

(2010) 05 DEL CK 0114

In the Delhi High Court

Case No : Regular First Appeal 421 of 2009

Bank of Baroda

APPELLANT

Vs

Vijay Mahipal and Co.

RESPONDENT

Date of Decision : 25-05-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, 151
Transfer of Property Act, 1882 — Section 106, 107, 116

Citation : (2010) 05 DEL CK 0114

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Adarsh B. Dial, R.P. Aggarwal and Arvind Kumar, for the Appellant;
Rajat Aneja, for the Respondent

Final Decision : Dismissed

Judgement

Reva Khetrapal, J.—In this appeal, the appellant seeks to assail the judgment and decree dated 19.09.2009 passed by the learned Additional District Judge whereby the suit of the respondent/plaintiff was decreed for the relief of possession.

2. The facts relevant for the disposal of the present appeal are not in controversy. The appellant and the respondent had entered into a lease deed dated 27.05.2004 in respect of the ground floor measuring 1203.12 sq.ft., basement 1378.12 sq.ft. and mezzanine floor measuring 1011.74 sq.ft., admeasuring in all 3592.98 sq.ft., situated at 32, Community Centre, Industrial Area, Phase-I, Naraina, New Delhi on a monthly rent of Rs. 71,860/- (Rupees Seventy One Thousand Eight Hundred Sixty Only), subject to tax deduction at source as per Income Tax Rules in force from time to time. The said lease deed was for a period of five years from 01.09.2003 to 31.08.2008.

3. By a letter dated 28.04.2008, the appellant extended an offer to the respondent for renewal of the aforesaid lease deed as follows:

Therefore as per Clause 5 on page 8 of the Lease Deed, we request you to let us have your written consent (with terms of offer) for renewal of lease latest by 31.5.08 or convey otherwise for our further action.

4. In response to the aforesaid letter, the respondent intimated the appellant by its termination notice dated 03.05.2008 that the respondent was no longer interested in continuing the lease any further. Paragraph-2 of the said letter, which is apposite, is reproduced hereunder:

That the said Lease Deed was to come to an end by efflux of time on 31.08.2008 as the period of 5 years will expire on that day. Since you had offered to our clients for renewal of the said lease by your letter dated 28.04.2008, expressing your intention to renew the Lease, we have specific instructions from our aforesaid clients to apprise you about their decision on the said issue. Our clients have instructed us to say that they are not interested in continuing the Lease any further. We also wish to apprise you that as per Clause (5) embodied in the Lease Deed executed between the parties, it has been clearly, unambiguously and unequivocally provided that the Lessor shall be liable to give to the Lessee a notice in writing not less than 3 (three) calendar months before the expiration of the term hereby created conveying/reaffirming or denying/refusing his/its/their consent for continuing the Lease and executing a Lease Deed therefore. In view of the aforesaid Clause, our clients deny and refuse their consent for continuing the Lease.

5. Thereupon, in supersession of its earlier letter dated 28.04.2008, the appellant by its letter dated 03.05.2008 wrote to the respondent, stating that in terms of the provisions contained in the lease deed dated 27.05.2004 for renewal of the lease, the appellant was exercising its option for renewal of the lease for a period of five years from 01.09.2008 to 31.08.2013 on the terms and conditions contained therein.

6. On 09.06.2008 the appellant through its counsel replied to the respondent's letter dated 03.05.2008, interpreting Clause 5 of the lease deed dated 27.05.2004 to mean that the respondent was bound to renew the term of the said lease deed for a further period of five years from 31.08.2008 by execution and registration of a fresh lease deed.

7. The respondent through its counsel sent a reminder dated 11.08.2008 to the appellant again calling upon the appellant to hand over and deliver the vacant and peaceful possession of the suit premises to the respondent on or before 31.08.2008. The respondent also informed that if the appellant failed to vacate the suit premises, the respondent would be constrained to initiate appropriate legal proceedings for the recovery of the possession of the demised premises as also for the recovery of mesne profits at the market rate.

