

Anant Raj Agencies Pvt. Ltd. Vs. Rajinder Jaina

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Court : Delhi

Decided On : Sep-01-1995

Reported in : 60(1995)DLT336

Judge : Devinder Gupta, J.

Appeal No. : Suit No. 2560 of 1993

Appellant : Anant Raj Agencies Pvt. Ltd.

Respondent : Rajinder Jaina

Advocate for Pet/Ap. : Deepali Chandhiok, Adv

Judgement :

Devinder Gupta, J.

(1) This is plaintiff's suit for recovery of possession and arrears of rent and interest thereon besides future damages.

(2) The defendant was directed to be served with summons for 12th April, 1994. The defendant was personally served with summons Along with copy of plaint on 25th January, 1994. On 12th April, 1994, Mr. Vipul Maheshwari, Advocate appeared for the defendant and undertook to file power of attorney and written statement within four weeks. The case was directed to be posted for 10th August 1994 for admission/denial of documents, on which date defendant did not put in

appearance. Written statement and power of attorney were also not filed. The case was posted in Court on 23rd September, 1994, on which date also nobody appeared for the defendant. The accordingly was proceeded against ex-parte. Plaintiff was called upon to adduce ex-parte evidence, which the plaintiff has done by filing an affidavit of Shri Anil Sarin, Director of the plaintiff and has been duly authorised to represent the plaintiff-Company.

(3) Through lease deeds dated 11th December, 1991 and 7th December, 1991, two premises were let out to the defendant, namely, 430 sq. ft. area in Hall No.1B, Mezzanine floor and 993 sq. ft. in Hall No. 1 Bb Mezzanine floor of E-2, Jhandewalan Extension, New Delhi, on a monthly rent of Rs. 6772.00 and Rs. 15,640.00 respectively. The defendant was also required to pay maintenance charges at the rate of Rs. 0.70 per sq. ft. of the covered area. It is alleged in the plaint and stated in the affidavit that with effect from 26th September, 1992, the defendant surrendered a part of the premises, namely, an area comprising 490 sq. ft. and thus the defendant remained in occupation of 933 sq. ft. which portion has been alienated in red Ex.P.2, copy of lease deed proved on record as EX.P.1. The revised rent agreed was Rs. 14,659.00 per month. It is alleged in the plaint and stated in the affidavit that defendant had been a habitual defaulter. For the months of January, 1992, February, 1992 and March, 1992, rent was paid by the defendant through three different cheques which when presented to the bankers were received back unrealised with the remarks that 'sufficient funds were not available with defendant's bankers'. . Ex. P.3, Ex. P.4 and Ex. P.5 respectively are the bank slips with the original cheques. Plaintiff has claimed interest on the arrears of rent at rate of 27% p.a. with quarterly rests. It is claimed that defendant's tenancy was duly terminated by serving notice dated 26th August, 1993, copy of which has been proved on record as Ex.P.6 with postal receipt appended thereto dated 29th August, 1993. It is claimed that defendant was called upon to make payment of the arrears of rent together with interest at the rate of 27% p.a. and also to vacate the premises, as stipulated under the notice and to pay damages for unauthorised occupation of the suit premises at the rate of Rs. 50,000.00 per month being the market rate prevalent for the similar premises from the date on which defendant was called upon to make payment.

(4) With the ex-parte evidence, it stands satisfied that defendant's tenancy stood terminated through notice Ex. P.6 and plaintiff is entitled to the decree for possession. Plaintiff is also entitled to decree for arrears of rent of Rs. 2,68,099.00 up to 26th September, 1993. Though plaintiff has claimed interest at the rate of 27% p.a., which I feel is an exorbitant, I hold plaintiff be entitled to interest at the rate of 18% p.a. (simple) from 26th September, 1963 till date of payment. Defendant had been called upon to deliver possession of the premises by the mid night of 26th September, 1993 since he has failed to deliver possession. Accordingly, defendant is liable to pay damages from 7th October, 1993 till date of delivery. In the affidavit of Shri Anil Sarin, it is stated that prevalent rent for similar accommodation in the locality have been Rs. 50,000.00 per month and on today's date the rent prevailing for the similar premises in the same area is not less than Rs. 75,000.00 per month. Since there is no rebuttal, there is no reason to disbelieve the version of the deponent. Accordingly, defendant is liable to pay damages at the rate of Rs. 50,000.00 per month from 6th October, 1993 till date of payment.

(5) In view of the above, ex-parte decree is passed in favor of the plaintiff against the defendant for possession of premises, namely, 1b being the portion of E-2, Jhandewalan Extension, New Delhi as depicted in red in the plan Ex. P.2 Along with a decree for Rs. 2,68,099.00 on account of arrears of rent up to 26th September, 1993 Along with interest on this amount at the rate of 18% p.a. from 26th September, 1993 till date of payment along with a decree for damages at the rate of Rs. 50,000.00 from 7th October, 1993 till possession is delivered by the defendant to the plaintiff. Decree be drawn accordingly in accordance with law, subject to the plaintiff's making good the deficiency, if any, in Court-fee.

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