

SUPREME COURT OF INDIA

Mukesh Seth

Vs.

A.B. Lal and Sons

C.A.No.10040/2010

(Kurian Joseph and R.Banumathi,JJ.,)

16.11.2017

JUDGMENT

Kurian Joseph,J.,

1. Mr. R. Basant, learned senior counsel, has handed over a demand draft for Rs.36,370/- on behalf of Ms. Heena Munshaw today. The demand draft has been acknowledged by the counsel for the landlord, Mrs. Anjani Aiyagari. Learned counsel appearing for the landlord submits that the electricity and water charges actually come to around Rs.45,000/- as on 25.09.2017.

2. Learned counsel appearing for the company may directly give the amount payable towards electricity and water charges to Mr. Senthil Jagadeesan, who is the counsel for Ms. Heena Munshaw and on such communication, the said payment will also be duly satisfied.

3. The parties are before this Court with certain disputes regarding the eviction. On 02.01.2017, this Court passed the following order:-

"Post after four weeks. Mr. V. Giri, learned senior counsel has today on instructions handed over the keys of the disputed premises to Mr. Devashish Bharukha, learned counsel for respondents No.1 and 2. The respondents can occupy the premises and enjoy the peaceful possession without any hindrance from the petitioner. That statement is recorded and the keys handed over to Mr. Bharukha.

List the appeal along with the application for discharge after six weeks. Mr. Giri at this stage submits that petitioner No.2-Company shall within six weeks from today also clear all outstanding water and electricity dues payable in respect of the premises and furnish receipts of the same to Mr. Bharukha. The delivery of the possession and payment of outstanding dues shall be without prejudice to all contentions open to them."

4. Thus, as far as eviction is concerned, that process is completed and the property has been surrendered vacant possession. What remains now is the dispute regarding mesne profits/use and occupation charges for the period of occupation.

5. On 03.05.2016, this Court had passed the following order:-

"Mr. Devashish Bharukha, learned counsel for respondents No. 1 and 2 points out that petitioner No. 2-Company, is according to Company Master Data maintained by the Government of India, an unlisted dormant company with no PAN number, no authorised signatories and with a paid up capital of hardly Rs. 20,000/-. He further points out that there is no information available with the Government maintained web-site regarding registered particulars of the company or e-mail ID nor does the data maintained by the Government web-site indicate the date of the last Annual General Meeting of the company. This according to Mr. Bharukha clearly shows that the company is a non existent fake/shell company, doing no business whatsoever and hence incapable of either conducting any business or paying rent due and payable to the respondent-landlord.

He further submits that petitioner No. 1 is not a Director of petitioner-2 company and that the petitioners have indulged in gross misrepresentation of facts by showing Mukesh Seth-petitioner No. 1 as Director of petitioner No. 2-Company. He submits that the vakalanama filed on behalf of petitioner also does not disclose the authority on the basis of which petitioner No. 1 has claimed himself to be an authorised signatory of petitioner No. 2. He states that the market rental value of the premises in question is in the neighbourhood of Rs. 3,00,000/- p.m. whereas petitioner No. 1 is enjoying the possession of the property for many years by paying a paltry sum of Rs. 670/- p.m. only. Mr. Dhruv Mehta, learned senior counsel appearing for the petitioners submits that petitioner-1 Mukesh Seth is not a Director of petitioner No. 2-company and that any mis-representation to that effect made in the cause-title of the SLP is wholly unsupportable. He concedes that the vakalatnama also does not indicate the authority on the basis of which petitioner No. 1 has signed on behalf of petitioner No. 2.

Mrs. Heena Mansha who appears in person on behalf of petitioner No. 2 submits that she is one of the Directors of the company, her son Kunal Mansha being the only other Director. She submits that the petitioner-company is doing business of sale of textile machinery imported from outside the country. She submits that her arrangement with petitioner No. 1 is that of a commission agent in which petitioner No.1 sells the machinery imported by petitioner No. 2-company on payment of commission by the company. We have given our anxious consideration to the submissions made at the Bar. We do not for the present propose to express any final opinion on the merits of the contentions urged on either side. All that we need say is that the premises in question comprises nearly 1800 sq. feet of covered area comprising three bed rooms, a drawing-cum-dining and an office room. The premises is situated in commercially important Gole Market area in the capital. The rental

value of the premises has doubtless increased considerably over the years. The amount being paid is in that view totally incommensurate with the market rent. The contractual rent it is pertinent to mention was fixed as early as in the year 1963 with no enhancement ever since. We are, therefore, inclined to direct that petitioner No. 2-Company who claims to be the real tenant of the premises shall deposit in this Court compensation for use and occupation of the premises @ Rs. 1,00,000/- p.m. w.e.f. 01.05.2010. The deposit shall be made within six weeks.

Post again on 02.08.2016. We make it clear that the deposit made is only provisional and subject to alternations and that the parties shall, if so advised, be free to file requisite documents to show market rental value of the property. The petitioner company shall in addition file the following documents and information on affidavit:

- 1) Audited balance-sheet for the past five years.
- 2) The date of Annual General Meetings of the company held during the past five years and the minutes of such meetings.
- 3) Extent of Business turnover from the Northern region being looked after by petitioner No. 1.
- 4) The amount of commission paid by petitioner No. 2-company to petitioner No. 1 over the past five years and the mode of such payment.
- 5) Income-Tax return of the petitioner No. 2-company for past five years."

6. Ms. Heena Munshaw has thereafter filed an application for modification of the above order dated 03.05.2016. So far, no response has been filed.

7. Be that as it may, having regard to the fact that the premises has been surrendered vacant possession, we are of the view that the surviving disputes are to be settled by an appropriate forum and not by this Court.

8. Therefore, we relegate the parties to the appropriate forum with liberty to pursue their surviving grievances regarding fixation of mesne profits/use and occupation charges etc.

9. Since we have relegated the parties to the appropriate forum to pursue their grievances, we are not inclined to embark upon an inquiry on I.A.No.16436/2016, which is, accordingly, disposed of.

10. The appeal is disposed of, as above.

11. Since, the appeal has been disposed of, no orders are required to be passed on the application for discharge of advocate.

12. We make it clear that all contentions available to the parties are left open.

13. In case any Forum is approached by any party, having regard to the long pending disputes, steps shall be taken to dispose of the matter expeditiously.

14. Pending applications, if any, shall stand disposed of.

15. There shall be no orders as to costs.

16. In view of the order passed in the civil appeal, contempt petition is also dismissed.