

Manorma Sharma Vs. Food Corporation of India & Others

Civil Suit No.80 of 2010

14.07.2023 Present: Mr. Sunita Sharma, Senior Advocate with Ms. Lalita Sharma, Advocate for the plaintiff.

Mr. Y.P. Sood & Mr. Praveen Chauhan, Advocates for defendants No.1 and 2.

Mr. Nand Lal Thakur, Senior Panel Counsel, for respondent No.3.

OMP No.122 of 2023.

The plaintiff, by way of the present application, filed under Order 14 Rule 5 of the Code of Civil Procedure (hereinafter referred to as the CPC'), has prayed for framing of the additional issues. According to the plaintiff, the defendants have damaged the building of the plaintiff by using drilling machine and also by throwing garbage and keeping junkyard and made dumping yards of the building. In order to substantiate the said fact, the plaintiff has relied upon the photographs, which are annexed with another application registered as OMP No.123 of 2023.

2. It is the further case of the plaintiff that necessary pleadings, in this regard, have already been made, in para 8 of the plaint and on the basis of the said pleadings, damages of Rs.30,00,000/- have also been claimed along with the interest, which comes to Rs.46,50,000/-.

3. On the basis of the said fact, a prayer has been made to frame the following additional issues:-

a) Whether the defendant is causing damage constantly to the building of the plaintiff by using drill machine and putting fixture in the internal side of the building to what effect?

b) Whether the plaintiff is entitled for damages to what extent?

4. The application is duly supported by the affidavit of the plaintiff Manorma Sharma.

5. When put to notice, this application has been contested by defendants No.1 and 2, only.

6. In the reply filed by defendants No.1 and 2, the factual position, as mentioned in the application, has specifically been denied. It has specifically been denied that any damages were caused by the defendants.

7. Apart from this, it has also been mentioned in the reply that all the necessary issues have already been framed by this Court and the parties to the lis had led their evidence. Apprehending that, in case the application is allowed, it amounts to *de novo* trial, a prayer has been made to dismiss the application.

8. Contents of the reply are duly supported by the affidavit of Assistant General Manager of the defendant-Corporation.

9. Heard.

10. Perusal of the record shows that the issues in this case were framed on 20.6.2012. Thereafter, the parties to the lis have led their respective evidence. It has not been disputed by learned counsel appearing for the parties that the case is now fixed for rebuttal evidence.

11. By way of the application, the prayer for framing of additional issues has been made. According to the settled preposition of law, issue is the material proposition of facts and law, which has been asserted by one party and denied by other party.

12. The plaintiff in para 8 of the plaint has specifically mentioned about material facts. The contents of para 8 of the plaint are reproduced as under:-

“8. That despite repeated promises and requests neither the use and occupation charges nor the compensation or damages have been paid to plaintiff nor the premises have been vacated. The Directorate of CPWD had issued notification vide letter No. 8-1/2002-W-li(DGW)PT dated 24th May, 2004 copy of which has been filed which provide that if there is any dispute over rental carpet area that can be resolved by measuring the space on the basis of built up area which the plaintiff had offered to the Food Corporation of India vide her letter dated 2nd November 2006 but nothing was done. The earthing of the building and phase-3 electricity connection was also got done by the plaintiff though the same had to be carried out by the concerned department and did not pay to the plaintiff. As such, the Food Corporation of India is now liable to pay the rental/use and occupation charges at Rs.44/- per Sq.

Ft. as not only the four floors of the building which are being occupied by the Food Corporation of India but also several additions/alternations and improvements have been carried out on the requests of the Food Corporation of India at a huge cost and finishing of the building which she was not bound to do and the defendants have made aluminum partition/additions /alternations and changes in the building and also damage the same to suite its own needs without the prior permission of the plaintiff. Therefore, the claim of use and occupation charges at the rate of Rs.44/- per Sq. Ft. is legitimate and justifiable. The premises have been subsequently materially impaired by changing the flooring etc. which they have no right to do. To the notice dated 09.09.2008, an evasive reply was sent. The amount now due and payable by you are as follows:-

