

CASE NO.:
Special Leave Petition (civil) 18722 of 2006

PETITIONER:
DELHI FINANCIAL CORPORATION

RESPONDENT:
V.P.PURI & OTHERS

DATE OF JUDGMENT: 08/12/2006

BENCH:
K.G.BALAKRISHNAN & D.K. JAIN

JUDGMENT:
JUDGMENT

O R D E R

D.K. JAIN, J.:

1. Challenge in this petition is to the order, dated 31.8.2006, passed by a Division Bench of the Delhi High Court, affirming the order passed by a learned Single Judge, whereby the application filed by the Delhi Financial Corporation (for short "DFC") defendant No. 2 in the suit, seeking to wriggle out of the settlement arrived at with the plaintiffs, respondents No. 1 to 7 herein (hereinafter referred to as "the landlords") was dismissed.

2. Having heard learned counsel for the DFC and the landlords who are on caveat, we are of the view that there is no ground to interfere with the impugned order.

3. The backdrop of this long drawn litigation, at times coming to this Court, in brief, is as follows:

The suit premises bearing No. 6-7, Saraswati Bhawan, E-Block, Connaught Place, New Delhi were let out by the landlords to the Union of India \026 Respondent No. 8 herein, some time in the year 1967. The lease was further extended vide agreement dated 1.1.1994 for a period of two years, with effect from 11.11.1993 at a monthly rent of Rs.2,28,255/- with right to sublet whole or any part of the premises, as per clause (4) of the lease deed, with a rider that the Union of India will remain responsible for full payment of rent. A substantial part of the premises was sublet by Union of India to DFC.

4. Determining the tenancy, after serving notice, dated 6.3.1995, on the Union of India, the landlords filed a suit for possession by ejectment and recovery of the mesne profits w.e.f. 1.5.1995 against the Union of India.

5. It appears that there was default on the part of the Union of India in payment of rent. By order dated 20.12.2000 a Division Bench of the High Court directed the Union of India to pay the stated amount as per earlier order dated 15.5.1997 towards use and occupation charges of the said premises, adding that on failure to pay it with interest on or before 31.3.2000 its right to continue contesting the suit would stand struck off.

6. The Union of India failed to comply with the said order. Consequently, their defence was struck off vide order dated 1.5.2001.

7. Subsequently, an application was filed by the DFC, claiming to be a necessary party, praying for its impleadment in the suit. The application was dismissed by the Single Judge, which order was affirmed by the

Division Bench in the appeal preferred by DFC. On matter being taken to this Court, vide order dated 16.7.2004, it was felt that for effective settlement of the disputes, DFC was a proper party. DFC's appeal was allowed and it was impleaded as the second defendant in the suit. Pursuant where to, DFC filed its written statement.

8. Thereafter, basing the case on some admissions by the DFC in the written statement, inter alia, as to UOI's tenancy, the rate of rent and determination of tenancy on their notice, the landlords filed an application under Order XII Rule 6 CPC contending that no triable issue having been raised by the DFC they were entitled to a decree of possession forthwith.

9. During the course of arguments on landlords' aforesaid application under Order XII Rule 6 CPC, counsel for the DFC sought adjournment in order to obtain instructions. The matter being listed again on 13.12.2005, counsel for the DFC made a statement to the effect that the Corporation was ready to vacate and hand over the premises to the landlords by 31.8.2006. DFC was asked to file an affidavit/undertaking to that effect, which was done, stating in the affidavit dated 12.1.2006 that the DFC would not induct any other person in the suit premises and would hand over vacant and peaceful possession thereof to the landlords on or before 31.8.2006 and till then would pay to them future compensation for use and occupation of the suit premises month by month. On 13.1.2006 the undertaking was accepted and a decree in terms thereof was passed by the learned Single Judge in favour of the landlords and against the DFC qua the ground floor, first floor and second floor of the suit premises, except one room of the first floor (already in occupation of the landlords). In so far as the basement of the premises in possession of the Union of India was concerned, the matter was fixed for arguments on 30.1.2006.

10. After a lapse of about four months, an application (I.A. No. 5852/2006) was filed by the DFC seeking closure of the case on the plea that the settlement made by it with the landlords was on a distinct understanding that all the disputes were settled and there was no question of payment of any mesne profits. In the alternative it was pleaded that the undertaking of DFC may not be treated as binding on them and it be deemed to be withdrawn. As noted above, the application was dismissed by the learned Single Judge vide order dated 7.8.2006. Appeal against this order was turned down by the impugned detailed and well reasoned order of the Division Bench.

11. The DFC is, thus, before us.

12. Mr. Mukul Rohtagi, learned senior counsel appearing for DFC has strenuously urged that the High Court has failed to appreciate that all the issues between the parties to the suit, including issue of possession, compensation etc. except regarding the possession of the basement floor, in the occupation of the Union of India, stood settled by virtue of order dated 13.1.2006. Therefore, the said order having attained finality the landlords are now estopped from raising the issue in regard to the mesne profits. It is asserted that the claim of damages/mesne profits by the landlords at this stage is an after thought. In the alternative, it is contended that if the arrangement arrived at between the DFC and the landlords is not acceptable to the landlords, the DFC may be put back in possession of the suit premises and

the suit may be tried afresh on all the issues.

13. We are unable to persuade ourselves to agree with learned counsel for the DFC. In the light of plain terms of the undertaking filed in the form of an affidavit by the Senior Manager of DFC; the order dated 13.1.2006 and the fact that the said undertaking was filed at a stage when arguments on landlords' application under Order XII Rule 6, praying for a decree for possession on admissions were being heard, we are of the view that order dated 13.1.2006 did not put a quietus to the issue of mesne profits. Apparently, neither the Union of India who in terms of clause (4) of the lease deed was principally liable to pay rent and other charges in respect of the whole of the suit premises, was a party to the said arrangement nor is there any mention or indication in the affidavit, filed by the DFC, on the question of mesne profits. That apart, admittedly, the suit as a whole was not disposed of and the issue of mesne profits still remained to be decided. We say no more at this stage, lest it may cause prejudice to either of the parties at the time of final adjudication on the issue. As regards the question whether or not the DFC is liable to pay the mesne profits to which a passing reference was made by learned counsel for the DFC, it was not the subject matter of the application giving rise to the present petition.

14. However, while opposing the petition, Mr. P.V.Kapur, learned senior counsel appearing for the landlords offered and gave an undertaking at the Bar, that notwithstanding the fact that the defence of the Union of India has been struck off, the landlords will not stand in the way of the Union of India raising the plea, even at this stage, of the stated settlement between the landlords and the DFC and the affidavit dated 12.1.2006 having been filed by DFC on some clear and distinct "understanding" as alleged by the DFC in these proceedings. The landlords shall remain bound by the said undertaking.

15. In view of the above said scenario, we hold that the impugned judgment does not suffer from any infirmity, warranting interference. Resultantly, subject to the aforementioned direction, the petition is dismissed.