

Nawab Singh

Vs

Inderjit Kaur

Civil Appeal No. 2735 of 1999

S. P. Bharucha, R. C. Lahoti JJ)

06.05.1999

JUDGMENT

R.C. Lahoti, J.

1. Leave granted.

2. The appellant has filed a suit for permanent preventive injunction restraining the defendant-respondent from interfering with the possession of the appellant. The appellant alleges himself to be a tenant in the suit shop inducted by the defendant-respondent as per rent note dated 23.9.1994. The tenancy is seriously disputed by the respondent. At the trial, after having taken about 14 adjournments for adducing evidence, the appellant moved an application seeking production of the rent note from the custody of the respondent, which application was rejected by the trial court. On the next date of hearing the appellant moved an application seeking leave of the court for production of secondary evidence of the rent note dated 23.9.1994, which application has also been rejected by the trial court. This order was challenged by the appellant by filing a civil revision before the High Court which has been dismissed.

3. Having heard the learned counsel for the parties, we are of the opinion that the trial court was not justified in rejecting the prayer seeking leave of the court for production of secondary evidence. The prayer has been rejected mainly on the ground that the copy of the rent note sought to be produced by the appellant was of doubtful veracity. The trial court was not justified in forming that opinion without affording the appellant an opportunity of adducing secondary evidence. The appellant has alleged the original rent note to be in possession of the respondent. The case was covered by clause (a) of Section 65 of the Indian Evidence Act, 1872.

4. Learned counsel for the respondent submitted that the appellant was protracting the trial and being in possession of the premises was interested in delaying the hearing of the suit. That may or may not be true but the fact remains that that is not the reason on which the rejection by the trial court is founded. In our opinion, the ends of justice would be satisfied if the appellant is allowed an opportunity of adducing secondary evidence but subject to terms.

5. The appeal is allowed. The impugned order of the trial court dated 3.2.1998 and the order of the High Court dated 16.9.1998 passed in revision are both set aside. The appellant is granted leave of adducing secondary evidence of the existence, condition and contents of the rent note dated 23.9.1994. The trial court shall appoint a date on which the appellant shall have the liberty of adducing such secondary evidence as he may choose to do but if he fails to adduce such evidence on the appointed date, he shall not be entitled to an adjournment for the purpose. The appellant shall

also be liable to pay costs quantified at Rs. 5,000/- (Rupees five thousand only) to the respondent, having regard to all the circumstances.

6. We make it clear that we have neither formed nor expressed any opinion touching the merits of the controversy in issue before the trial court.

7. The appeal stands disposed of in the above said terms.

Appeal allowed.