

HIGH COURT OF DELHI AT NEW DELHI

FAO OF 191/2008

Reserved on : 6th June, 2008

Date of Decision: June 11th, 2008

Mr. Vikrant Singh
!

..... Appellant/Defendant
Through Mr. Ruchir Batra, Advocate

Versus

\$ Mrs. Neelam Tewari

..... Respondent/Plaintiff

Through None

CORAM:

*** HON'BLE MR. JUSTICE MANMOHAN**

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | |
| 3. Whether the judgment should be reported in the digest? | No |

J U D G M E N T

MANMOHAN, J :

1. The Appellant/Defendant has filed the present appeal seeking setting aside of the order dated 23rd May, 2008 in Suit No. 302/2008, whereby the Additional District Judge, Delhi has directed the Appellant/Defendant to deposit the entire arrears of rent from 1st April, 2007 to May 2008 by 2nd June, 2008, failing which his defence would be struck off.

2. Learned Counsel for the Appellant/Defendant states that the Respondent/Plaintiff had filed a suit for recovery of possession,

damages and mesne profits against the Appellant/Defendant and along with the said suit, an application under Order 39 Rule 10 CPC had also been filed. The Appellant/Defendant alleges that after filing the said suit, the Respondent/Plaintiff had intentionally got the electricity and water supply in the suit premises disconnected and, therefore, there was no reason for the Appellant/Defendant to pay any rent or charges for use and occupation of the suit premises. He further states that during the course of argument under Order 39 Rule 10 CPC the Respondent/Plaintiff had assured the Trial Court that she would get the electricity and water connection restored in the suit premises and it was only on this assurance that the Court had directed the Appellant/Defendant to deposit the admitted amount of rent @ Rs. 13,500/- per month w.e.f. 1st April, 2007. He further states that in the month of April, 2008 the Respondent/Plaintiff had filed an application under section 151 CPC for striking off the defence of the Appellant/Defendant as it had not deposited the arrears of rent in accordance with the order dated 10th January, 2008. It was during these proceedings that the impugned order dated 23rd May, 2008 was passed by the trial court directing the Appellant/Defendant to deposit entire arrears of rent within one week.

3. Learned Counsel for the Appellant/Defendant further submits that as the Respondent/Plaintiff had already filed an Appeal being FAO No. 50/2008 in this Court against the order dated 10th January, 2008, the Respondent/Plaintiff was estopped from asking the Appellant/Defendant to comply with the said order.

4. I find that the Appellant's arguments are misconceived on facts and untenable in law. The order dated 10th January, 2008 passed by the trial court does not in any way stipulate that the electricity and water supply of the suit premises have to be restored by the Respondent/Plaintiff, prior to the Appellant/Defendant depositing the admitted arrears of rent. In case the Appellant/Defendant had a grievance with the non recording of such a concession in the order dated 10th January, 2008, it should have filed either an application for recalling of the said order or an appeal. However, having initiated no proceedings against the order dated 10th January, 2008, the said order has attained finality and the Appellant/Defendant cannot go behind the said order. In any event, Court proceedings are a matter of record and no party can allege an oral understanding or oral concession in Court which is not incorporated in the Court order.

5. The second argument of the Appellant/Defendant that the Respondent/Plaintiff was estopped from enforcing or relying upon the order dated 10th January, 2008 is concerned, it is equally untenable. The Respondent/Plaintiff has impugned the order dated 10th January, 2008 to the extent that it has directed the Appellant/Defendant to deposit only the admitted amount of rent.

6. Consequently, I am of the view that the impugned order dated 23rd May, 2008 calls for no interference as the trial court has already given one additional opportunity to the Appellant/Defendant to comply with the order dated 10th January, 2008 – which order in fact had not been challenged by the Appellant/Defendant.

7. In view of the above, I dismiss the present appeal with cost of Rs. 10,000/- to be paid to Delhi High Court Legal Services Committee, New Delhi. Registry of this Court is directed to place a copy of this order immediately on the file of Suit No. 302/2008 titled as "Smt. Neelam Tewari Vs. Shri Vikrant Singh" pending in the court of Shri Neeraj Kumar Gupta, Additional District Judge, Delhi for necessary information and action.

Manmohan
(Vacation Judge)

June 11th, 2008
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