(2000) 09 DEL CK 0058

In the Delhi High Court

Case No : FAO (OS) 180/98

Bharat Petroleum Corporation Ltd. APPELLANT

Vs

B.R. Handa (HUF) and Others RESPONDENT

Date of Decision : 27-09-2000

Acts Referred:

Citation : (2000) 7 AD 1178 : (2000) 88 DLT 64 : (2001) 1 RCR(Civil) 215 : (2000) 2 RCR(Rent) 702

Hon'ble Judges : Mukul Mudgal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. P. Banerjee, for the Appellant; Mr. A.S. Chandhiok, Senior Advocate, Mr. S.P. Gupta and Ms. Jyoti Mendiratta, for the Respondent

Judgement

Devinder Gupta, J.—By this appeal the defendant/appellant has prayed to set aside an interim order passed on 27.5.1998 by learned Single Judge of this Court in is 282/98 directing the defendant to pay arrears of rent/damages @ Rs. 85/- per sq. ft. per month to the plaintiffs/respondents w.e.f. 1.11.1997. Arrears were directed to be paid within two months. The appellant was further directed to continue to pay the rent and damages at the same rate subject, however, to the respective contentions of both the parties in the pending suit.

2. Facts in brief are that on 12.1.1998 the plaintiffs filed a suit against the defendant claiming a decree for delivery of vacant and peaceful possession of the suit premises and for recovery of mesne profits at the rate, as may be assessed w.e.f. 1.11.1997 till date of delivery of possession. It was also prayed that in the meantime, the defendant be directed to go on paying at least a sum of Rs. 1,72,186.64, as detailed in Annexure A attached to the plaint. The suit was founded on the allegations that the property was let out to the defendant as a tenant on the basis of registered lease deed dated 1.4.1982. Despite the fact that the period of lease expired on 31.3.1986 and notice dated 1.10.1997 was served upon the defendant terminating its tenancy and requiring the defendant to deliver possession on or before 31.10.1997, the defendant was continuing to

occupy the premises and had also made itself liable to pay market rent w.e.f. 1.11.1997. It was alleged that the present prevailing market rent of covered space of similar properties in the vicinity was Rs. 125/ per sq. ft. The plaintiff was entitled to a decree of recovery of possession and of damages at that rate though at the time of termination of tenancy, the monthly rate payable was at the rate of Rs. 1,72,186.64 p. per month which was about Rs. 26/- per sq. ft. per month.

3. Along with the suit the plaintiffs filed an application (IA 282/98) under Order 39 Rules 1, 2, 7 and 10 read with Section 151 C.P.C. inter alia, praying that the defendant be restrained from changing the user of the premises; defendant be directed to pay damages @ Rs. 125/- per sq. ft. per month and the defendant be directed to give inspection of the premises to the plaintiffs.

4. The defendant put in appearance and contested the suit by filing written statement as also reply to the miscellaneous application. The defendant denied its liability to be evicted from the premises on numerous grounds and also its liability to pay damages contending that the tenancy had not lawfully been terminated and so long it is not terminated in accordance with law, the defendant is liable to pay agreed rent and moreover the mesne profits claimed are highly exaggerated. The defendant also took a plea that one Mr. O.P. Arora; claiming himself to be the landlord of the defendant on the basis of an Agreement to Sell dated 1.12.1982 between Daljit Singh Pal and Yashpal Oberoi, the recorded owners of the property, who had let out the property to the defendant and on the basis of the Sale Deed dated 30.3.1984; had sought injunction against the defendant from using his premises contrary to the provisions of the lease. It was alleged that later on Mr. Arora had also issued demand notice calling upon the defendant to hand over possession. As such there were conflicting and contrary claims in respect of the suit premises. O.P. Arora had filed civil suits, which were pending in the Court of Civil Judge. The defendant had been restrained from using the premises for any other purpose other than residential. Therefore, the defendant has not been able to use the suit premises for the purpose for which it was let out.

