

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE

Judgment reserved on : 19.7.2011

Judgment delivered on : 26.7.2011

CM(M).No. 818/2011 & CM No.12953/2011

GULAB SINGH THROUGH LRS.

.....Appellant

Through: Ms.Suman Kapoor, Advocate.

Versus

THE RAMKOLA SUGAR MILLS CO. LTD. & ORS.

.....Respondent

Through: Mr.Sanjeev Anand and Mr.Vikram Singh, Advocates.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1. This appeal has impugned two orders. The first order is the order dated 7.5.2011; the second order is the order dated 6.6.2011. Both the said orders had been passed by the ARCT. Vide order dated 7.5.2011 the application filed by M/s Triveni Engineering and Industries Ltd. under Section 151 of the Code of Civil Procedure (hereinafter referred to as "the Code") to be impleaded as a party had

been allowed and amended memo of parties was taken on record. Vide order dated 6.6.2011 the order of the Addl. Rent Controller (ARC) dated 15.11.1985 has been set aside. It was held that the Rent Controller has gone wrong in holding that the misuse has been stopped by the respondent/tenant; appeal against the order of the trial court was allowed; time had been granted up to 21.7.2011 to hand over vacant possession of the suit premises to landlord. These two orders are the subject matter of this petition.

2. On advance notice learned counsel for the respondent has put in appearance.

3. With the consent of the parties the appeal is taken up for final disposal.

4. The eviction petition had been filed under Sections 14(1)(c) and 14(1)(k) of the Delhi Rent Control Act (DRCA); this was on 03.10.1969; it had been filed by Ramkola Sugar Mills. Ram Kola Sugar Mills had been amalgamated with the transferee company namely M/s Ganga Sugar Corporation Ltd. vide order of amalgamation which order had to take effect on 01.11.1969. These averments had been noted by the Supreme Court in the litigation which has been preferred by the parties before the Apex Court. The Apex Court while disposing of the Special Leave Petition on 03.8.2007 had noted that since Ramkola Sugar Mills had merged with Ganga Sugar Corporation only w.e.f. 01.11.1969 and the eviction petition had been filed prior thereto the proceedings was held to be maintainable. Matter had accordingly been remanded back to the High Court for reviewing its order dated 4.9.2000 vide which the High Court had held that the eviction petition filed by Ramkola Sugar Mills was a nullity. The High Court vide order dated 7.12.2007 reviewed its orders dated 4.9.2000 and 20.8.2004, holding the eviction petition to be maintainable.

5. The eviction petition under Section 14(1) and 14(1)(k) of the DRCA had been decreed by the ARC on 4.2.1976. The contention of the landlord that the premises was being misused having been let out for residential purpose but was being run for a restaurant had found favour with the Rent Controller; the landlord's second contention that the premises is being run contrary to the terms and conditions imposed on the petitioner by the government had also found favour with the Rent Controller; eviction order was accordingly passed under Section 14(1)(c) of the DRCA. Ground (k) under Section 14(1) was held proved. However, the

procedure as contained in Section 14(11) had to be adhered to by giving notice to L&DO to ascertain the fact if the government was willing to regularize the use of the premises. On 20.7.1976 the ARC noted that the L & DO pursuant to a notice issued to them had in the reply refused to regularize the use of the premises contrary to the terms of the lease; it was asked to stop the misuse contrary to the terms of the lease Ex.AW1/A6 within four months failing which the tenant would be liable to be evicted.

6. The order of the ARC dated 4.2.1976 was the subject matter of an appeal before the Rent Control Tribunal (RCT). On 06.8.1979 the Tribunal had set aside the order of the Rent Controller under Section 14(1)(c) holding that there was no misuse. The order qua Section 14(1)(k) was however maintained.

7. In September, 1979 the landlord preferred an execution petition. This execution petition sought execution of the order dated 20.7.1976. Objections were filed by the tenant; contention being that the misuse has been stopped in March 1976 much before the order was passed on 20.7.1976. The Rent Controller vide order dated 31.7.1981 directed the parties to adduce evidence as to whether the condition imposed in terms of Section 14(11) of the DRCA which was required to be complied with in four months has been complied with or not. Order of 20.7.1976 stood modified to this extent. This was affirmed in appeal vide order of the ARCT on 26.11.1981. On 15.11.1985 the petition filed by the legal heirs of the deceased Gulab Singh had been adjudicated and on the basis of the evidence led before the executing court the objections filed by the legal heirs of the tenant had been allowed; execution petition was dismissed. On 1.5.1986 the Rent Control Tribunal set aside the order of the ARC whereby the objection of the tenant/LRs have been allowed. The Tribunal was of the view that there was no evidence to the effect that the misuse has been stopped. Against the order dated 01.5.1986 an appeal was filed before the High Court; this appeal was allowed on 4.9.2000. This appeal was allowed on the premise that the eviction petition initiated by M/s Ram Kola Sugar Mills which by a non-entity since it had amalgamated with M/s Ganga Sugar Mills Corporation it was accordingly dismissed. These proceedings were assailed before the Supreme Court and in view of the new factual scenario which had emerged (as noted supra) it was noted that the eviction petition had been preferred by Ram Kola Sugar Mills prior to its amalgamation with M/s Ganga Sugar Mills Corporation and as such the eviction petition was filed by a competent

