

Suresh Mansharamani and anr Vs. Gunender Kumar Jain

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Court : Delhi

Decided On : Nov-05-2012

Judge : Veena Birbal

Appellant : Suresh Mansharamani and anr

Respondent : Gunender Kumar Jain

Judgement :

\$~ 33 * IN THE HIGH COURT OF DELHI AT NEW DELHI + FAO 448/2012 %
Date of decision: November 5, 2012 SURESH MANSHARAMANI & ANR
Appellants Through Mr Atul Batra, Adv. versus GUNENDER KUMAR JAIN
Through None. Respondent CORAM: HON'BLE MS. JUSTICE VEENA
BIRBAL VEENA BIRBAL, J * 1. By way of this appeal, challenge has been made
to the order dated 24.7.2012 passed by the Learned Addl. District Judge, Dwarka
Courts, Delhi by which application of appellant no.1 under Order XXXIX Rule 10 of
CPC has been dismissed.

2. Appellant no.1 herein is the plaintiff before the learned trial court. Appellant no.1/plaintiff has filed a suit for possession, permanent injunction and mesne profits against respondent i.e., defendant before the learned trial court alleging therein that he is the owner of property bearing no.S-17-18, Chankya Place-II, (Opp C-1 Janakpuri), New Delhi and was engaged in the business of export of the readymade garments and would procure the export orders and transfer the same to the interested parties for which the company of the appellant no.1/plaintiff would charge the commission at the agreed terms and conditions. It is alleged The

respondent /defendant used to supply fabric and readymade garments to Ms/ Rahul Merchandising Ltd of which appellant no.1/plaintiff is one of the Directors. As per appellant no.1/plaintiff, the respondent/defendant had taken first floor of the said property w.e.f March, 2001 for him on a monthly rent of Rs.12500/-. The details of the property are given in the plaint. It is alleged that it was agreed that the rent due from respondent/defendant was to be adjusted in the statement of account against the readymade garments supplied by respondent/defendant. There was running account between the respondent/defendant and the company of appellant no.1/plaintiff in respect of the commission to be received by the said company from respondent/defendant against the transfer of export orders. Appellant no.1/plaintiff has further alleged that on 2.9.2002 there was an outstanding against M/s Rahul Merchandising Ltd of Rs.97,18,115/- and the amount to be received from the respondent/defendant was Rs.23,24,220/- and the outstanding balance was cleared by M/s Rahul Merchandising Ltd by making payments in favour of Chandra Exports, Chandra Frabric Pvt Ltd, Mahavira Garments, Sun Fabric and Vardhman Garments resulting into net dues of Rs.18,645/- from M/s Chandra Fabrics Pvt Ltd of which respondent/defendant is one of the Directors. Appellant no.1/plaintiff has also alleged that rent from 31st March, 2004 @ Rs.12500/- per month has been adjusted in the statement of account of M/s Chandra Fabrics Pvt. Ltd. The tenancy of respondent/defendant was terminated by notice dated 24.9.2008 and another notice was sent on 20.4.2010 and from 1.6.2010, respondent/defendant is unauthorized occupant. It is alleged that respondent/defendant has not paid rent from 1.4.2004 but appellant no.1/plaintiff is claiming rent from 15.10.2007 which is within the period of limitation.

3. Respondent/defendant has denied the allegations. According to respondent/defendant, appellant no.1/plaintiff is not the owner of the suit property and suit property is owned by Smt. Uma Mansharamani i.e., wife of appellant no.1/plaintiff and respondent/defendant has taken the suit property from her vide agreement dated 1.6.2011, as such there is no relationship of landlord and tenant between appellant no.1/plaintiff and respondent/defendant. The stand of statement is that the rent was adjusted respondent/defendant in written in the goods supplied. In the rejoinder, appellant no.1/plaintiff has denied that his wife has ever

entered into rent agreement with respondent/defendant, as is alleged. The appellant no.1/plaintiff has also moved an application under Order 1 Rule 10 CPC for impleading his wife as plaintiff no.2. The said application was allowed by the Id. trial court vide order dated 2.6.2012. Prior to that, an application under Order 39 Rule 10 CPC was also moved by appellant no.1/plaintiff praying for interim order for recovery of arrears of rent and damages commencing from 15.10.2007 at the agreed rent of Rs.12,500/- per month, 4. The said application was opposed by respondent/defendant on the ground that appellant no.1/plaintiff is neither the landlord nor co-owner of the suit property, as such application is not maintainable. The learned trial court after considering the contentions of the parties has dismissed the application. Aggrieved with the same, present appeal is filed.

5. Learned counsel for the appellant has contended that respondent/defendant has admitted that he is a tenant @ Rs.12500/- per month in the suit property. It is also contended that wife of appellant no.1 i.e., appellant no.2 has already been impleaded as a party to the suit before the Id. trial court in an application under Order 1 Rule 10 CPC. In these circumstances, the learned trial court ought to have allowed the application.

6. In order to deal with the contentions, it would be appropriate to refer to the provisions of the Order XXXIX Rule 10 CPC. The same are reproduced as under: 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.

7. This court in Harish Ramchandani Vs. Manu Ramchandani & ors 91(2001) DLT 48. while interpreting the aforesaid rule has observed as under: 7. This rule would be applicable only when there is an admission on the part of the defendants of the nature which would constitute sufficient admission under Order XII Rule 6 CPC. Rule 10 of Order XXXIX does not apply unless:- (A) The admission of the party is an admission sufficient under Order 12 Rule 6 AIR 192. Sind 25(27). (B) The party making the admission holds the property or other things capable to deliver. (1903)

27 Mad 168(172) (SB).

8. In the present case, the relationship of landlord and tenant between appellant no.1/plaintiff and respondent/defendant has been denied in the written statement in respect of suit property. The stand of respondent/defendant is that there was a rent agreement between appellant no.2 and respondent/defendant and the rent due from respondent/defendant was to be adjusted in the statement of account against the order given by M/s Chandra Fabrics Pvt. Ltd. In these circumstances also there is no clear admission even about the arrears of rent. The same is a subject matter of evidence. In these circumstances, no order under Order XXXIX Rule 10 CPC could have been passed by the Id. trial court.

9. The learned trial court has rightly observed that an order under Order XXXIX Rule 10 CPC can be passed on admission and in the present case neither the landlord is admitted nor the rent has been admitted to be due from respondent/defendant to appellant no.1/plaintiff or appellant no.2. No illegality is seen in the impugned order which calls for interference of this court. Appeal is dismissed. VEENA BIRBAL, J NOVEMBER 05 2012 ssb

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