Sr. No.	Abstract of Due Rent	Amount due
1.	Rent of first and third floor with effect from 10.01.2006 to 31.07.2010 and rent of 2 nd and 4 th floor w.e.f. 02.02.2006 to 31.07.2010 Total amount received from FCI with tax under protest with effect from 10.01.2006 to 31.07.2010(-): Due balance till date: Difference of Due amount:	Rentable carpet area worked out by HPPWD i.e. 5580 sq.ft. (Carpet Area) @Rs.44/- per Sq.Ft. (as per penal rate)(s per Bid) i.e. Rs.1,33,37,016.00 Rs.24,14,636.00 Principal Amount Rs.1,09,21,380.00 Rs.1,09,21,380.00
2.	Three phase electricity usage and earthing charges from 10.01.2006 to 31.07.2010 for 1st and 3rd floor with effect from 02.02.2006 to 31.07.2010 (for 2nd and 4th floor):	Rs.5000/- per month per floor for 4 floors = Rs.1,90,000.00
3.	Three phase meter security (Illegally and wrongly deducted from the rent):	Rs.42,221.87
4.	Water Pipe repair illegally and	Rs.1,416/-

	wrongly deducted from the rent:	
5.	Water meter connection security (Illegally and wrongly deducted from the rent):	Rs.2,945/-
6.	Sewerage Charges (paid on behalf of FCI)	Rs. 59,000/-
7.	Last water bill to be paid by the FCI January, 2007 to 21.04.2007	Rs.1000/-
8.	Water Lifting charges and use of water lifting pump charges with effect from 10.01.2006 to 30.11.2006 at the rate of Rs. 7000/- per month for eleven months spent on behalf of FCI:	Rs.77,000/-
9.	Cost of Water pipe (illegally removed from Attic without the consent of plaintiff):	Rs.1500/-
10.	Finishing of the whole building on the pressure of FCI and renovation done on their demand of toilet and stairs and other charges according to their requirement:	Rs.30,00,000/-
11.	Interest on Rs. 1,09,21,380.00 at the rate of 12 per cent per annum from 10.01.2006 to 31.07.2010 Grand Total:	Rs.50,88,667.00 (12 per cent total interest on all principal amounts) Rs.

13. On the basis of the above facts, the plaintiff has asserted her entitlement in para 9 of the plaint. The contents of para 9 of the plaint are reproduced as under:-

9. That the plaintiff is entitled to a sum of Rs.2,02,85,120.00 However, for the purposes of present case, the plaintiff is only claiming Rs. 1,72,85,120/- crores alongwith interest at the rate of 12 per cent per annum as the same has not been paid despite notice under Section 80 C.P.C. having been served on the defendants and the defendants have also not vacated the premises. The plaintiff is giving up the claim of Rs.30,00,000/- as she has not in a

position to pay the court fees and is only restricted the claim to Rs.1,72,85,120/- which is in fact due and payable to the plaintiff. The summary of the various amounts payable to the plaintiff from January, 2006 up to 31st July, 2010 are as under:

Sr. No.	Particulars	Principal	Interest	total
1.	Rent of Building	10921380	3056672	13977952
2.	Rent of 3 phase electric connection and earthing	1090000	302500	1392500
3.	Other charges (Sr. No.3 to 9)	185083	79586	264669
4.	Damages	3000000	1650000	4650000
	Total	15196463	5088657	20285120
Less claim given up				Rs.30,00,000/-
Net Payable				Rs.1,72,85,120/

14. These contents have specifically been denied by the defendants. Relevant paras 8 and 9 of the written statement are reproduced, as under:-

“8. Contents of para 8 as alleged are wrong and hence denied. It is denied that the defendants are liable to pay use and occupation charges or compensation or damages to the plaintiff. It is also wrong and hence denied that the defendants are required to vacate the premise as alleged. As far as the notification dated 24.5.2004 issued by the Directorate of C.P.W.D. is concerned, the same being matter of record requires no reply. It will, however, be pertinent to submit here that the notification dated 24.5.2004 pertain to the assessment of the rent and not for the measurement of

