
(1999) 06 AP CK 0012

In the Andhra Pradesh High Court

Case No : A.S. No's. 2539 of 1985 and 2290 of 1987

Andhra Bank

APPELLANT

Vs

Chalasani Nageswara Rao

RESPONDENT

Date of Decision : 09-06-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12
Transfer of Property Act, 1882 — Section 106

Citation : (1999) 3 ALT 581 : (1999) 3 RCR(Civil) 499 : (1999) 2 RCR(Rent) 34

Hon'ble Judges : B. Prakash Rao, J

Bench : Single Bench

Advocate : M.S. Ramakrishna Rao, for the Appellant; Y.B. Tata Rao, for the Respondent

Final Decision : Dismissed

Judgement

B. Prakash Rao, J.—These two appeals arise out of the same proceedings at two different stages. A.S. No. 2539 of 1985 is filed by the defendant-Bank against the judgment and decree in O.S. No. 33 of 1984 dated 19th August, 1985 on the file of the Principal Subordinate Judge's Court, Guntur whereunder the suit for ejectment filed by the respondent-plaintiff in respect of Schedule A and B properties, for recovery of possession and claiming damages was decreed by granting Rs. 57,000/- towards arrears of rent and damages for use and occupation. As regards the future profits, it was held that the same would be determined on a separate application to be filed by the plaintiff. Subsequent to the said decree, on the application filed by the respondent-plaintiff in LA. No. 2447 of 1985, the future mesne profits were determined at the rate of Rs. 9,000/- per month as per the orders dated 19th March, 1987. Aggrieved by the same, the Bank preferred A.S. No. 2290 of 1987.

2. The respondent-plaintiff had laid the suit against the appellant-Bank, inter alia, on the allegation that the respondent is the landlord of the suit property and the appellant had located its Branch Office in the suit building on payment of a

consolidated monthly rent of Rs. 3,000/-, which includes Rs. 2,000/- for Schedule A property for its office in the ground floor and Rs. 1,000/- per month for the B Schedule property consisting of strong room, fittings etc., in the ground floor. It was alleged that the appellant paid the rents upto March, 1983 and the tenancy was terminated by a registered notice, Ex.A-1, dated 24-6-1983. Further, it was also alleged that the lease, as agreed, stood expired by 31-3-1983. It was also claimed that in view of the inflation, the respondent had called upon the appellant to pay a consolidated amount of Rs. 9,000/- per month for both the Schedule A and B properties from 1-4-1983. However, since the appellant did not vacate the premises, the respondent had filed the present suit seeking eviction and also claiming damages of Rs. 9,000/-per month from 1-8-1983 and also for future profits.

3. The said suit was contested by the appellant Bank, inter alia, on various grounds stating that there is an option for renewal and extension of lease for further periods and it was also alleged that since there was a refusal to accede to the request for the enhancement of the rent at abnormal rate, the suit was filed and the claim of Rs. 9,000/- per month towards damages is abnormal and exorbitant. It was also further alleged that on behalf of the plaintiff one V.V. Subba Rao, approached the Manager of the Bank and agreed for renewal of the lease subject to payment of rent of Rs. 6,500/- per month. Apart from the said pleas, the validity of the quit notice etc., have also been raised in the written statement, of which there is no need to mention in view of the ultimate restricted question raised by the parties in these appeals.

4. On the rival pleadings, the trial Court framed the following issues:

- (1) Whether the plaintiff is the landlord of the building?
- (2) Whether the suit is maintainable for want of privity of contract?
- (3) Whether the tenancy is not properly terminated?
- (4) Whether the damages claimed are excessive?
- (5) Whether the plaintiff is entitled for eviction and recovery of possession of the suit property?
- (6) To what relief?

Ultimately, after taking the evidence of both sides, the suit was decreed ordering eviction of the appellant. As regards the damages, the trial Court fixed the same at the rate of Rs. 9,000/- per month rejecting the alleged plea of negotiations between the parties with the offer of the appellant at Rs. 6,500/- per month.

5. In these two appeals, it is stated by Sri M.S. Rama Krishna Rao, learned Counsel for the appellant-Bank, that the Bank had already vacated the premises in question and in view of the interim orders granted by this Court pending the appeal, the amounts as decreed have also been paid. Therefore, the learned Counsel for the appellant restricted his arguments only on the question of the

determination as to the quantum of damages. The learned Counsel attacked the said finding on the ground that the appellant, after vacating the suit premises, has shifted to the premises which is quite opposite to the suit premises agreeing to pay rent at the rate of Re. 1/- per sq. ft. Accordingly, the rate of rent as agreed to under Exs.B-1 and B-2 upto the period 1980 at Rs. 3,000 /- per month is a reasonable one and the claim of Rs. 9,000/- per month is quite excessive and exorbitant. It was pointed out that the respondent-plaintiff had examined the other tenant viz., the Tobacco Board only and did not examine the other two tenants who are in occupation of two shops in the ground floor. Therefore, the reliance placed by the trial Court, both in the main suit and also during the enquiry for determination of the future mesne profits, on the sole testimony given on behalf of the Tobacco Board is not proper. The learned Counsel, Sri Y.B. Tata Rao, appearing for the respondent-plaintiff has contested the said claim stating that the premises which has been taken by the appellant in the opposite building is very small with a narrow entrance and it cannot be equated with the suit premises which was in occupation. It is also pointed out that admittedly, an offer was given by the appellant Bank itself upto Rs. 6,500/- per month which, according to the learned Counsel, was not accepted and the lease amounts as agreed to between the respondent and the Tobacco Board as spoken to by P.W.I do reflect the prevailing market rate and accordingly, the damages as determined by the Court below at Rs. 9,000/- is quite reasonable.

