
(2002) 02 AHC CK 0084
In the Allahabad High Court
Case No : Civil Revision No. 397 of 2001

Bank of Baroda

APPELLANT

Vs

Sardar Arvinder Singh and Another

RESPONDENT

Date of Decision : 05-02-2002

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 107

Citation : (2002) 2 AWC 1068

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : Avinash Swaroop, for the Appellant; Som Nath Seth and Rajesh Tandon, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Rathi, J.—The respondents filed a suit for eviction and for recovery of arrears of rent against the revisionist which was Suit No. 3 of 1998. The suit for eviction as well as for recovery of arrears of rent has been decreed by judgment dated 31.5.2001 by Additional District Judge, Hapur (Ghaziabad). Aggrieved by it, the present revision has been preferred.

2. The only point pressed before me by Sri Avinash Swaroop, learned counsel for the revisionist is that the tenancy was for a fixed period ; that the notice of termination of tenancy was served and the suit has been filed before the expiry of the said period : that, therefore, the notice of termination of tenancy is illegal and the suit is premature.

3. The facts of the case are not in dispute. A registered lease deed was executed between the parties on 20.12.1983, which is Annexure-1 to the affidavit. However, it is also not denied that the tenancy in fact started from 10.1.1983 though this registered deed was executed on 20.12,1983. According to the agreement, the premises was given on rent for a period of ten years. There is a Clause 5 in the lease deed, interpretation of which is involved in this revision

and, therefore, the same is abstracted as below :

"Provided always and it is hereby agreed and declared that the lessor will, on the written request of the lessee made not less than three calendar months before the expiration of the terms hereby created if there shall not at the time of such request be any existing breach or non-observance of any of the covenants on the part of the lessee herein contained, grant to the lessee a renewal of the lease of the demised premises for one further period of five years from the expiration of the terms hereby granted at the rent increased by 10% of the rent hereby fixed in respect of such further period and containing the same covenants and provisions as are herein contained excluding this present covenant for renewal."

4. It is contended by the learned counsel for the revisionist that after the expiry of period of ten years, a proper notice was served and the 10% rent was increased in accordance with the above clause and the increased rent was accepted by the respondents ; that, therefore, the tenancy renewed for a further period of five years and could not have been terminated before the expiry of five years ; that, therefore, the notice of termination of tenancy dated 20.8.1997 which was given before the expiry of period of five years is invalid notice and the tenancy cannot be terminated : that, therefore, the decree is fit to be set aside.

5. Opposing the arguments, Sri Rajesh Tandon, learned senior advocate for the respondents has argued that no fresh registered agreement was executed after the expiry of period of ten years in accordance with the above clause 5 of the agreement ; that according to Section 107 of Transfer of Property Act, the tenancy for five years could be created by a registered deed only ; that no registered deed was executed between the parties ; that therefore, after the expiry of ten years, the revisionist became the tenant from month to month by holding over and, therefore, the tenancy could be terminated any time by notice u/s 106 of Transfer of Property Act.

6. Learned counsel has referred to the Section 107 of Transfer of Property Act, which provides that the 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.

7. It has been argued that no registered instrument was executed and therefore, the tenancy is not renewed for five years. On the other hand, the tenancy became month to month tenancy terminable by a notice u/s 106 of Transfer of Property Act.

8. Learned counsel for the opposite parties in support of the argument has referred to few cases. The first case referred to is Bharat Petroleum Corporation Limited v. Khaja Midhat Noor and Ors. 1988 (1) RCR 613. In this case, the premises was given on lease for ten years with a right of renewal for five years. Lessee continued after ten years but no instrument was executed by the parties. It was held that in the absence of any instrument the lease shall be deemed from month to month after expiry of period of ten years. The perusal of the judgment

of the Apex Court show that in that case according to the agreement, the lease was for a period of ten years with a right of renewal for a further period of five years. After expiry of ten years, no instrument was executed by the parties and the lessee continued in possession of the leased property. The facts of the present case are identical. The para 5 of lease deed shows that there was an agreement to grant to the lessee a renewal of the lease of the demised premises for a further period of five years. Therefore. In view of the above decision of the Apex Court, the interpretation of the Clause 5 is that a fresh agreement of lease should have been executed for the renewal of the lease for a further period of five years. Admittedly, no such agreement was executed. Therefore, the lease became from month to month.

9. The other case referred to is of Division Bench decision of Delhi High Court in *Uptron Powertronics Limited v. G. L. Rawal*. 1999 RCR 442. In this case in the lease deed, there was a stipulation (hat the lease shall be of continuous nature till revoked by mutual consent and there will be automatic increase of 15% in rent after expiry of every three years. The original lease deed was registered. It was held that the lease deed is required to be registered after the expiry of every three years ; that in the absence of the registered lease deed, it will be deemed to be monthly lease and terminable u/s 106 of Transfer of Property Act.

10. On the strength of the above authorities, it has been argued that since after the expiry of period of ten years, no lease deed agreement was executed. Therefore, revisionist became lessee from month to month and the lease could be terminated by a notice u/s 106 of Transfer of Property Act.

11. As against this, learned counsel for the revisionist has referred to *Sardar Singh Vs. Smt. Krishna Devi and another*, . It was held in this case that if any document does not create any right, title or interest in presenti in immovable property of value of Rs. 100 or above, its registration is not necessary. On the basis of this observation of the Apex Court, it has been argued that the right was granted by the lease deed dated 20.12.1983 and no right was recreated in the presenti and therefore, no registered deed is required. The argument cannot be accepted. The observation of the Apex Court was made in a different context and has no application in (he present case. The question in the present case is regarding the renewal of the lease after the expiry of period of ten years for a further period of five years. No right was granted to lessee to continue the lease for five years more after the expiry of ten years by registered agreement. Therefore, the revisionist shall be considered to be the lessee from month to month.

12. In the circumstances, the lease could have been terminated by a notice u/s 106 of Transfer of Property Act. It was validly terminated. The suit is not premature.

13. No other point has been pressed before me in this revision. The revision is without merit and is hereby fit to be dismissed.

14. The revision fails and is hereby dismissed with costs. However, the bank requires some time to vacate the premises and, therefore, four months time from today is allowed to bank to vacate the premises.