8. The appellant sent a reply dated 25.08.2008 to the aforesaid legal notice, whereby the appellant reiterated the averments made in its earlier reply dated 09.06.2008. On 31.08.2008, the lease deed dated 27.05.2004 expired by efflux

of time and on 02.09.2008, the respondent filed a civil suit bearing Suit No. 122/2008 for recovery of possession and damages/mesne profits. The appellant entered its defence by filing a written statement on 04.11.2008. The respondent thereupon filed an application under Order XII Rule 6 for a decree of possession against the appellant in view of the admissions made by the appellant in the said written statement. The said application was contested by the appellant, inter-alia, on the ground that it had moved a transfer petition dated 11.09.2008 in the suit for specific performance, being Suit No. 512/2008, filed by it against the respondent, which was pending decision of the District Judge, with the prayer that both the suits, i.e., the suit filed by the appellant as well as the suit filed by the respondent be transferred to any one court. On 19.09.2009 the application of the respondent under Order XII Rule 6 read with Section 151 CPC was allowed and the suit of the plaintiff was decreed for the relief of possession. Aggrieved by the said order, the present appeal has been preferred.

9. The arguments at the bar were advanced by Mr. Adarsh B. Dial, the learned senior counsel for the appellant and Mr. Rajat Aneja, the learned Counsel for the respondent. The counsel for both the parties did not dispute that Clause 5 of the lease deed was crucial for the decision of the present appeal. For ready reference therefore, the said clause is reproduced below:

Provided always and it is hereby agreed and declared hat the Lessor will, on the written request of the Lessee made not less than 3(Three) calender months before the expiration of the term 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 renewal of the lease of the demised Premises for a further period of 5 years at the discretion of the Lessee, from the expiration of the term hereby granted at the rent increased by 25% of the rent hereby fixed in respect of such further period and containing of the covenants and provisions as are herein contained excluding/including (delete the inapplicable) this present covenant for renewal. The Lessor shall be liable to give the Lessee a notice in writing not less than 3 (Three) calendar months before the expiration of the term hereby created conveying/reaffirming or denying/refusing his/its/their consent for continuing the Lease and executing a lease deed therefore ./blockquote> 10. Mr. Adarsh Dial, the learned Senior counsel for the appellant assailed the judgment of the learned trial court on the ground that the suit had been decreed on an entirely erroneous reading of the aforesaid Clause 5 of the lease deed. He contended that a plain reading of Clause 5 makes it abundantly clear that the appellant-lessee had an unconditional right to the renewal of the lease deed dated 27.05.2004. He contended that the first part of Clause 5 was the operative part, whereby it was agreed and declared between the parties that on the written request of the lessee, made not less than three calender months before the expiration of the term of the lease, the lessor shall grant to the lessee renewal of the lease of the demised premises for a further period of five years. The caveat, the learned Counsel contended, was that at the time of making such request, there shall not be any existing breach or non-

observance of any of the covenants of the lease on the part of the lessee; and it was no one's case that the appellant had committed any such breach. The second part of Clause 5, the learned Counsel contended, was complementary to the first part and was by way of a supplement or adjunct. A supplement or adjunct could not be allowed to supersede the main part and, in any case, no authority was required for the proposition that effect must be given to every part of the document, which has to be construed as a whole.

11. Alternatively Mr. Dayal contended that assuming Clause 5 to be capable of two interpretations, it was incumbent upon the trial court to have allowed the case to proceed to trial so as to enable the parties to bring on record explicit evidence to show the intent of the parties. A decree under the provisions of Order XII Rule 6 ought not to have been passed at the initial stage of the suit.

12. Mr. Dial on behalf of the appellant relied upon the following decisions:

(i) Madhav Leasing Finance (P) Ltd. and Another Vs. Erore Educational Infotech Pvt. Ltd., wherein it was held that a decree under Order XII Rule 6 can be passed only where the admission made is clear and unambiguous, in support of his contention that this was not the stage to go into the merits of the pleas taken in the written statement, which necessitated adducing of evidence by both the parties.

(ii) Sneh Vasih and Another Vs. Filatex India Ltd., wherein it was held that it would not be appropriate to pass a judgment under Order XII Rule 6 in the peculiar facts of the case and in view of the terms of the lease agreement.

