

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 5367-5368 OF 2012

JOTINDRA STEEL & TUBES LTD. Appellant (s)

VERSUS

KIRAN KANDHARI Respondent(s)

ORDER

These appeals are directed against judgment dated 18.4.2012 and order dated 14.5.2012 passed by the learned Single Judge of the Delhi High Court in Regular First Appeal No.575/2006 and Review Petition No.306/2012, respectively whereby dismissal of the suit filed by the appellant for specific performance was upheld.

The appellant filed Suit No.52/2006 for grant of the following relief:

"It is therefore, prayed that this Hon'ble court to pass a DECREE OF SPECIFIC PERFORMANCE thereby directing the defendant to fulfil her part of the obligation by executing a lease deed on requisite stamp paper for the period from 1.1.2006 to 31.12.2008 in respect of the flat bearing no 605 Chiranjiv Tower, 43, Nehru palce, new Delhi more clearly shown in red in the site plan attached as per clause no.2 of the lease deed dated 9.6.05 and the lease deed registered before the office of the complaint sub-registrar, Delhi and on her refusal to do so, the same may be ordered to be got executed by the Hon'ble Court on behalf of the defendant."

(reproduced from the SLP paper book)

On being noticed by the trial Court, the respondent filed written statement and contested the suit on several grounds including the one that lease deed dated 9.6.2005, of which specific performance was sought, was unregistered and was inadmissible in evidence in view of Sections 17 and 49 of the Registration Act, 1908 (for short, 'the 1908 Act').

On the pleadings of the parties the trial Court framed the following preliminary issue:

"3(A) whether the lease deed dated 09.06.2005 relied upon by the plaintiff required compulsory registration and being unregistered, is inadmissible in evidence in view of Sections 17 and 49 of the Registration Act as claimed for by the defendant in preliminary objection no.4 of his written statement?"

After hearing the parties the trial Court dismissed the suit vide judgment dated 2.8.2006 by observing that lease deed was compulsorily registrable under Section 17 read with 49 of the 1908 Act and as the same had not been registered.

The appeal filed by the appellant was dismissed by the learned Single Judge of the High Court, who not only agreed with the trial Court on the issue of compulsory registration of the lease deed but also observed that the appeal had become infructuous because tenure of the lease had come to an end. The learned Single Judge also observed

that even though the judgment of the trial Court was essentially based on Order 7 Rule 11 CPC, the provisions of Order 41 Rule 24 CPC read with Order 41 Rule 33 CPC could be invoked for deciding the appeal. He also relied upon Order 12 Rule 6 CPC and held that the appeal is liable to be dismissed on the basis of admitted facts. The review petition filed by the appellant was dismissed by the learned Single Judge by observing that the certificate filed along with it was given by the advocate without understanding his responsibility to the Court.

We have heard learned counsel for the parties and perused the record.

Ordinarily, we would have considered the question(s) raised in the appeal in detail and then decided whether the trial Court was justified in applying Order 7 Rule 11 CPC for declaring that the suit was not maintainable and also whether the learned Single Judge of the High Court was justified in suo motu invoking Order 41 Rule 24 CPC read with Order 41 Rule 33 CPC and Order 12 Rule 6 CPC but the necessity of doing so has been obviated because learned counsel for the respondent fairly stated that he cannot justify the exercise undertaken by the trial Court to dismiss the suit under Order 7 Rule 11 CPC or the impugned judgment, in which the learned Single Judge relied upon the provisions of Order 41 Rule 24 CPC read with Order 41 Rule 33 CPC and Order 12 Rule 6 CPC.

In view of the above, the appeals are allowed, the impugned judgment as also the one passed by the trial Court are set aside and the matter is remitted to the trial Court for fresh disposal of the suit in accordance with law.

.....J.
(G.S. SINGHVI)

.....J.
(H.L. GOKHALE)

March 4, 2013,
NEW DELHI.

ITEM NO.49 COURT NO.3 SECTION XIV

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(S). 5367-5368 OF 2012

JOTINDRA STEEL & TUBES LTD. Appellant (s)
VERSUS

KIRAN KANDHARI Respondent(s)
(With prayer for interim relief and office report)

Date: 04/03/2013 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE H.L. GOKHALE

For Appellant(s) Mr. Anand Nandan, Adv.
Mr. Amit Pawan, Adv.

For Respondent(s) Mr. Annam D.N. Rao, Adv.
Ms. Neelam Jain, Adv.

UPON hearing counsel the Court made the following
ORDER

The appeals are allowed in terms of the signed
order.

(Parveen Kr. Chawla) (Phoolan Wati Arora)
Court Master Court Master
[signed order is placed on the file]