
(2008) 05 DEL CK 0250

In the Delhi High Court

Case No : Regular First Appeal 505 of 2007

Bandhu Machinery P. Ltd.

APPELLANT

Vs

Om Parkash Sikka and Others

RESPONDENT

Date of Decision : 30-05-2008

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 106(3), 107

Citation : AIR 2009 Delhi 33 : (2008) 105 DRJ 267 : (2009) 5 RCR(Civil) 601

Hon'ble Judges : T.S. Thakur, J;Siddharth Mridul, J

Bench : Division Bench

Advocate : Virender Goswami and Sindhu Sinha, for the Appellant; Manjusha Wadhwa and Gagan Deep Kaur, for the Respondent

Final Decision : Dismissed

Judgement

Siddharth Mridul, J.—The present appeal is preferred by the appellant against the judgment and decree passed by the learned Additional District Judge, Delhi in Suit No. 287/04, directing the appellant/tenant to hand over possession of the suit premises to the respondent/landlord. Vide the said judgment the appellant has also been directed to pay mesne profits at Rs. 25,000/- (rupees twenty five thousand) per month with effect from 1st May, 2004, till the suit premises is vacated.

2. The plaintiff is the owner of property bearing No. D-854, New Friends Colony, New Delhi. The suit property was given out on rent by the plaintiff/respondent to the appellant/company for use as residence of their officer, namely, Shri Prem Bandhu Gupta vide rent deed dated 1st May, 1998, for a period of three years at a rental of Rs. 19,500/- (rupees nineteen thousand five hundred). Upon expiry of the aforesaid rent deed the parties executed a fresh rent deed for a period of three years from 1st May, 2001 at a monthly rent of Rs. 25,000/- (rupees twenty five thousand).

3. By a letter dated 29th April, 2004, the plaintiff informed the appellant-

company, that since the tenancy would expire by efflux of time on 30th April, 2004, the possession of the suit premises should be handed over to the plaintiff-landlord's nominee on the 1st of May, 2004. The landlord states that the tenant refused to hand over physical possession of the suit property to the nominee on 1st May, 2004.

4. Thereafter, the suit for possession and mesne profits was instituted by the landlord against the tenant on 23rd May, 2004. In the written statement filed by the defendant/appellant it was, inter alia, alleged that, after the period of the running lease expired on 30th April, 2004, there was a meeting between the parties, wherein it was agreed that, the appellant/defendant could stay for another three years, subject to enhanced rent with rest of the terms and conditions remaining unchanged. It was also alleged that the tenant was always ready and willing to pay rent to the landlord, but that the plaintiff had not come to collect it. The tenant also alleged that no proper notice of termination of lease had been served upon it and prayed for dismissal of the suit on that account.

5. Before the trial court the following issues were framed:

(i) Whether the rent deed stood extended by virtue of oral agreement for a period of another three years after 30.04.2004? (OPD)

(ii) Whether the lease had expired on 30.04.2004 and whether the plaintiff is entitled to possession of the suit property? (OPD)

(iii) Whether the plaintiff is entitled to mesne profits @ Rs. 25,000/- per month w.e.f. 01.05.2004 till the premises is vacated? (OPP)

(iv) Relief.

6. Appearing for the appellant, Mr. Virender Goswami, Advocate, made the following submissions before us. Firstly, he contended that the learned Trial Court fell into error in holding that the oral arrangement entered into between the parties with regard to extension of lease had no legal impact. Secondly, he urged that the learned Trial Court had failed to appreciate that no notice regarding termination of tenancy was ever served on the appellant/tenant. Lastly, he submitted that the learned Trial Court erred in relying upon the testimony of Mr. Ashwani Handa, who was substituted as the duly authorized Attorney, in place of the landlord, since the said, Mr. Ashwani Handa, was not a party to the transaction that had taken place between the parties in regard to the renewal of the rent deed qua the suit premises.

7. Per contra on the question of the finding of the learned Trial Court, that the purported oral agreement was of no avail to the appellant, it was urged by Ms. Manjusha Wadhwa, Advocate, appearing for the landlord, that any lease for a period of three years with respect to immovable property could be created only through a registered lease deed in view of the provision of Section 107 of the Transfer of Property Act, 1882. Even otherwise, as regards the purported oral extension, the solitary witness examined by the appellant-company had not been

able to establish it, since he could not depose as to the exact date or month of such oral agreement or even as to who represented the landlord at the time the purported agreement was entered into.

