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Pawan Gupta Vs. Bhupinder Gupta

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Court : Delhi

Decided On : Feb-27-2015

Judge : V.K.Shali

Appellant : Pawan Gupta

Respondent : Bhupinder Gupta

Advocate for Def. : Mr. Arvind Kumar Gupta, Mr. Rahul Mangla, Mr. Abhishek Goyal

Advocate for Pet/Ap. : Mr. Varun Kumar, Mr. Pankaj Jain

Judgement :

* HIGH COURT OF DELHI AT NEW DELHI + R.S.A. No.89/2015 & C.M. No.3611/2015 Decided on :

27. h February, 2015 PAWAN GUPTA Through: Appellant Mr. Varun Kumar & Mr. Pankaj Jain, Advocates. Versus BHUPINDER GUPTA Through: Respondent Mr. Arvind Kumar Gupta, Mr. Rahul Mangla & Mr. Abhishek Goyal, Advs. CORAM: HONBLE MR. JUSTICE V.K. SHALI V.K. SHALI, J.

(ORAL) 1. This is a regular second appeal filed by the appellant against the judgment dated 30.1.2015 passed by the learned Additional District Judge (North) in R.C.A. No.80/2014 titled Pawan Gupta vs. Bhupinder Gupta by virtue of which the judgment and decree passed by the learned Senior Civil Judge on 22.11.2014

has been upheld against the present appellant.

2. The contention of the learned counsel for the appellant is that the judgment which has been passed by the trial court is erroneous and has not taken into consideration the fact that there were two tenancies in respect of two shops on a monthly rent of Rs.2,500/-. The appellant during the course of his written statement had stated that the monthly rent is Rs.5,000/-, on the basis of an earlier suit filed by him which was by a consent order.

3. The learned counsel has sought to place reliance on case titled S.S. Rikhy vs. Hermes Travels & Cargo Pvt. Ltd.; 2001 (91) DLT659to contend that as the rent of each of the tenanted premises was Rs.2,500/per month, therefore, he enjoyed the protection of the Rent Act by virtue of Section 50 and consequently, the judgment and the decree passed against the appellant is unsustainable in the eyes of law.

4. The second contention which has been raised by the learned counsel for the appellant which, in his view, is raising a substantial question of law is with regard to the portion of the tenanted premises. It has been contended by the learned counsel that the case of the respondent/plaintiff was that the appellant was the tenant in respect of the two shops and he had trespassed into the third shop, while as during the course of examination of the evidence, he has given up the site plan which was not in conformity with the site plan of the appellant. It has been stated that the respondent had given up his own site plan which was annexed with the suit and he has stated that the said plan which has been filed by the defendant/appellant was correct and therefore, he has admitted that the site plan filed by him is not correct and accordingly, decree for possession could not have been passed.

5. I have considered the submissions. I am of the considered opinion that neither the judgment of S.S. Rikhy (supra) is applicable to the facts of the case nor does any of the two submissions which have been urged by the learned counsel for the appellant raise any substantial question of law which would warrant issuance of notice to the respondent. However, before parting with the case it may be pertinent here to mention that the respondent had filed a suit for possession against the present appellant. The case which was setup by the respondent/plaintiff in the

plaint was that the appellant/defendant was the tenant in respect of the two shops in the suit property on a monthly rent of Rs.5,000/- and in addition to this, he had also trespassed into the third shop. It was also stated by him that at the time when trespass was committed by the appellant, a report with the police had been lodged as a consequence of which a settlement was arrived at the police station whereby the appellant/defendant had agreed to pay rent of Rs.15,000/- per month instead of Rs.5,000/- per month and he had also agreed to vacate by 18.8.2012. The defendant/appellant filed his written statement and contested the suit.

6. On the pleadings of the parties, issues were framed and one of the issue was with regard to maintainability of the suit and the applicability of the Rent Act. Both the courts below have ruled in favour of the respondent/plaintiff holding that the tenanted premises are not covered by the Rent Act. The reason for this finding is that the case of the appellant/defendant in the written statement has been that he had taken two shops on a monthly rent of Rs.5,000/-. Once this averment was made in the written statement, it was not open to the appellant/defendant to contend that the rent for each of the shop was Rs.2,500/- per month. There was absolutely no evidence adduced by the appellant/defendant to say or show to the court that there were two separate tenancies in respect of the two shops with different rentals and, therefore, in my considered opinion, it was not open to the appellant/defendant to apportion the rent of Rs.5,000/- per month at his whims and fancies in respect of the two shops.

7. On the contrary, there is a concurrent finding returned by the court below that although two shops were taken on rent but it was one composite tenancy in respect of the two shops and the rent was Rs.5,000/and thereby having observed so, the protection of the Rent Act under Section 50 of the Rent Act was not applicable or available to the appellant/defendant.

8. The case of S.S. Rikhys case (supra), which has been relied upon by the appellant, is not applicable to the facts of the present case because in that case this has been established that there were two separate tenancies in respect of two portions where rent admittedly less than Rs.3,500/-. That being so, the facts of the two cases are totally distinguishable and the appellant/defendant cannot take the

advantage of observations of the High Court made in the said case so as to advance his own case.

9. As regards the tenanted premises, no doubt the respondent/plaintiff in his plaint had alleged that there were two shops under the tenancy of the appellant/defendant and that he had trespassed into the third shop and further he had chosen to file a site plan of his own along with the plaint yet during the course of examination of evidence, the respondent/plaintiff had given up his own site plan and rightly so and accepted the plan purported to have been filed by the appellant to be a correct plan. Having done so, the area which constitutes the tenanted premises was also not in dispute. This has been ruled both by the two courts concurrently against the appellant and thus, there is no scope of entertaining any doubt about the tenanted premises. That being the position, these are at best questions of fact which have been ruled against the appellant/defendant. It is not the case of the appellant/defendant that there is any perversity with regard to the finding of fact arrived at by the two courts below.

10. In my considered opinion, none of the submissions which have been urged before this court raise any question of law much less a substantial question of law. Accordingly, the present appeal is without any merit and the same is dismissed. V.K. SHALI, J.

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