

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE

RFA No.346/2010

DATE OF DECISION : 5th November, 2011

LAJPAT RAI MADAN Appellant
Through: Mr. Surendra Mishra, Advocate.

versus

MCD & ORS. Respondents
Through: Ms. Madhu Tewatia, Advocate with Ms.
Sidhi Arora, Advocate.

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

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 10.2.2010 whereby the suit of the appellant/plaintiff for recovery of possession, injunction etc. was dismissed. By the impugned judgment the suit has been dismissed because as per the admitted stand of the appellant, the respondent No.1 is a tenant of the appellant with respect to the suit premises. The suit has been held to be barred by Section 19 of the Slums Areas (Improvement and Clearance) Act, 1956 as no prior permission was taken from the designated authority under this Act prior to filing of the suit.

2. The case as set up in the plaint was that the respondent No.1/MCD/tenant has demolished the tenanted premises and therefore by demolition of the premises, the relationship of landlord and tenant between the parties has come to an end and thereby the Civil Court was claimed to have jurisdiction to determine the suit. I may note that the respondent No.1/MCD in the written statement had also taken up a plea that the Civil Court has no jurisdiction by virtue of Section 50 of the Delhi Rent Control Act, 1958 and which is an aspect which is duly mentioned in the beginning of the impugned judgment.

3. Learned counsel for the appellant argues that there is no provision in the Delhi Rent Control Act whereby eviction can be allowed on a tenant demolishing the tenanted premises. It is also argued that suit could not have been dismissed by applying the provision of Order 7 Rule 11 CPC.

4. In my opinion, the appeal is liable to fail not only on the ground which is given in the impugned judgment, of the suit being barred by Section 19 of the

Slums Areas (Improvement and Clearance) Act, 1956 but also because of the bar of a Civil Court to deal with the suit with respect to termination of tenancy and eviction of the tenant from a suit premises which is within the purview of the Delhi Rent Control Act.

5. The contention of the learned counsel for the appellant that there is no provision in the Delhi Rent Control Act to cause eviction of a tenant where the tenant has demolished the premises is incorrect because Section 14(1)(j) of the Act specifically gives a ground for eviction whether tenant causes substantial damage to the tenanted premises. The Supreme Court in the case of T. Lakshmi pathi and Others Vs. P. Nithyananda Reddy and Others (2003) 5 SCC 150 has laid down that even if a building is destroyed or demolished, the lease is not determined when the land beneath it continues to exist.

6. Accordingly, the suit so far as the relief of possession/eviction is concerned was not maintainable as the same was barred by Section 50 of the Delhi Rent Control Act because eviction of a tenant in the circumstances as mentioned by the appellant/plaintiff can only take place by means of filing of a petition before the Rent Controller under the Delhi Rent Control Act by making and proving the necessary averments as required under Section 14(1)(j) of the Act.

7. So far as the applicability of Section 19 of the Slum Areas (Improvement & Clearance) Act, 1956 is concerned there cannot be any doubt because the premises are clearly situated in a slum area. Therefore prior to filing an eviction petition under Section 14(1)(j) of the Delhi Rent Control Act, the permission of the designated authority will have to be taken, in addition to the fact that the Civil Court has no jurisdiction to pass an eviction decree against a respondent/tenant which is a tenant under the Delhi Rent Control Act.

8. There is one aspect which however will have to be considered, though the same has not been argued on behalf of the appellant. This aspect is that besides claiming possession and ejection of the tenanted premises the suit also prays for arrears of rent, damages for demolishing the building and injunction. These are aspects which a Rent Controller under the Delhi Rent Control Act has no jurisdiction to deal with and therefore the Civil Court will continue to have jurisdiction so far as these aspects are concerned. It is however clarified that this Court is not making any observation on merits of the case inasmuch as the respondent No.1/MCD has denied all the contentions as raised by the appellant/plaintiff in the plaint.

9. The impugned judgment therefore is sustained however not by applying the provision of Order 7 Rule 11 CPC but on admitted facts by applying the provisions of Order 12 Rule 6 read with Section 2(2) CPC so as to pass a decree for dismissal of the suit so far as the reliefs claimed for possession and ejection are concerned. Section 2(2) CPC envisages a decree for part of the disputes in a suit. So far as the other causes of action and the reliefs are concerned, the suit will however continue.

10. Parties to appear before the District & Sessions Judge, Tis Hazari, Delhi on 14th December, 2011 and on which date the District & Sessions Judge will

mark the suit to a competent Court for disposal in accordance with law so far as the reliefs claimed for injunction, recovery, arrears of rent and damages are concerned.

11. Appeal is disposed of accordingly, leaving the parties to bear their own costs.

Sd./-

VALMIKI J. MEHTA,J

NOVEMBER 15, 2011