8. As regards the question of notice of termination, Ms. Manjusha Wadhwa, Advocate urged that since no specific objection regarding legal validity of notice had been taken by the appellant in the written statement, no issue was framed by the Trial Court in that behalf. It was thus submitted that since there was no specific averment either in the written statement or in the evidence by way of affidavit filed before the Trial Court on behalf of appellant, they were estopped from taking this objection at the appellate stage. Moreover, the Trial Court had returned a finding in support of due service of notice to quit on the appellants. Alternatively, it was urged by Ms. Wadhwa that since the tenancy had come to an end by efflux of time, no notice was required u/s 106 of The Transfer of Property Act, 1882. Further, it was submitted that even the extended period of lease under the purported oral extension had come to an end on 31st March, 2007, and consequently the present appeal was an abuse of process of law.

9. Insofar as the question of testimony of Mr. Ashwani Handa, the duly authorized Attorney of the landlord/plaintiff is concerned, it was urged that, his testimony in relation to the rent deed between the parties, had been admitted as correct by the defendant, and that, therefore, the learned Trial Court had correctly returned a finding, that the rent deed placed on record by landlord having been admitted by the adversary, was not required to be proved.

10. We have considered the rival submissions made at the bar and perused the records of the proceedings. In the written statement filed by the appellant-tenant, it had been expressly admitted that the period of the running lease had expired on the 30th April, 2004. Further, no specific objection or denial had been raised with regard to validity of notice of termination of lease, except to say that:

6) It is submitted that even as per the plaintiff no proper notice of termination of lease has been served on the defendant and therefore the present suit is not maintainable.

In *Dharam Pal v. Harbans Singh* reported as (2006) 9 SCC 216, the Supreme Court has held that "an objection as to the invalidity or insufficiency of notice u/s 106 of the Transfer of Property Act should be specifically raised in the written statement, failing which, it will be deemed to have been waived." No such specific denial was averred by the Appellant in the written statement filed by them. Even otherwise the dispatch and service of the notice dated 29th April, 2004, has been proved by the plaintiff-landlord before the learned Trial Court. Furthermore, vide notice in question, the appellant-tenant was asked to hand over possession of the suit premises on the 1st May, 2004, but the suit in question was filed in Court only on the 25th May, 2004, i.e. much after the expiry of the stipulated period of fifteen days, and as such no fault can be found with the notice in view of the provision of Section 106(3) of the Transfer of Property

Act, 1882, which reads as follows:

A notice under Sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

The notice to quit was dispatched on 29th April, 2004 and served on the appellant on 30th April, 2004. The suit for possession was instituted by landlord on 23rd May, 2004, after the expiry of fifteen days from service of said notice. In *Sudershan Sinha and Anr. v. Kuldeep Singh* reported as 2006 VIII AD (DELHI) 75, this Court has held that:

It is now only relevant that the suit should be filed after the expiry of the period of fifteen days from the date of the receipt of the notice." Therefore, the finding of the learned Trial Court with regard to the service as well as validity of notice to quit is unimpeachable in the facts and circumstances of the present case.

11. We are also of the opinion that the appellant himself having admitted the period of currency of rent deed in question in his written statement, the period of tenancy had come to an end by efflux of time on the 30th April, 2004. The Supreme Court in the case of *Pooran Chand v. Moti Lal* reported as AIR 64 sc 461, has held that if the term of the tenancy expires by efflux of time no question of statutory notice would arise.

12. The argument with regard to the purported oral extension of the lease is equally untenable in view of the specific provision of Section 107 of the Transfer of Property Act which reads as follows:

Leases how made - A lease of Immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

It is not the case of the appellant that upon expiry of the earlier rent deed an extension thereof was made by a registered instrument. Further, the onus to establish the purported oral lease deed was on the appellant-tenant, which he miserably failed to discharge.

13. That brings us to the last submission made on behalf of the appellant relating to the testimony of Mr. Ashwani Handa, who had been substituted as the duly authorized Attorney in place of landlord. The submission in this behalf that the Power of Attorney could not have proved the case of the landlord, since he had no personal knowledge thereof, is of no avail in the present case, as the solitary witness examined on behalf of the appellant/tenant had himself admitted both the rent deed and the factum of period of tenancy having come to an end on 30th April, 2004.

14. It is also pertinent to observe that, even the extended period of three years from 1st May, 2004, that the appellant claimed under the oral agreement, has

since come to an end. The appellant thus has no right or entitlement to retain possession of the demised premises.

15. In view of the above, there is no merit in this appeal which fails and is hereby dismissed. The parties are left to bear their own costs.