

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE

CRP 20/2009 & CM 2256/2009

Reserved on: February 16th, 2009

Date of Decision: March 02, 2009

Panchsila Hospitality
Ventures Ltd. & Anr. Petitioners
Through: Mr. Arun Khosla, Advocate

Versus

Mrs. Praneeta Soni & Ors. Respondents
Through: None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J

1. Present revision petition has been filed seeking to set aside order dated 24th December, 2008 passed by learned Additional District Judge whereby petitioners' application under Order 7 Rule 11(d) read with Section 151 of Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") was dismissed.

2. Mr. Arun Khosla, learned Counsel for petitioners contended that documents relied upon by respondent/plaintiff including alleged sale deed dated 26th July, 2007 clearly show Rs. 3,000/- as monthly rent of the demised premises and the trial court cannot mechanically proceed with the suit on a mere assertion in the plaint that monthly rent was in excess of Rs. 3,500/- without any documentary evidence in support of such an assertion. In this connection, Mr. Khosla referred to following documents :-

i) Erstwhile owner Ms. Ranjeet Charles Singh's notice dated 18th September, 2002 under Sections 6A and 8 of Delhi Rent Control Act (hereinafter referred to as "DRC Act") claiming enhancement of rent upto Rs. 3,300/- per month.

- ii) Eviction petition dated 23rd September, 2002 filed by erstwhile owner Ms. Ranjeet Charles Singh against petitioners. In the said eviction petition the erstwhile owner mentioned Rs. 3,000/- as monthly rent of tenanted premises.
- iii) Affidavit by way of evidence dated 9th November, 2006 of Ms. Ranjeet Charles Singh in said eviction petition wherein Rs. 3,000/- per month was reiterated as rent of tenanted premises.
- iv) Legal notice dated 6th March, 2006 issued on behalf of Ms. Ranjeet Charles Singh under Sections 6A and 8 of DRC Act claiming Rs. 3,330/- per month henceforth as rent of tenanted premises.
- v) Sale deed dated 26th July, 2007 executed by Ms. Ranjeet Charles Singh in favour of plaintiff/respondent no. 1 wherein despite legal notice dated 6th March, 2006, rent of tenanted premises has been mentioned as Rs. 3,000/- per month.

3. Mr. Khosla submitted that where plaint is based on a document, the Court would be entitled to consider the said document and ascertain whether a cause of action is disclosed in the plaint. He further submitted that even where fraud is pleaded, the plaint has to be read in conjunction with documents relied upon in order to ascertain if a cause of action is disclosed. In this connection, he relied upon the following judgments :-

- A) Anil Nanda & Anr. Vs. Escorts Ltd. & Ors. reported in 156(2009) Delhi Law Times 697 (DB); and
- B) I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and others reported in AIR 1998 SC 634.

4. On a perusal of plaint filed by respondent no. 1, I find the following averments with regard to rent at Rs. 3,630/- per month :-

“24. Inasmuch as three years had expired (from the 18.09.2002 notice), another notice dated 6.03.2006 on behalf of the previous owner-landlady was served upon the defendant No. 1. With the expiry of 30 days of its service, the rent stood enhanced to Rs. 3,630/- per month. Copy of the notice is Annexure ‘P’ [at pp020] hereto.

25. On 25.7.2007 plaintiff purchased S-45 Panchshila Park from Mrs. Ranjit Charles Singh. Thenceforth, plaintiff is the owner-landlady thereof.

26. Although the rent stood enhanced by service of notices as aforesaid Annexure ‘F’ supra (6.03.2006), by way of abundant precaution and proceeding on an assumption (which is not a fact) that the notice of 6.03.2006 did not have the effect of enhancing the rent as aforesaid (and without prejudice to the earlier said notice/s in any way), a fresh notice dated 15.11.2007 was sent by the plaintiff Smt. Praneeta Soni through counsel exercising the statutory right and demanding the statutory increase, in accordance with law. Copy of the notice is Annexure ‘G’ [at pp022] hereto. Copy of this notice was also sent to Df-2 Shri N.J. Kanwar, Df-3 Smt. Kavita Kanwar, Df-4 Shri Abhayjeet Kanwar and Shri Arun Khosla, Advocate (who was appearing for Panchshila Hospitality as an Advocate in the rent control proceedings).

27. To the aforesaid notice (of 15.11.2007), no reply was received from Df-1, but it seems that after receipt of this notice by Df-1, some strange letter (referring to alleged oral splitting of tenancy) was written by Df-1 and Df-2 to the previous owner. A copy as subsequently received is Annexure 'H' (colly) [pp025] hereto. Mrs. Ranjit Charles Singh's reply dated 5.12.2007 – refuting the allegations – was given. Copy of the reply is Annexure 'I' [pp027] hereto.

28. So much for the turn of events which have been stated for reasons noted in para 7 supra.

29. Continuing with the more pertinent averments in this suit for ejectment, Df-1 (Panchshila Hospitality Ventures Limited) were occupying the property as a tenant from month to month. Their tenancy was as per the English calendar month. The rent after statutory escalations supra exceeded Rs. 3,500/- (i.e. was Rs. 3,630/- per month). The ownership of the property vests in the plaintiff (Praneeta Soni)."

5. Moreover, along with respondent no. 1's plaint, respondent no. 1 had annexed a legal notice dated 15th November, 2007 wherein it has been stated as under :-

"13. Although the rent stood enhanced as aforesaid, by way of abundant precaution and proceeding on an assumption (which is not a fact) that the notice of 6.03.2006 or the notice of 18.09.2002 did not have the effect of enhancing the rent as aforesaid, I hereby (and without prejudice to the earlier said notice/s in any way), on behalf of my client aforesaid (Smt. Praneeta Soni) exercise the statutory right and demand the statutory increase, in accordance with law.

14. In other words, if the rent stood enhanced by the two aforesaid notices, this notice for enhancement (para 13 supra) will be a surplusage. And, if for any reason, the rent did not stand enhanced as aforesaid, then this notice would have the effect of carrying out the necessary enhancement.

15. This notice is without prejudice to the court cases that are pending.

16. May I also request for a response within a week failing which it will be presumed that it is not disputed that with service of notice dated 6.03.2006, the rent of the demised premises had stood enhanced to Rs. 3,630/- per month."

6. The approach of a Court while dealing with an application under Order 7 Rule 11 of CPC has been settled by a number of judgments of the Hon'ble Supreme court as well as this Court. In Raj Narain Sarin (Dead) through LRs and others v. Laxmi Devi and others, reported in (2002) 10 SCC 501, it was held that, "it has also been the well-settled principle of law that the law court should be rather hesitant to exercise the jurisdiction under Order 7 Rule 11 unless the factual score warrants such exercise and the matter in issue falls within the four corners of the requirement of the statute.....". In Popat and Kotecha Property v. State Bank of India Staff Assn., reported in (2005) 7 SCC 510, the

Hon'ble Supreme Court held that, " Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.

7. Keeping in view the averments in the plaint, more particularly paras 26, 27 and 29 as well as the legal notice dated 15th November, 2007 which is subsequent to all the documents relied upon by Mr. Arun Khosla, I am of the view that at this stage, respondent no. 1's suit, as apparent from statement in the plaint, cannot be said to be barred by any law.

8. In view of the aforesaid, present petition and pending application are dismissed but with no order as to costs. However, it is further clarified that any observation made in this order would not prejudice either of the parties and the trial court would apply its mind independently and decide the case in accordance with law.

MANMOHAN, J