(iii) Shri Bhanu Mehra Vs. Shri Dato Brij Kishore and others, wherein, in paragraph-15 it was held that in view of the disputed questions of fact and law, it was necessary for the trial court to have framed issues thereon and then proceeded with the trial of the suit on merits in accordance with law, instead of making its own observations that the plaintiff was entitled to a decree for possession on the alleged implied admission.

(iv) Puran Chand Packaging Industrial Pvt. Ltd. Vs. Smt. Sona Devi and Another, where a judgment on admissions passed by a learned Single Judge of this Court was set aside by the Division Bench on the ground that various objections, which go to the root of the matter, which if permitted to be proved would disentitle the respondents to a decree of possession had been urged by the appellant.

13. Highlighting the second part of Clause 5, Mr. Rajat Aneja, the learned counsel, on the other hand, contended that the last few lines of Clause 5 qualify the first part of Clause 5. He further contended that there would have been no need to incorporate the last four lines unless it was intended to vest in the lessor the right of denying/refusing his consent for continuing the lease and executing a lease deed therefore. The second part of Clause 5, which was heavily relied upon by the respondent/plaintiff, at the risk of repetition, is again reproduced hereunder:

The Lessor shall be liable to give the Lessee a notice in writing not less than 3 (Three) calendar months before the expiration of the term hereby created conveying/reaffirming or denying/refusing his/its/their consent for continuing the Lease and executing a lease deed therefore .

14. Mr. Aneja contended that it is a cardinal rule of interpretation of documents that no clause or part of a clause of a document should be rendered otiose, and that as far as possible all the clauses and each and every part of each clause must be harmoniously read. According to him, such a reading of the first part and the second part of Clause 5 of the lease deed dated 27.05.2004 seems to suggest that a renewal of the lease deed in the instant case was envisaged only when the lessee as well as the lessor were interested, on expiration of the term of the lease, in executing a fresh lease deed for a further period of five years. The right given to the lessor of denying or refusing his consent to continuing the lease in the latter part of the Clause 5 could not be brushed aside or ignored, given the fact that ultimately it was for the lessor to decide whether or not he wants to give his premises on lease for a further period of five years to the lessee.

15. Mr. Aneja also contended that the first para of Section 107 of the Transfer of Property Act makes it very clear that a lease of immovable property exceeding one year can never be made by an unregistered instrument. In the present case, admittedly, the registered lease deed dated 27.05.2004 had expired by efflux of time on 31.08.2008, and the lessor having refused to accede to the request of the lessee for renewal of the lease deed, the tenancy must be regarded as a month-to-month tenancy, which could be and was in fact terminated in accordance with the provisions of Section 106 of the Act. In this context, reliance was placed by the learned Counsel for the respondent on the following decisions of this court:

(i) *Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd. Vs. Khaja Midhat Noor and Others*,

(ii) *Uptron Powertronics Ltd. Vs. Shri G.L. Rawal*,

(iii) *Modern Food Industries (India) Limited Vs. I.K. Malik and Others*, and

(iv) *Kidarsons Industries Pvt. Ltd. Vs. Allahabad Bank*,

16. Having considered the rival submissions of the counsel for the parties and gone through the precedents cited at the bar, I have not the least bit of hesitation in holding that the construction sought to be placed by the appellant on Clause 5 of the lease deed is wholly untenable. The learned trial court has rightly construed the said clause to mean that by virtue of the lease deed itself, the respondent/plaintiff had the right to affirm or deny consent for the continuation of the lease or to execute or refuse to execute a fresh lease deed, and that no right exists in favour of the appellant/lessee unless the respondent/lessor in categorical terms conveys its consent regarding the continuation of the

lease and agrees to execute a fresh lease deed. This is not a case where any exclusive right has been given to the appellant-lessee to opt for renewal of the lease deed even in the absence of the concurrence of the lessor. Rather, it is case where renewal of the lease has been viewed as matter of consensus to be arrived at between the parties. Clause 5 of the lease deed in the present case, in my opinion, secures the right of the lessee as well as the lessor, by giving to the lessee the right to opt for the renewal of the lease deed, and to the lessor the right to refuse consent to the aforesaid renewal. Any other construction placed upon the said clause can only lead to absurdity and would in fact amount to distortion of the clause itself.