person. The order of the High Court dated 4.9.2000 was subsequently reviewed by an order dated 7.12.2007. The order dated 1.5.1986 passed by the Tribunal was set aside. Matter was remanded back to the Tribunal to decide it afresh.

8. This appeal was finally decided by the impugned judgment i.e. the judgment dated 6.6.2011. Prior to the disposal of the appeal an application filed by M/s Triveni Industries Pvt. Ltd. to be impleaded in place of Ram Kola Sugar Mills had been allowed on 07.5.2011 and the amended memo of parties had also been taken on record.

9. Vide impugned judgment (disposing of the appeal) the order of the ARC was set aside; the impugned judgment has noted that the lease deed which was executed between the landlord and the L.&D.O clearly postulates that lessee/landlord will neither carry on or permit to be carried on, on the said premises any business, trade or manufacture or permit the said premises to be used for any purpose otherwise than as private lock up garages/ for private motor car. The premises although had been given by the landlord to Gulab Singh for a residential purpose yet it could not have breached the terms of the lease deed. The contention of the tenant that he had stopped the misuser of the premises since March 1975 did not find favour with the Tribunal and after examination of the evidence which had been led before the executing court it was of the view that the misuse of the premises had not been stopped; further the order of eviction under Section 14(1)(k) did not suffer from any infirmity; order dated 20.7.1976 had also attained a finality vide which the tenant had been directed to stop the misuse other than that allowed in terms of the lease deed failing which the tenant was liable to be evicted. Eviction order was accordingly passed.

10. In this background the respective contentions of the parties has to be appreciated.

11. On behalf the appellant it has been vehemently argued that even assuming that the eviction petition had been filed by a competent person i.e. by Ram Kola Sugar Mills, the execution petition and the appeal preferred thereafter by Ram Kola Sugar Mills was incompetent; these proceedings were a nullity as admittedly even as per the case of the respondent M/s Ram Kola Sugar Mills was amalgamated and merged with M/s Ganga Sugar Mills Corporation w.e.f.

1.11.1969 which had then merged with M/s Gangeshwar Ltd. and thereafter M/s Triveni Engineering and Industries. The contention is that the order allowing the application of M/s Triveni Engineering and Industries to be substituted in place of Ram Kola Sugar Mills at such a belated stage (vide order dated 17.5.2011) was clearly an illegality. The subsequent proceedings after filing of the eviction petition i.e. the execution petition and the appeal were also a nullity. For this proposition reliance has been placed upon AIR 1991 SC 70 Sarswari Industrial Syndicate Ltd. Vs. Commissioner of Income Tax . The second contention raised by the learned counsel for the petitioner is that the RCT could not have re-appreciated the evidence which had been assessed by the Rent Controller. The order of the Rent Controller suffers from no infirmity and the Tribunal reviewing this evidence has committed an illegality. Reliance has been placed upon 136 (2007) DLT 219 Shyam Sunder Dania & Anr. Vs. J.D.Kapoor to substantiate this submission where the reasoning of the ARC is based on the appreciation of evidence and which has not raised any question of law appeal should not have been entertained.

12. Arguments have been rebutted.

13. Record has been perused.

14. In (1985) 1 SCC 270 Lakshmi Narayan Guin & Anr. Vs. Niranjan Modak , the Apex court had reiterated that a decree which is in appeal; is considered as a continuation of the suit and where the appellate decree affirms, modifies or reverse the decree on merits, the decree of the trial court merges with the appellate court decree and it is the appellate decree which rules. This has again been reiterated in (2008) 8 SCC 505 D.Purushotama Reddy Vs. K.Sateesh; wherein it was reiterated that an appeal is a continuation of the suit.

