

Mutallib Vs Sunil Jain

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Court : Delhi

Decided On : Oct-06-2010

Judge : Mr. V.B.Gupta. J.

Acts : Code of Civil Procedure (CPC) - Order 39, Rule 10

Appeal No. : CM (M) No. 1252/2010 & CM No. 17880/2010

Appellant : Mutallib

Respondent : Sunil Jain

Advocate for Pet/Ap. : Mr. Mukesh Birla, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

ORDER

1. Present revision petition has been filed by petitioner against order dated 13th July, 2010 passed by Civil Judge, Delhi.

2. Brief facts of this case are that petitioner is a tenant under the respondent in premises H.No. 3577, Band Gali, Near Jain Mandir, Dharampura, Gandhi Nagar, Delhi.

3. Petitioner filed suit for permanent and mandatory injunction against respondent on the ground that respondent should not get the premises vacated without due process of law. In those proceedings, respondent filed an application under Order 39 Rule 10 of Code of Civil Procedure (for short as Code).

4. Vide impugned order, trial court held that the rate of rent of premises is Rs.19,000/- p.m. and rent has been paid till 9th August, 2009. Petitioner was directed to make payment of Rs.1,14,000/- as rent from September, 2009 till the filing of application.

5. It is contended by learned counsel for petitioner that respondent has not filed any documentary proof in support of his claim as to how the rent of the premises comes to Rs.19,000/- p.m. Petitioner's case is that rent of the premises is Rs.2,800/- p.m. only. Trial court passed the impugned order on the basis of some amount calculated or entries made on a plain paper which is void ab initio. The said entries have not yet been proved in the court and as such impugned order is liable to be set aside.

6. Petitioner admits that he is a tenant under the respondent but the rate of rent is Rs.2,800/- p.m., whereas case of respondent is that rent is Rs.19,000/- p.m. As far as the alleged piece of writing is concerned, therein rate of rent has been mentioned as Rs.19,000/- p.m. As per findings of the trial court, this document has not been denied by the petitioner. Relevant findings of the trial court in this regard read as under:- "Admittedly, the plaintiff is in possession of two floors of the suit property. The defendant has placed on record a writing on which it is mentioned that till 24.11.08 the account settled as per reading. The plaintiff has not denied his signatures on the writing. It is also mentioned that Rs.18,000/- has been paid on 17.02.09. There are signatures of the daughter of the plaintiff. It is also mentioned that Rs.10,000/- for the month of March received and balance Rs.9,000/- was received on 29.03.09. Further there is a writing that Rs.15,000/- was given on 05.04.09 and Rs.13,000/- on 21.04.09. Rs.8,000/- was given on 29.05.09 and

Rs.9,000/- on 09.06.09, Rs.15,000/- on 17.06.09, Rs.25,000/- on 10.07.09 and Rs.20,000/- was paid on 09.08.09. There are signatures of the daughter of the plaintiff on this writing. It is also mentioned in this writing that from 01.12.08, the rent is at the rate of Rs.19,000/- per month. There are signatures of the plaintiff underneath this writing. The writing suggests that the rent of the premises is Rs.19,000/- per month. Admittedly, the plaintiff is also doing commercial activities at the suit property. From the writing, it can be inferred that the rent of the premises is Rs.19,000/- per month and the rent is paid till 09.08.09. Though this writing also shows that some payment has already been made on account of electricity charges. Thus, this application in respect of the rent is allowed and the plaintiff is directed to make the payment of Rs.1,14,000/- for the rent from September 2009 till the filing of the application. The plaintiff is also directed to make the payment of future rent on or before the 7th day of each succeeding month."

7. Order XXXIX Rule 10 of the Code read as under:

"10. Deposit of money, etc., in Court. Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court."

8. According to this provision, where rent is payable and liability to pay is admitted, the court can order deposit of arrears of rent in the court.

9. Petitioner has taken a contradictory stand with regard to the rate of rent. In the grounds for challenging the impugned order, it is stated that rate of rent is Rs.2,800/- p.m. and it was never fixed at Rs.19,000/- p.m. However, in the synopsis (page D and E of the paper book) case of petitioner is that in September, 2009, respondent started raising demand of Rs.5,000/- p.m. as rent. This is nobodys case that respondent demanded rent at the rate of Rs.5,000/- p.m.

10. Petitioner has not denied his signatures on the writings and it has been clearly mentioned in these writings that from 1.12.2008 the rate of rent is Rs.19,000/- p.m. So, trial court rightly inferred, that the rate of rent of the premises is Rs.19,000/- p.m. and the same has been paid only till 9.8.2009.

11. It is apparent from the record that petitioner who is residing as a tenant in the premises in question wishes to continue to enjoy the use and benefit of the premises without having to pay for the same at the agreed rent.

12. Under these circumstances, the impugned order is fully justified and do not want any interference in the exercise of the revisional jurisdiction.

13. Present revision petition being bogus and frivolous one having no merit is hereby dismissed with costs of Rs.25,000/- (Twenty five thousand).

14. Petitioner is directed to deposit the costs with Registrar General of this court by way of cross cheque, within four weeks from today. CM No. 17880/2010 (stay)

15. Dismissed.

16. List for compliance on 9th November, 2010.

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