

Suit No.12188/16
Jaspal Kaur Sethi vs Surinder Singh

14.09.2022

Present: Ms. Manjeet Kaur, Ld. Proxy Counsel for the defendant.

1. By this order, I shall dispose of the application under Order 7 Rule 14 (3) read with Section 151 CPC filed by the plaintiff.

2. In the present application, the plaintiff has submitted that the plaintiff has filed the present suit for recovery of possession and of arrears of rent/mesne profits against the defendants. It is further submitted that the plaintiff has pleaded in the plaint that the defendants since beginning of tenancy had been making the payment of rent to the plaintiff in respect of tenanted premises but for the last few months, they have started sending the rent by clubbing the rent of two premises i.e. tenanted premises and of other premises which is under the tenancy of Shri Harnam Singh, Proprietor of M/s Friends and Company. It is further submitted that the defendant has been sending a single cheque of Rs.34,065/- for the aforesaid both the tenanted property whereas the the rent of tenanted premises is Rs.20,970/- and the rent of other premises is Rs.13,095/-. It is further submitted that the

plaintiff is unable to understand the intention of the defendant in making the payment of rent by a single cheque of Rs.34,065/- for two different tenancies.

3. It is further submitted that the plaintiff has received the rent up to month of February 2016 and the defendant is in arrears of rent w.e.f. 01.03.2016. It is further submitted that after service of legal notice dated 17.03.2016, the defendant by post had sent cheques dated 27.04.2016, 20.05.2016 and 22.06.2016 drawn on South Indian Bank, Rohini, Delhi each for Rs.34,065/- issued in the name of the plaintiff but the same were not encashed by the plaintiff as the rent in respect of the tenanted premises is Rs.20,970/- per month. It is further submitted that the plaintiff was 85 years old at the time of filing of the present suit and he had misplaced the said cheques and was therefore, could not file the same with the plaintiff earlier. It is further submitted that on 30.11.2018, the daughter of the plaintiff namely Mrs. Randeep Anand/SPA Holder of the plaintiff, while searching for medical reports of the plaintiff, has found the original cheques along with covering postal envelopes.

4. It is further submitted that non-filing of the above documents at the time of filing the present suit was neither intentional nor deliberate. It is further submitted that the said documents are very much relevant for proper adjudication of the present case. It is further submitted that the case is at the stage where witness of the plaintiff is yet to be cross-examined and no

prejudice would be caused to the defendants, if the present application is allowed. It is prayed that the plaintiff be allowed to file above said documents on record along with list of documents in the interest of justice to prove the same in evidence as per law.

5. Reply has been filed by the defendant to the present application and it has been submitted therein that he is the tenant under Mr. H. S. Sethi and not under the plaintiff. It is further submitted that the plaintiff is relative of Sh. H. S. Sethi and she has no legal right or title in the suit property and she is trying to interfere with the possession of Sh. H. S. Sethi in the suit property which is presently in possession of the defendant. It is further submitted that no cause of action has arisen in favour of the plaintiff for filing the present application against the defendant. It is further submitted that these cheques and copies are neither received by the applicants nor it was sent or addressed to them, then under what law and provision the applicants can bring these copies on record. It is further submitted that filing of these documents on record at this stage, would cause prejudice to the defendant as the documents have been put in answer in written statement. It is prayed that the present application be dismissed.

6. I have heard arguments advanced by Ld. Counsel for the parties and perused the records of the case.

7. It is the contention of the Ld. Counsel for the plaintiff that the defendant was sending the cheques for an amount of Rs.34,065/- by clubbing rent of two tenancies pertaining to two different landlords whereas the rent is Rs.20,970/- with respect to the tenancy pertaining to the suit property. It is further contention of Ld. Counsel for the plaintiff that the intention behind sending one cheque for the rent of two tenancies was not understandable by the plaintiff and the said cheques have not been encashed as the same was not in respect of the rent of the suit property. It is the contention of Ld. Counsel for the plaintiff that the cheques could not be filed earlier by the plaintiff as the same were misplaced at the time of filing of the suit and they were located while searching the medical reports of the plaintiff in the Almirah of the plaintiff. The reason given for not filing of the cheques along with the plaint is believable as the said documents were part of the pleadings of the plaintiff and in case, it was not misplaced, there was no reason for the plaintiff for not filing the same along with the plaint. The said cheques and postal envelopes also *prima-facie* show that the same were addressed and sent to the plaintiff. The cheques are alleged to be pertaining to the defendant and therefore, it cannot be said that they were in power and possession of the plaintiff at the time of filing of the suit. Furthermore, no prejudice would be caused to the defendant as the defendant will have an opportunity to cross-examination of the plaintiff's witness. Therefore, in view of my above said discussion, the application under Order 7 Rule 14 (3) read with Section 151 CPC is allowed and the documents filed by the plaintiff are taken on record.

8. Application stands disposed of.
9. **To come up for PE on 15.10.2022.**

(VINOD KUMAR GAUTAM)

ADJ-07(W)/THC DELHI
14.09.2022(k)