15. The position that emerges is thus as follows:

The High Court while reviewing its earlier order dated 4.9.2000, vide order dated 7.12.2007 has returned a finding that since Ramkola Sugar Mills had merged with M/s Ganga Sugar Mills Corporation only w.e.f. 1.11.1969 and the eviction petition having been filed prior in time the proceedings were held to be maintainable. It is thus settled that the eviction petition was filed by a competent person; the subsequent appeal and execution of the decree passed in the eviction petition were

mere continuations of the eviction petition; in these circumstances, the argument of the learned counsel for the petitioner that the appeal and the execution petition were being continued by an incompetent person has no merit. The order of the Tribunal dated 07.5.2011 allowing the impleadment of M/s Triveni Engineering and Industries Ltd. in lieu of Ramkola Sugar Mills thus suffers from no infirmity.

16. Record also shows that Ramkola Sugar Mills had amalgamated and merged with M/s Ganga Sugar Corporation Ltd. which order was to take effect w.e.f. 01.11.1969; eviction petition had been filed on 03.10.1969 i.e. prior thereto. It is also relevant to state that at no point of time this issue about the legality or the status of the Ramkola Sugar Mills to contest the appeal had been raised before the courts below; this was raised for the first time in the objections filed before executing court. It is also not the case of the judgment debtor that he was unaware of the fact. This is relevant in view of the fact that the tenant Gulab Singh had moved an application on 15.7.1971 praying that since the premises had been sold by Ramkola Sugar Mills in favour of M/s Ganga Sugar Mills Corporation; Ramkola Sugar Mills had ceased to have any interest in the property. Record further revealed that on 2.9.1971 application order under Order 22 Rule 10 of the Code had been filed by M/s Ganga Sugar Mills Corporation contending that Ramkola Sugar Mills had merged with M/s Ganga Sugar Mills Corporation and M/s Ganga Sugar Mills Corporation has a right to continue with the proceedings. This application was allowed on 2.3.1972 with a direction to file the amended memo of parties. It appears that the amended memo of parties was not filed and that is why in the judgment dated 4.2.1976 (passed by the ARC) the parties continued to be described as Ramkola Sugar Mills Vs. Gulab Singh. On 3.4.1978 M/s Ganga Sugar Mills Corporation had changed its name to M/s Gangeshwar Ltd. and thereafter to M/s Triveni Engineering and Industries Ltd. The certificate of incorporation dated 31.3.2000 is also on record. It was in this factual background which is borne out from the record that the order dated 07.5.2011 was passed allowing M/s Triveni Engineering and Industries Ltd. to be impleaded as the appellant. This order suffers from no infirmity.

17. Record has revealed that an eviction petition has been filed by the landlord under Section 14(1)(c) and 14(1)(k) of the DRCA. On both counts a decree had been passed on 4.2.1976. On 20.7.1976 the ARC granted four months time to the judgment debtor to stop the misuse or else face eviction. This was pursuant to the

reply which had been tendered by the L & DO under Section 14(11) of the DRCA wherein the L & DO refused to regularize the misuser of the premises. The Tribunal had set aside the order under Section 14(1)(c) but the order under Section 14(1)(k) stood affirmed. However the order under Section 14(1)(k) could not take effect as the procedure contained in Section 14(11) of the DRCA was to be complied with. The Tribunal vide its order dated 6.8.1979 had noted that the ingredients of Section 14(1)(k) and the procedure contained in Section 14(11) has to be followed. In September 1979 the execution petition had been filed by the decree holder; objections have been filed by the judgment debtor on 25.4.1980. Contention being that the alleged misuse i.e. using the premises as restaurant since March 1976 has since stopped and this is prior in time to the order dated 20.7.1976. The ARC vide its order dated 03.7.1981 directed the parties to lead evidence which order was affirmed in appeal by the Tribunal on 26.11.1981. The evidence was led before the executing court. JDW-1 was S.N.Gupta, an LDC from the Health Department, MCD; had brought the summoned record; as per his deposition Gulab Singh had been given a licence for selling tea and bakery product; licence was valid up to 1975-76; it has not been renewed thereafter; there was now no tea shop at the spot. In his cross-examination he has reiterated that the fact that the licence has not been renewed after 1975-76 and how no tea shop exists there. JDW-2 was the son of the deceased Gulab Singh who has also reiterated that the last licence for running a tea shop was taken in the year 1975-76 and thereafter the licence of tea was closed; it was being run as a residential unit where his family was residing. In his cross-examination he has admitted that on 27.9.1976 an order was passed to stop the misuse of the premises; he further deposed that tea shop had already stood closed 2 to 3 year prior to the death of his father. His father had expired on 12.2.1979. DHW-1 on behalf of the decree holder had deposed that on 20.7.1976 notice under section 14(11) of the DRCA had been issued to the L& DO pursuant to which four months time had been granted to the judgment debtor/tenant to remove the breaches and stop misuse; he, however, continued with the misuser. In his cross-examination he has stated that officers of the decree holder company had gone to see if the misuse had been stopped or not; the misuse continued; however, report in writing was not submitted by them.