the rentable carpet area. It is further submitted that the rent is payable on the basis of the rentable carpet area and not on the basis of built up area as alleged. It is also wrong and hence denied that the defendants earthed or were required to pay for the building and providing of three phase electricity connections. It is wrong and hence denied that the FCI is liable to pay the rent/use and occupation charges @ Rs. 44/- per sq. ft. It is submitted that the F.C.1. is a tenant in the building therefore, it is only liable to pay the rent as approved by the plaintiff which rent is being paid to by the Deputy Commissioner Shimla and accepted the plaintiff regularly. The defendants are not liable to pay any use and occupation charges to the plaintiff as claimed. The claim of the plaintiff is totally false and wrong. It is wrong and hence denied that any additions/alterations and improvements have been carried out on the request of FCI at huge cost which the plaintiff was not bound to do as alleged, It is not denied that the defendants have provided few aluminum partitions with the consent of plaintiff which were necessary to make the building suitable for use of office purposes but the same have not caused any damage to the premises of the plaintiff. Except for providing the aluminum partition no additions, alterations or changes in the building have been carried out by the plaintiff nor any damage has been caused to the building. It is wrong and hence denied that the claim of use and occupation charges @ Rs. 44 per sq. ft. is legitimate and justifiable as alleged. The claim for Rs. 44 per sq. ft. by the plaintiff is totally unjustified and without any basis. It is wrong and hence denied that the premises have been materially impaired by changing the flooring etc. as alleged. It is wrong and hence denied that to the notice dated 9.9.2008 evasive reply was sent by replying defendant. It is submitted that each and every allegation in the notice was effectively replied. It is also wrong and hence denied that the plaintiff is entitled to claim the amount as mentioned in this para at Serial Nos. 1 to 11. The aim of the plaintiff is untenable and devoid of any basis. As far as the claims as set up by the

plaintiff at serial Net 3 to 10 are concerned the same are repetitive of what has been claimed in para 6 of the plaint and reply to these claims has already been submitted In reply to para 6 above and the same are not being repeated here in order to avoid repetition. The reply to para 6 may kindly be read as reply to contents of para: 8 serial Nos 3 to 10. As regards the claim at serial No.1 of this para it is submitted that the amount of Rs. 1,33,,37,016/- is not payable by the defendants to the plaintiff as neither the rentable carpet area is 5580 sq. ft. nor the rent is payable @ Rs. 44/- per sq. ft as claimed by the plaintiff. It is, however admitted that a sum of Rs. 24,15,636/- has been paid as rent to the plaintiff by the defendants. It is further submitted that the amount of Rs. 10,90,000/- as claimed at serial No.2 in also not payable by the defendants because it was for the plaintiff to provide: the electricity connections and all the charges were to be incurred by her for providing the electricity connections. The plaintiff had agreed to provide electricity is clear from the technical bid submitted by her. The plaintiff is not entitled to claim Rs. 50,88,661/- an account of interest from the defendants an alleged.

9. Contents of para 9 an alleged are wrong and hence denied. It is denied that the plaintiff is entitled to sum of Rs.2,02,85,120/- or 1,72,85,120/- from defendants. It is wrong and hence denied that the plaintiff is entitled to recover the amount as per the details given in this para. The rent is being claimed by the plaintiff arbitrarily without any basis and the same in not payable by defendants and similarly the charges for providing the electricity connections or alleged damages are also not payable to the plaintiff.”

15. The case, although, is at the advance stage of rebuttal evidence, but, considering the nature of the procedural law, according to which, a party has every right to prove his case, by leading the evidence, on the issues, so

framed. It was the duty of the Court to frame proper issues, arising out of the pleadings of the parties.

16. So far as the objections with regard to the delay of the proceedings, as well as, *de novo* trial are concerned, the procedural law is meant for advancement of justice and not to hamper the stream of justice. The parties to the lis have every right to adduce evidence and to prove their respective case, as per the provisions of law. Framing of issues, at this stage, will also not cause any prejudice to the defendants, as in case, the issues are framed, the opposite party, will get an opportunity to disprove the same.

17. Considering all these facts, the application is allowed and the following additional issues below Issue No.3, as 3(a) and 3(b), are framed:-

3(a) Whether the defendant is causing damage constantly to the building of the plaintiff by using drill machine and putting fixture in the internal side of the building to what effect?

OPP

3(b) Whether the plaintiff is entitled for damages to what extent?

OPP

18. Onus has not been objected to. The case is now adjourned for Plaintiff's evidence. List this matter before the Registrar.

OMP No. 123 of 2023.

19. Learned counsel for the plaintiff submits that she does not want to press the present petition, at this stage. The application is accordingly disposed of, being not pressed.

**(Virender Singh)
Judge**

July 14, 2023_(ps)