6. On the submissions made on behalf of the parties, the only question which falls for consideration is whether the determination of the quantum of damages at the rate of Rs. 9,000/- per month by the trial Court is justified?

7. At the outset, it may be noticed that even though the parties had full opportunity to lead evidence as regards the quantum of damages at both the stages i.e., firstly in the main suit and also at the stage of determination of future mesne profits, however, surprisingly, neither of the parties has taken pains to lead any independent evidence. The evidence as let in on the respective sides is only interested and is of their own. The real question which has to be gone into in respect of determination of damages, which has an interrelation to the expressions like mesne profits and compensation arising in different proceedings, has only to be based on and has a direct nexus to the prevailing market value or rate etc., which, in fact, needs to be elaborated and established by the parties. In the absence of any such independent evidence of the occupants of the surrounding premises as regards the prevailing market value or rate, it becomes very difficult to solely rely on the interested evidence let in on behalf of the respective parties. Damages for use and occupation which normally arise after the quit notice issued under Sec.106 of the Transfer of Property Act and mesne profits as contemplated under Order XX Rule 12 of the CPC and the compensation which has to be determined under the provisions of the Land Acquisition Act have thus an inter-related basis for the purpose of the enquiry and their determination.

8. In the instant case, the respondent-plaintiff had, in fact, claimed the damages at the rate of Rs. 9,000/- per month in the quit notice in Ex.A-1 dated 24-6-1983, prior to the filing of the suit. Further, it was also reiterated in the relief portion in the suit. In support of the said claim arising under issue No. 4 viz., whether the damages claimed are excessive, the respondent-plaintiff had examined P.W.I, Mr. Mohan Rao, an Assistant in the Tobacco Board according to whom, the Board is in occupation of the first floor of the suit premises since 1-10-1976 and was paying rent of Rs. 4,000/- per month and it was enhanced to Rs. 6,250/- per month from 2-10-1979 to October, 1980. It was further enhanced to Rs. 9,000/- per month from 2-10-1980 to 1-10-1983. Subsequently, it was enhanced to Rs. 10,000/- per month from 2-10-1983 to 1-10-1984, which was again enhanced to Rs. 11,000/- per month from October, 1984 and it was also agreed to further enhancement at Rs. 12,000/- per month from October 1985 to October, 1986. The suit building in occupation of the Board consists of the entire upstairs portion. However, this witness was not able to give the plinth area occupied by the Board.

9. On behalf of the defendant-Bank, its Branch Manager was examined as R.W.I, who stated that the Bank had taken another premises quite opposite to the suit building on the main road of Arundelpet and Koritipadu. He stated that the said new premises was taken at Re. 1/- per sq. ft. But in the cross-examination, he has stated that the rate is at Rs. 2.75 per sq. ft. The parties have given the description, location and the area in occupation in the suit premises and also the premises occupied by the appellant Bank on the opposite side. P.W.I appearing on behalf of the plaintiff had stated in his cross-examination that the area occupied by the Tobacco Board is 5,500 sq. ft. whereas the Bank had occupied a plinth area of 3,000 sq. ft. The same evidence was again repeated before the Advocate-Commissioner during the enquiry for determination of the future mesne profits without again there being any independent evidence in support of the prevailing-market rates.

10. Be that as it may, it is quite evident from the admitted fact that the appellant-Bank has been paying the rent at the rate of Rs. 3,000/- per month upto 1980 and there was demand of Rs. 9,000/- per month in the initial quit notice itself. The appellant had taken a specific plea that there have been some negotiations between the parties wherein the appellant had offered Rs. 6,500/- per month as rent which, of course, did not materialise. However, without going into the factum or the result of the said alleged negotiations, it is the appellant's own offer of Rs. 6,500/- per month towards rent which appears to have been not acceded to by the plaintiff. Therefore, even taking the earlier rent at the rate of Rs. 3,000/- per month as per the existing agreement and by taking into consideration the normal inflationary rates in the rents, with normal 30% enhancement, the very offer of Rs. 6,500/- per month does not outweigh the rate of Rs. 9,000/- per month as demanded by the plaintiff. Ultimately, the entire question as to the quantum is only a guess work, more so in the absence of any independent evidence as to the prevailing market rates. Admittedly, the suit

property is situate in Guntur, which is sufficiently a big town and the developmental activities and inflationary increase cannot be ruled out. Therefore, looking from any angle, the claim as awarded by the trial Court at the rate of Rs. 9,000/- does not seem to be excessive or exorbitant. Further, as already stated, there is no material to come to a different conclusion or to show at least that the said rate is exorbitant.

11. As regards the quantum determination, in a case arising under the Motor , Vehicle Accident claims, the Supreme Court in Nagappa Mahadev Doddaamani Vs. New India Assurance Co. Ltd. and Another, , has held that normally, interference in an appeal can be made with the quantum only on the ground of inadequacy of compensation or the same being too excessive.

12. The learned Counsel for the appellant did not point out any such errors which would warrant interference by the appellate Court. As regards the non-examination of the other two tenants in the suit premises on behalf of the respondent-plaintiff, there is no foundation laid on behalf of the appellant to draw any adverse inference. I have also gone through the entire record and the evidence on record and do not see any reason to interfere with the quantum as determined.

13. In view of the above, there is no reason to interfere with the finding arrived at by the trial Court. Both the appeals fail and they are accordingly dismissed. However, in view of the fact that the appellant had vacated the premises and paid the entire amounts as per the decree, there shall be no order as to costs.