18. This was the sum total of the evidence which had been led before the executing court pursuant to which the executing court vide its order dated 15.11.1985 had allowed the objections. This order had noted that in the grounds of appeal (dated 15.5.1976) in para 16 the JD had stated that he had stopped the misuser of the premises; moreover admittedly after 1975-76 the judgment debtor had not applied for the renewal of the licence; the restaurant could not have been run without a licence. The statement of CW-2 wherein he had deposed that after 1975-76 he had stopped using the premises had been relied upon; objections were allowed; execution petition had been dismissed.

19. The impugned order has reversed this finding.

20. Before dealing with this impugned order relevant would it be to extract the provision of Section 14(1)(k) of the DRCA; it reads as follows:

“(k) that the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate;”

21. Section 14(11) contains the procedure which has to be followed before an order under Section 14(1)(k) of the DRC can be implemented. It clearly postulates that an order for recovery of possession shall not be made if the tenant within such time as specified by the Controller, complies with the condition imposed on the landlord by any of the authorities referred to in that clause or pays to that authority such amount by way of compensation as the Controller may direct. In the instant case it is not in dispute that four months time had been granted in terms of the order of the Rent Controller dated 20.7.1976 to the tenant to stop the misuse or else eviction order would follow. On this count the testimony of the witnesses noted supra are relevant. JDW-2 was the son of deceased tenant. The original tenant Gulab Singh had expired on 12.2.1979; after 1975-76 no licence had been obtained; admittedly prior thereto business of running a tea restaurant was being run there. In his cross-examination he had admitted that tea shop was closed 2 to 3 years prior to the death of his father meaning thereby that it was closed some time in 1975-76. JDW-1 was a summoned witness being an LDC from the Health Department of the MCD who had deposed as per the record that no licence for

running tea shop had been applied for by Gubal Singh after 1975-76. Testimony of JDW-1 establishes that no licence had been obtained for running the tea shop after 1975-76. In the objections petition preferred on 25.4.1980 (before the executing court) the objector had stated that the misuse has stopped in the premises since March 1975, much prior to the passing of the order of eviction. Per contra the evidence of DHW-1 was to the effect that on 20.7.1976 notice under Section 14(11) of the DRCA had been issued to the L & DO and even thereafter misuser had not been stopped. In his cross-examination this witness had admitted that although persons from his company had visited the premises several times to see whether the misuse had been stopped or not; they had noted that misuse is continuing but no report to the said effect was filed. It has also come on record that no licence had been applied to by the objector after 1975-76 for the running of the tea shop although admittedly prior thereto licence had been obtained by him. This entire evidence had been noted and looked by the ARC at the time when the objections of the objector were allowed in terms of the order dated 18.11.1985.

22. An appeal against the order of the Rent Controller is maintainable under Section 38 of the DRCA only on a question of law. In the judgment of Shyam Sunder Dania (supra) a Bench of this Court had noted that where the reasoning of the ARC is based on the appreciation of evidence and no question of law has been raised the Tribunal should not interfere with the finding of the Rent Controller. In the instant case as well it is not as if the order of the Rent Controller is not based on a sound reasoning; it was after considering the entire evidence led before it; the Tribunal has interfered on mere conjectures; the appeal was not founded on a question of law. The ARC had in fact based his reasoning on an appreciation of the evidence and had held that the execution stood satisfied as the misuse has been stopped. The appeal before the Tribunal not having raised any question of law the Tribunal has committed an illegality in interfering on mere surmises. The Tribunal has based its finding on Clause 7 of the lease deed which was a lease executed between the superior lessor i.e. the L & DO and the landlord(respondent) failing to note that the evidence led before the executing court had established that the misuser by the tenant i.e. running of the tea shop stood closed after 1975-76 i.e. prior to the passing of the eviction order and definitely within the period of four months as contemplated in terms of the order dated 20.7.1976. The extract from the cross-examination of JDW-2 reproduced in para 29 and 30 of the impugned

order shows the blatant misconstruction by the Tribunal of the evidence recorded before the ARC which has to be read in its entirety and no single line can be picked up from here and there to impute intentions which are otherwise not noted in the entirety of the evidence. The order dated 06.6.2011 suffers from a patent illegality. It is liable to be set aside. It is accordingly set aside. The order of the ARC dated 15.11.1985 allowing the objections of the objector is restored.

23. Petition is allowed. Execution petition is dismissed. File be consigned to record room.

Sd/-

INDERMEET KAUR, J.