17. It also cannot be lost sight of that the words "renewal of the lease" are a misnomer. Viewed from any angle, the renewal is in fact really execution of a fresh lease and that too a registered one in terms of para-1 of Section 107 of the Transfer of Property Act. The Supreme Court in Delhi Development Authority Vs. Durga Chand Kaushish, elucidated as under:

A renewal of lease is really grant of a fresh lease. It is called "renewal" simply because it postulates the existence of a prior lease, which generally provides for renewal as of right. In all other aspects, it is really a fresh lease.

18. The renewal of the lease having been equated to a fresh lease deed, even otherwise, in my opinion, consensus ad item would be a sine qua non for renewal of the lease agreement between the parties. Thus, without the consent of the lessor, the lessee cannot be said to have opted for and obtained the renewal of the lease deed after it has expired by efflux of time, merely on account of renewal clause inserted in the lease deed providing for option of the lessee to renew the lease deed on an enhanced rate of rent.

19. The lease in the present case was for a period of five years and, as held by the Supreme Court in the Burma Shell Oil Distributing case (supra), on a harmonious construction of Section 107 read with Section 116 of the Transfer of Property Act, on the expiry of the lease period, which in the instant case expired on 31.08.2008, in the absence of a registered instrument, it must be held that it was a case of holding over from month-to-month and that the lease stood terminated by the giving of a valid notice. Such notice was given to the lessee on 03.05.2008, asking the lessee to quit the demised premises and to hand over and deliver the vacant and peaceful possession of the demised premises, on the expiration of the lease ending on 31.08.2008.

20. As regards the precedents relied upon by the learned Counsel for the appellant to contend that the learned trial court ought not to have passed the decree under Order XII Rule 6 without granting to the parties an opportunity of adducing their evidence, the said cases, in my view, are clearly distinguishable on facts. No hard and fast rule can be laid down as to when the trial court should exercise its discretion to pass a decree under Order XII Rule 6 of the CPC as this is a matter which depends wholly upon the facts of each particular case. Thus in

the case of Mahadev Leasing Finance (P) Ltd. (supra), the lease deed was liable to be renewed "for a maximum period of an additional two years only at the option of the Lessee" and no right was given to the lessor to refuse the aforesaid renewal for an additional period of two years only. So also in Sneh Vasih (supra), the relevant clause of the lease agreement specifically provided that the lessors would be disentitled to recover possession where renewal notice was served upon them coupled with increase in rent within the stipulated time. In Bhanu Mehra (supra), it was held that the right of renewal arises only when notice is given to the lessor by the lessee in terms of the renewal clause and the lessee has performed all the conditions precedent as provided in the renewal clause, and further held that it was also a question of fact as to whether or not the lessee had violated the covenants of the registered lease deed. In the present case, as rightly contended, no such disputed questions of fact and law arise and, therefore, the judgment rendered by the Division Bench in Bhanu Mehra (supra) is wholly inapplicable to the facts of the present case. Likewise the judgment in Puran Chand Packaging(supra) has no bearing on the present case. In the said case the plea of lessor was that notice of termination had been waived by the respondent/lessee and the Court held that this being a question of fact, it had to be decided after the parties had been given time to adduce their evidence.

21. To conclude, there is no dispute in the instant case as regards the facts which are cut and dried. As rightly contended by the learned Counsel for the appellant, the case turns upon the interpretation of Clause 5 of the lease deed and, in such circumstances, to my mind, there is no illegality or perversity in the impugned judgment and decree. The judgment in fact is a well considered one in which the learned trial court has considered a catena of legal precedents to arrive at the conclusion that the respondent/plaintiff is entitled for judgment on admission against the appellant/defendant. No ground for interference is made out. The impugned judgment and decree are accordingly affirmed.

Resultantly, the appeal is dismissed as being without merit.