside.

7. I am unable to agree to any of the arguments as raised on behalf of the appellant. So far as the first argument is concerned, it is absolutely misconceived in law inasmuch as the present is a case where notices were sent to as many as seven addresses of the appellant/defendant. Notices were sent at these addresses both by registered AD post and UPC. It is not the case of the appellant in the written statement filed before the trial Court that the addresses at which notices were sent were not the addresses of the appellant. In fact, this is also recorded in the impugned judgment. The trial Court has thereafter held with respect to the service of notices that in view of the judgment of the Supreme Court in M/s Madan & Co. v. Wazir Jaivir Chand, 1989(1) SCC 264, once notices are sent at the correct address, even if they are received back, such notices are deemed to be served upon the tenant. I am, therefore, of the opinion that the trial court has rightly held that notice dated 7.5.2007, Ex. PW1/2 was duly served upon the appellant/defendant.

8. The second argument raised on behalf of the appellant with respect to the illegality in the notice because a notice given under Sections 6A and 8 of the Delhi Rent Control Act cannot increase the rent retrospectively is also an argument which only sounds correct at the first blush, but the trial Court has rightly dealt with this issue by observing that the notice can surely be taken in terms of Section 6A to have a necessary legal effect of increasing rent 30 days after receipt of the notice. I agree with these finding and conclusion of the trial Court because surely once a notice increasing rent is sent, no doubt to the extent of the same demanding an illegal increase the same would not be legal, however, that cannot take away the correct legal effect of the notice and which is that rent will be increased by 10% after thirty days of service of such notice.

9. The third argument raised on behalf of the appellant is also equally misconceived that it was necessary for the Court to pass a preliminary decree under Order 20 Rule 12 CPC before deciding the issue of mesne profits. Order 20 Rule 12 CPC is only one of the methods of passing of a judgment in a suit for possession and mesne profits, however, it is not mandatory that the Court shall first decree the suit for possession by taking evidence only on the aspect of illegality of possession and thereafter will set

out the case for trial with respect to the mesne profits. In the present case the evidence has been led on behalf of the respondent/plaintiff/landlord, simultaneously both with respect to the issues of possession and mesne profits and the suit has thereafter been decreed after the final arguments were addressed. No illegality can therefore be found in the judgment of the trial Court decreeing the suit for possession and mesne profits. Reliance placed by learned counsel for the appellant on the judgment of this Court titled as D.N. Kalia v. R.N. Kalia 178(2011) DLT 294 is totally misconceived inasmuch as evidence has very much been led in the present case on the issue of mesne profits.

10. Finally I may note that the defence that the maintenance charges were not `880/- per month has rightly been rejected by the trial Court by giving its findings/conclusions in para 11 of the impugned judgment which reads as under:-

"11. PW 6 Kali Charan, is the Assistant Manager of Skyway Construction Co. who brought the record pertaining to the maintenance charges of the property in question and placed on record the bill dated 13.07.2009, with respect to the claim of maintenance charges w.e.f. May, 2005 to 31.07.2009, amounting to Rs. 54,144/- inclusive of service tax which document was Ex. PW 6/1. It was argued by Counsel for defendants that in terms of deposition of this witness, the society was issuing quarterly bills but no such quarterly bills were placed on record by any of the PWs. The two bills which have been placed on record as Ex. PW 1/D-1 and PW 6/1 are not for the quarterly period which makes it clear that the society had not issued any bill upon the defendants claiming the maintenance charges at Rs. 880/- per month, besides the fact that PW 6 had not produced carbon copy of the alleged bills which were allegedly issued upon the defendants on quarterly basis. However, I find sufficient justification for the above in deposition of PW 6 whereby he stated that the bill is issued on quarterly basis but in this case, particular bill till 31.07.2009, was prepared only for court purpose. He also corroborated the testimony of PW 1, that sometime, intimation with regard to the maintenance charges is also sent to the respective flat owner of the building. According to this witness, rate of common maintenance charges was Rs. 2.50 per sq. feet per month w.e.f. April, 2007. Since, the bills were sent through ordinary post, therefore, no record was maintained and because of this reason, this witness as stated was not in position to produce the document of delivery of maintenance bill issued to the defendant number 1 or the owner of the flat. It was also deposed by PW 6 that w.e.f. May, 2005 to March, 2007, maintenance charges were at Rs. 2/- p.s.f. per month and with respect to the increase in maintenance charges, they had given the