5. Miscellaneous application was taken up by learned Single Judge on 27.5.1998 on which date placing reliance upon the documents filed by the plaintiffs on record in support of the submission about prevailing market rent, passed the aforementioned order, which is under challenge in this appeal.

6. We have heard learned counsel for the parties and were taken through the record. Learned counsel for the respondents (plaintiffs) tried to support the impugned order urging that the learned Single Judge in the facts and circumstances had exercised discretion by determining tentatively the amount of damages to be paid by the defendant, which it was liable to pay towards use and occupation of the premises. By the impugned order only a prima facie view has been taken. Tentative damages determined by learned Single Judge are reasonable, which the defendant has been called upon to pay, which of course,

will have to be taken care of at the stage of final disposal of the suit. Learned counsel for the defendant attacked the legality and validity of the impugned order contending that as per the practice of this Court, stage for filing of documents had not yet reached. The plaintiffs had also not filed replication to the written statement and rejoinder to the miscellaneous application. Without taking the defendant''s document on record, learned Single Judge proceeded to dispose of the miscellaneous application taking an arbitrary view of the matter. It was necessary for the learned Single Judge to at least have noticed the pleas raised by the defendant in the written statement that it was because of the order of restraint that the defendant was prevented from making lawful use of the property. Only by the impugned order, that said restraint was lifted. Learned counsel for the defendant/appellant also contended that a separate application under Order 41 Rule 27 read with Section 151 C.P.C. (IA 4139/99) had been filed by the appellant seeking permission to place on record number of documents in order to substantiate its plea defendant that there was slump in the market and the fair market rent during the relevant period was even less than the one which was being paid by the defendant to the plaintiffs/respondents.

7. Having considered the submissions made at the Bar and having gone through the record, we are of the view that the impugned order is not sustainable in law and is liable to be set aside.

8. Needless to add that during pendency of the appeal, the defendant has handed over physical and vacant possession of the premises to the plaintiffs on 26.9.1998. The plaintiffs/respondents have also been paid rent/damages at the agreed rate, namely @ Rs. 1,72,186.64 p. per month. The only questions now surviving in the suit are about the liability of the defendant to pay the damages, the rate at which use and occupation charges are payable and the period. These of course will have to be determined on the basis of the pleadings of the parties and the evidence to be led on record by the parties, for which stage has not yet arrived. Issues have not yet been framed. As per the practice of the Court even after framing of issues, it is pointed out that time is allowed to the parties to file additional documents, if any and thereafter the suit is posted for admission/ denial of documents.

9. At the stage when the application was taken up for consideration by learned Single Judge, the defendant had not yet filed documents. The defendant, as noticed above, had already taken a plea that because of an interim order issued by a Civil Court, it was prevented from making lawful use of the property as per the terms of the lease deed. In view of this plea having been raised by the defendant and the learned Single Judge having observed that there was a downward trend in the market in the rents as well as in the prices of similar properties, because of he downward trend, we are of the view that discretion was not properly exercised by calling upon the defendant to pay arrears of rent/ damages and future damages @ Rs. 85/ per sq. ft. as against Rs. 26/- per sq. ft., which was the agreed rate at which rent was payable by the defendant.

10. Learned counsel for the appellant made reference to the application for additional evidence and the documents appended therein and urged that the same if taken on record, would reflect that at the relevant time, the market rate was even less than the agreed rent of Rs. 26/- per sq. ft. per month. We need not go into the question at this stage since the matter is yet to be decided on merits by learned Single Judge. Even the documents filed by the plaintiff had not been admitted or denied. Learned Single Judge proceeded as if the documents filed by the plaintiffs were proved on record.

11. As the only question for determination is the liability of the defendant to pay damages, the quantum of damages and the period for which it is payable and the fact that admittedly for the period from 1.11.1997 to 30.9.1993, the amount already stands paid at the agreed rate, the interests of justice will be fairly met in case the suit is disposed of expeditiously. Consequently, we allow the appeal and set aside the impugned order. We will request learned Single Judge to expedite disposal of the suit at an early date.

