

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE

Date of Reserve: September 12, 2008

Date of Order: October 4, 2008

CM(M) 648/2008

Vijay Gupta ...Petitioner
Through: Mr. Rana Ranjit Singh, Advocate

Versus

Manoj Mehta ...Respondent
Through: Mr. Pawan Kumar Singh, Advocate

JUSTICE SHIV NARAYAN DHINGRA

JUDGMENT:

1. The petitioner is aggrieved by an order dated 2nd February 2008 passed by the learned Civil Judge on an application under Section 151 CPC whereby the learned Civil Judge directed the plaintiff/ landlord to clear the dues with electricity department, if any, and get the electricity connection restored in the suit property within a month, in case the respondent/tenant deposits 50% of the arrears of rent from 1st September 2006 to 31st January 2008 and deposits the remaining 50% after restoration of electricity connection.

2. Brief facts relevant for the purpose of deciding this petition are that the plaintiff (petitioner herein) let out the premises bearing No.57/2, Naniwala Bagh, Azadpur, Delhi to the defendant (respondent herein) on a monthly

rental of Rs.5000/- excluding all water and electricity charges on 1st October 2003. The lease was for a period of 3 years and it expired on 30th September 2006. There was a clause of enhancement of rent at the rate of 5 per cent. The electricity and water charges were to be paid by the defendant as per the consumption shown by the sub meter installed therein. The plaintiff found that there was a huge difference in the electricity bill generated by NDPL and the amount of Rs.500 per month being paid by the respondent in terms of the sub meter. Hence, he inspected the premises and found that the defendant was using two Photostat machines, six computers, one lamination machine, one fax machine and two STDs on a commercial scale in the premises and was doing the business of Photostat and computer generated printouts etc. He was consuming electricity of above 1000 units per month but was tampering with the sub meter and he was paying only Rs.500/- per month. The plaintiff terminated the tenancy of the defendant by a notice dated 9th October 2006 asking the defendant to handover the peaceful possession of the property by the end of midnight of 30th October 2006. The plaintiff thereafter filed a suit seeking possession of the premises on termination of the lease. In the suit the plaintiff stated that the defendant had made electricity consumption of over Rs.1,26,000/- but has paid only Rs.17692/- for the entire tenancy period. The plaintiff had been paying electricity bills regularly till June 2006 but due to non-payment of the electricity bill dated 27th April 2007 i.e. after termination of the tenancy, the electricity was disconnected by NDPL on 2nd June 2007. The defendant filed an application under Order 39 Rules 1 and 2 CPC in this suit seeking restoration of electricity connection while the plaintiff filed an application under Order 39 Rule 10 CPC for directions to the defendant to pay the user charge/charges at the admitted rate during the pendency of the suit. The plaintiff/petitioner also informed the Court while replying the application of the defendant that the defendant had used the electricity much more than that what he had paid. There were several other commercial premises. The petitioner paid electricity bills to the tune of Rs.1,07,140/- for the electricity consumed which was much more than what the plaintiff realized from the collection from tenant i.e. Rs.12,896/-.

3. It is submitted by the petitioner that the order of learned Civil Judge directing him to restore the electricity was passed on an application under Section 151 CPC which was a non-appealable. He submitted that the impugned order was illegal and contrary to law since the tenancy of the defendant had been terminated. He was not supposed to restore the electricity by paying arrears of electricity from his own pocket.

