

(2017) 08 UK CK 0003
In the Uttarakhand High Court
Case No : 104 of 2017

Bata India Ltd. & Another

APPELLANT

Vs

Shri Sharvan Kumar Jain & Others

RESPONDENT

Date of Decision : 01-08-2017

Acts Referred:

Transfer of Property Act, 1882, Section 114, Section 113, Section 112, Section 111(b) - Relief against forfeiture for non-payment of reni - Waiver of notice to quit - Waiver of forfeiture - Determination of lease

Citation : (2017) 08 UK CK 0003

Hon'ble Judges : Servesh Kumar Gupta

Bench : Single Bench

Advocate : S.K. Jain, Siddhartha Jain, Siddhartha Singh, Siddhartha?Bhatia

Judgement

1. Having heard the arguments of learned Counsels of either parties at good length on the question of admission itself, it transpires that a lease was persisting between the parties even before the fresh registered agreement of lease was executed on 7.1.2011 pursuant to an agreement arrived at between them on 6.1.2011 in a previously launched eviction suit SCC No. 37/2008. This time the lease was for the term of 15 years to be commenced w.e.f. 1.12.2010 to 30.11.2025. The monthly rate of rent agreed upon was Rs. 66,126/- to be paid on quarterly basis in three equal shares (because the demised premises 11-B Rajpur Road was under the co-ownership and co-landlordship of three real brothers, namely, Sharvan Kumar Jain, Pawan Kumar Jain and Hem Chand Jain). It was also agreed that after every three years, there will be 15 per cent increase in the monthly rent. Therefore, the rent had to be paid to the tune of Rs. 76,045/- per month w.e.f. 1.12.2013 onwards for another three years.

2. It was also stipulated that this lease is for a fixed term and the lessor will have rights to terminate this lease for reason during the term, if lessee fails to pay rent within six months from the date of its accrual or subject to any default, subletting or any major alteration than the lessor shall be entitled, at any time

during the term, to terminate this lease by giving one month's vacation notice for claiming rent in writing to the lessee by the lessor.

3. When the tenant Bata India Limited (revisionist herein) made the default of payment of the enhanced rent w.e.f. 1.12.2013, at the rate indicated above, but continued to pay the rent at the original rate, then the notice was issued on 24.6.2014 under the instructions of two co-landlords Mr. Sharvan Kumar Jain and Mr. Hem Chand Jain terminating the tenancy, explicating the default which has been depicted in paragraphs 6 and 7 of such notice. It shall be in the interest of justice to reproduce such paragraphs 6 and 7 as under: "6. That you addressees in spite of various verbal requests made by my client to you to pay proper enhanced rent of Rs. 76,451.00 in light of lease agreement dated 07-01-2011 and judgment and decree passed in SCC suit no. 37 of 2008 from 01-12-2013 seems to have fallen on deaf ears and you have again sent rent @66,126.00 for the month April 2014 to June 2014 of my clients are not accepting the said rent and the cheques issued by you are being sent back returned along with this notice.

7. That since you are a bad pay master and your previous act also shows that each and every time my client is forced to approach to the Hon'ble court because you fail to pay proper rent, hence my client does not intend to keep you as his tenant any more and through this notice your tenancy is being terminated."

4. The tenancy was terminated and the tenant was asked to vacate the premises. After receiving such notice, it appears that the tenant issued the cheque/cheques enclosing with the letter dated 9.7.2014 for payment of the difference of the enhanced rent. However, the SCC Suit No. 42/2014 was initiated by Mr. Sharvan Kumar Jain (one of the co-landlords/co-owners) against the tenant impleading rest of the two landlords as proforma defendants. Such suit was contested by the tenant and it was ultimately decreed vide the impugned judgment and order dated 31.5.2017, whereagainst this revision has been preferred by the tenant.

5. Learned Senior Counsel for the revisionists has vehemently argued that notice by itself was not on behalf of all the three landlords and even after sending of the notice and further during the tenancy of the suit, one of the brothers Mr. Pawan Kumar Jain continued to receive the enhanced rent. Learned Senior Counsel has relied upon the law laid down by the Allahabad High Court in the case of Akhilesh Singh v. Vijay Singh & Others, reported in 2004 (1) ARC 213, wherein some other cases have also been referred. It was held that if all the co-owners or co-landlords do not join in a notice for ejectment are not made even the proforma respondents, the suit for eviction can be brought about only by some of the co-owners. 6. I think this precedent is not applicable in the present case because rest of the two co-landlords were impleaded as the proforma defendants by the plaintiff Mr. Sharvan Kumar Jain. Mr. Pawan Kumar Jain, who is said to be continuously receiving the rent, has not presented his version before the Court below. So, I feel that mere acceptance of the rent by Mr. Pawan Kumar Jain will not make the plaintiff non-suited.

It is abundantly clear that one of the terms of such lease deed was that the lessor will have right to terminate such lease if the lessee fails to pay the rent within six months from the date of its accrual. The enhanced rate of rent accrued w.e.f. 1.12.2013. So, the six months expired on 31.5.2014, but difference of such enhanced rate of rent was paid enclosing the cheque(s) with the letter dated 9.7.2014. Therefore, prior to sending the letter or paying the enhanced rent, six months had already expired. So, I think the termination of the tenancy did not suffer from any infirmity or illegality.

7. Clauses (b), (g) and (h) of Section 111 of the Transfer of Property Act are very speaking in the present controversy, which read as under: 111. Determination of lease.-A lease of immoveable property determines-

(b) where such time is limited conditionally on the happening of some event-by the happening of such event; (g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease;

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

8. Mere acceptance of the cheque (either for rent or for the occupational charges, whatever name it may be given) will not extend any benefit to the tenant revisionist in view of the provisions contained under Section 112, 113 and even under Section 114 of the Transfer of Property Act. For the convenience, it shall again be useful to reproduce all these sections as under: "112. Waiver of forfeiture.-A forfeiture under section 111, clause (g) is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting: Provided that the lessor is aware that the forfeiture has been incurred: Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver. 113. Waiver of notice to quit.-A notice given under section 111, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

114. Relief against forfeiture for non-payment of rent.-Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for

making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred."

9. Even if it is accepted that the arrears of the enhanced rent had been paid, but the fact remains it was not together with the interest thereon and the full cost of the suit, as is contemplated under Section 114 of the Transfer of Property Act.

10. All told, I do not find any infirmity in the impugned judgment and order. This revision has no force. It is dismissed at the very threshold.