notice to the occupants or owners of the flat of the building including the defendants which notification was also affixed on the notice board of the building. The said intimation dated 17.03.2007, was also placed on record which was exhibited as Ex. PW 6/D-1. Besides the claim of the plaintiff that the defendant did not pay maintenance charges w.e.f April, 2005 to November, 2007, PW 6 rather proceeded ahead to say that the maintenance charges in fact had not been paid w.e.f. May 2005 to July, 2009 though admitted that the latest bill dated 30.07.2009, had not been sent to defendant number 1. It is correct that the original ledger book was not brought by this witness whereas the photocopies of the ledger maintained for the property in question was Mark A where the last two entries were admitted to be inserted by PW 6 in the court itself, which were pertaining to the period after 04.07.2009, it was clarified that the said entries had been inserted in the photocopy because the photocopy was prepared earlier when he appeared as a witness on the last date of hearing. Subsequent to which, those two entries were mentioned in the original ledger and he wanted to update the photocopy to be filed before the Court. Be that as it may, what is relevant for arriving at conclusion with respect to the computation of maintenance charges, is only after April, 2007 but prior to the period for which those two entries were inserted. The maintenance charges as reflected w.e.f. sMarch, 2007, were also Rs. 880/- per month. The contention of Counsel for defendant that PW 6 was posted with Skyway Construction having its office at Barakhamba Road, New Delhi and also at Manglam Building, Vikas Marg, New Delhi, whereas the document i.e. Ex. PW 6/D-1 and other documents have been received from the office of Skyway Construction at Nehru Place, New Delhi, therefore, PW 6 was not a witness authorised to place on record those documents. As per the record, the designation of this witness has been mentioned as Manager with Skyway Construction having its office at many places and it is not necessary that Manager of the said Co. would remain seated at Nehru Place office of the Skyway Construction Co. There is no sugestion also to this witness that he was not competent to depose on behalf of Skyway Construction Co. and only because of this reason that he was not sitting at Nehru Place office would not render the documents filed on record as negated. The bills as placed on record by PW 1 and PW 6 and more particularly, the circular of the society which was affixed on the notice board of the society as deposed by PW 6 i.e. Ex. PW 6/D-1 makes it clear that maintenance charges were enhanced to Rs. 880/- per month w.e.f. 01.04.2007. PW 6 is an official witness who has deposed as per the records of the society & I do not find any reason to disbelieve the version of this official witness whose deposition is supported by documents

placed on record. The plea that the carbon copies of the bills raised upon the defendant number 1 have not been filed by PW 6 on record, does not help the defence of the defendants if the maintenance charges were Rs. 704/- per month as claimed by defendants and were also paid by them to the society, the defendants themselves could have produced such bills raised upon them or the receipt for the payment of the maintenance to the society. Accordingly, having been established on record, the rate of rent at Rs. 2,738.23/- after June, 2007 and by adding maintenance charges at Rs. 880/- per month, the total rent works out to Rs. 3,618.23/- per month, which is above the amount of Rs. 3,500/- and thereby the suit filed by the plaintiff comes out of the purview of Delhi Rent Control Act, and is accordingly held to be not barred under the Provisions of DRC Act."

(underlining added)

To the aforesaid I may add that the amount of maintenance charges of `880/- per month are payable not only by the appellant but also by all persons similarly situated as the appellant in the subject multi-storeyed building.

11. No other issue is pressed or urged on behalf of the appellant.

12. The Supreme Court in the case of Ramrameshwari Devi and Others v. Nirmala Devi and Others, (2011) 8 SCC 249 has held that it is high time that actual and realistic costs be imposed in order to pre-empt and prevent dishonesty in litigation. Earlier, a Division Bench of three Judges in the case of Salem Advocate Bar Association Vs. Union of India, (2005)6 SCC 344 in para 37 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.

13. I find that the present matter is a fit case for imposition of actual costs inasmuch as a tenant has blatantly overstayed in the suit premises and has kept on in one way or the other seeking to prevent payment of lawful dues in addition to failing to vacate the suit premises. The respondent/landlord has unnecessarily been dragged in litigation. The Supreme Court in the case of Ramrameshwari Devi (Supra) has made the following pertinent observations with regard to imposition of costs:-

"43. We have carefully examined the written submissions of the learned Amicus Curiae and learned Counsel for the parties. We are clearly of the view that unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for

uncalled for litigation. It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases.

47. We have to dispel the common impression that a party by obtaining an injunction based on even false averments and forged documents will tire out the true owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit. It is also a matter of common experience that to achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs. In Swaran Singh v. State of Punjab (2000) 5 SCC 668 this Court was constrained to observe that perjury has become a way of life in our courts.

52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.

A. …

B. …

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.

56. On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation."

(underlining added)

14. Accordingly, in the facts of the present case, there is no ground to interfere with the impugned judgment and decree, therefore, the present appeal is dismissed with costs of `50,000/-, which I quantify to be actual costs in the facts of the present case. Costs be paid within four weeks from today.

15. Appeal is disposed of accordingly.

Sd./-
VALMIKI J. MEHTA, J.

JANUARY 18, 2012