4. There is no dispute about the fact that the tenancy is not covered under Delhi Rent Control Act and that the respondent is not a protected tenant enjoying protection provided under DRC Act. The respondent in this case is a contractual tenant and rights and obligations of the petitioner and respondent are governed by the Transfer of Properties Act. Even if we believe that the tenancy was not for a fixed period of 3 years and was month to month, the tenancy undisputedly was terminated by the petitioner by serving a legal notice under Section 106 of the Transfer of Properties Act. On receipt of this notice terminating the tenancy, it was obligatory on the part of the respondent to handover the possession of the premises to the petitioner/lessor. The respondent had no statutory or contractual rights to continue in the premises against the wishes of the petitioner. Section 108 of the Transfer of Properties Act lays down the rights and liabilities of a lessor and lessee. The liabilities of the lessor towards the lessee as specified under this Section are to be fulfilled by the lessor during the continuation of the lease between the parties and once the lease is terminated, the lessor is under no obligation to continue its liabilities. The liabilities of the lessee as defined under Section 108 (q), on termination of lease, is to put lessor into possession of the property. The language of Section 108 (q) of TP Act is very specific and it states that the lessee is bound to put the lessor into possession. Where a lessee continues into the premises despite determination of the lease by service of a notice or by an efflux of time, he cannot ask the lessor to fulfill his obligations of providing him necessary amenities into the premises like water, electricity or other similar amenities. His obligation is to handover the peaceful possession to the lessor and leave the premises. He cannot call upon the lessor to perform any obligations either under the contract of lease or under Section 108 of the TP Act. The lessee after determination of lease is considered as a trespasser or a tenant by sufferance and he has no right qua the premises in question or qua the landlord/lessor.

5. The Court cannot come to the rescue of a defaulting party and cannot grant an injunction in favour of a person who is encroaching upon the rights of the others and is acting contrary to the contract between the parties. The Court can help only those person who have a legal right against others and want the help of the Court to enforce their rights. Section 38 of the Specific Reliefs Act provides that a permanent injunction can be granted to the plaintiff to prevent breach of an obligation in his favour whether expressly or by implication. Thus in order to seek relief of temporary or permanent injunction, it is obligatory on the part of the party to show that there exists a

right in his favour and an obligations to be performed by the other side in his favour. If there is no right in his favour or obligation existing in his favour, the Court cannot grant either prohibitory injunction or interim injunction to help a litigant in perpetuating an unlawful act of remaining in the premises despite termination of the contract nor an interim injunction can be granted in a casual manner. The Court has to see that there must be a prima facie case in favour of the person seeking injunction. A prima facie case would mean that the applicant has been able to demonstrate that he has a right which was being infringed by other person. If a person has no right and under no obligation, the Court cannot protect him and cannot grant injunction for perpetuating an illegality being committed by him. Section 38 (3) makes is abundantly clear that the Court can grant an injunction in case the defendant threatens to infringe plaintiff's rights for enjoyment of the property. Thus, the person in whose favour the injunction is granted must have a right to enjoy the property. If he has no right to enjoy the property, his lease stood terminated and the contract was not there, he has no subsisting tenancy, the Court cannot grant injunction in his favour and cannot direct a landlord to provide him facilities so that he may perpetuate an illegality and continue encroaching upon the rights of the landlord. Similar is the situation in case of mandatory injunction which can be granted by the Court under Section 39 of the Specific Reliefs Act. Under Section 39, the Court can give directions to compel the performance of certain act in order to prevent the breach of a right of the applicant/plaintiff. If an applicant has no right which can be enforced by the Court, no injunction can be granted by the Court to prevent breach of such a right. The lessee whose lease has been terminated by the lessor through a notice or whose lease has come to an end by an efflux of time cannot come to Court for mandatory injunction for perpetuating his illegal possession of the property or seeking direction that the landlord should be compelled to provide him water, electricity and other amenities.

6. In the present case, the learned Civil judge had directed the landlord to bear the electricity expenses of the respondent business which is quite strange. The respondent is in the business of photocopying, laminating, computer printouts etc and installed machines for commercial use and he wants the landlord to pay electricity charges for his machines. The learned Civil Judge has not taken pain of calculating the consumption of such machines as installed by the defendant and has not seen whether the claim of the respondent was justified or not. All such machines which were installed by respondent consumed a lot of power. The landlord cannot be asked to

bear the electricity charges of the electricity consumed by the tenant in the past and cannot be asked to pay arrears of electricity consumed by tenant.

7. I find that the order of learned Civil Judge is beyond jurisdiction and suffers from a material irregularity. The petition is allowed and the order of learned Civil Judge is hereby set aside. In the facts and circumstances, the parties are left to bear their own costs.

Sd/-
SHIV NARAYAN DHINGRA J.