
(2004) 03 AP CK 0011

In the Andhra Pradesh High Court

Case No : A.S. No's. 650 of 2000 and 3303 of 2004

Branch Manager, Andhra Bank

APPELLANT

Vs

Myneni Prabhavathi

RESPONDENT

Date of Decision : 29-03-2004

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2004) 6 ALD 574

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : D.S.N.V. Prasad Babu, SC for Andhra Bank in A.S. No. 650 of 2000 and D.K.R. Murthy, in AS No. 3303 of 2004, for the Appellant; D.S.N.V. Prasad Babu, SC for Andhra Bank in A.S. No. 3303 of 2004 and D.K.R. Murthy in AS No. 650 of 2000, for the Respondent

Judgement

V. Eswaraiah, J.—Heard both the learned Counsel.

2. These two appeals arise out of the common judgment dated 21.1.2000 in O.S. No. 48 of 1996 and O.S. No. 140 of 1997 on the file of the Principal Senior Civil Judge, Eluru. The appellant in A.S. No. 650 of 2000 is the defendant in O.S. No. 48 of 1996 filed by the respondent-plaintiff. The plaintiff filed A.S. No. 3303 of 2004 against the judgment in O.S. No. 48 of 1996 in dismissing the suit filed by her for enhancement of the rents.

3. For the sake of convenience, the parties herein are referred to as arrayed in the suit O.S. No. 48 of 1996.

4. The plaintiff is landlady and the defendant is a bank. The plaint schedule property is given on lease for a total period of eight years. After expiry of five years, it is at the option of the parties to continue the lease for further period of three years with effect from 1.6.1978. After expiry of eight years, the lease was renewed for a period of eight years with effect from 1.6.1986 at the enhanced rent of Rs. 2.25 ps per month per square feet.

5. Out of the eight years period, for the first five years the enhanced rate of rent is Rs. 2.25 ps per square feet and after expiry of five years there shall be enhancement of 0.20 ps per square feet during the further period of three years and the eight years lease came to an end by 31.5.1994. It is stated that though the said premises was required for the personal occupation of the plaintiff and the plaintiff was not intended to disturb the defendant, and therefore, the plaintiff addressed a letter dated 19.3.1994 offering to renew the lease for a further period of eight years of which five years is certain and three years is at the bank's option if the defendant agreed to pay for the certain period of five years with an increase of 0.20 ps per square feet during the option period of three years with effect from 1.6.1994. The plaintiff also terminated subsequent lease and pursuant to the request of the plaintiff, the defendant-bank finally negotiated for the enhanced rate of rent at the rate of Rs. 4.75 ps per month per square feet under Ext.A-9, dated 18.9.1995. The said letter Ext.A-9, dated 18.9.1995 addressed by the defendant to the plaintiff states that the Central Office has permitted for renewal of the lease of the branch premises occupied, which is an extent of 2,800 square feet in the ground floor and the rent is Rs. 4.75 ps per square feet per month with effect from the date of execution of the lease deed which comes to Rs. 1,33,326/-. The lease period of five years is certain from the date of execution of the lease deed, and three years is option with the increase of 0.20 ps rent on square feet during the option period. On the terms and conditions of the lease deed and the standard costs, the plaintiff has requested the defendant-bank to execute the lease deed at the earliest. But, the defendant was not sending the enhanced rent and was sending the old rents only, which was received under protest without prejudice to his contention, for the enhanced rents. Accordingly, the plaintiff got issued a legal notice dated 16.12.1995 under Ext.A7, calling upon the defendant to pay the rent at the rate of Rs. 4.75 ps per month per square feet with effect from 1.6.1994 for the certain period of five years, and with an increase of 0.20 ps per month per square feet for the option period of three years and to vacate and handover the premises to her and to pay the rent with interest at the rate of 12% per annum from the respective due date under proper receipt. The defendant received the said notice on 18.12.1995. It is stated under Ext.A-7 that the plaintiff got issued a legal notice terminating the lease demanding the defendant to vacate and handover the vacant possession of the suit scheduled property by the end of December, and also to pay the due rents from 1.4.1994 with interest. There is no dispute that the said notice was received by the defendant only on 18.12.1995. It is the case of the defendant that the rent under the renewed lease deed was only Rs. 2.25 ps per square feet per month which comes to an end by 31.8.1994 and the terms and conditions of the said lease are undisturbed, and therefore, the said letter Ex.A-9 cannot be looked into and it is not enforceable. It is true that the plaintiff addressed letters demanding the enhancement of the rent i.e., Rs. 4.75 ps per month per square feet and the Branch Office made correspondence with the Head Office and the defendant-bank was willing to enhance the rents and ultimately the defendant-bank agreed to pay the

enhanced rent at the rate of Rs. 4.75 ps per month per square feet and addressed a letter dated 18.9.1995 under Ext.A-9 calling upon the plaintiff to execute a lease deed. There is no dispute that there was an agreement for the enhancement of rent at the rate of Rs. 4.75 ps per month per square feet from the date of execution of the lease deed. Therefore, the suit is filed for ejectment of the defendant and to put the plaintiff in possession of the premises and for recovery of Rs. 1,33,326/- with subsequent interest at 12% per annum over the principal amount of Rs. 1,09,060/- towards the difference of rent from 1.6.1994 till date of the suit.

6. It is the contention of the defendant-bank in its written statement that the regular lease deed is not executed and therefore, the defendant is not liable to pay the enhanced rents as agreed by it under Exts.A-1 and A-9. It is further contended that the legal notice issued u/s 106 of the Transfer of Property Act, 1882 (hereinafter referred to as the T.P. Act) under Ext.A-7 which was received by the defendant on 18.12.1995 is not valid as there is no clear 15 days notice given as per the said section. Therefore, the plaintiff is not entitled to seek the eviction. It is further stated that the plaintiff claimed interest on the enhanced rent due with effect from 1.6.1994, but the plaintiff is not entitled for any interest in the absence of any contract and therefore the defendant is not liable to pay interest as prayed for. It is further stated that the intention of the defendant is to maintain cordial relations and therefore, the defendant agreed to enhance the rent at the rate of Rs. 4.75 ps per month per square feet and prepared to pay the said enhanced rent from the date of execution of another lease deed but the defendant did not execute the lease deed for the reasons well known. Therefore, the defendant is not liable to pay enhanced rents also.

7. The defendant-bank also filed a suit O.S. No. 140 of 1997 for mandatory injunction directing the landlady to remove the red marked wall and the locks put to the garage and G-2 and G-3 gates as shown in the plaint plan and also for the consequential permanent injunction. The Trial Court dismissed the said suit filed by the defendant-bank.

8. On the above pleadings, the Court framed issues in O.S. No. 48 of 1996 are as follows:

1. Whether there is a relationship of landlady and tenant between parties to the suit? And if so, the notice under Section-106 of Transfer of Property Act issued to the defendant is valid?
2. Whether the plaintiff's suit is band for non-joinder of necessary parties?
3. Whether the plaintiff is entitled to claim enhanced rent and interest thereon?
4. Whether the plaintiff is entitled for possession of the plaint schedule?
5. To what relief ?

9. On behalf of the plaintiffs, PWs.1 and 2 were examined and Exs.A-1 to A-14

were marked and on behalf of Defendant DWs.1 to 3 were examined and Exs.D-1 to D-5 were marked. On consideration of the oral and documentary evidence, the Trial Court held on Issue Nos.1 and 4 that the defendant-bank is the tenant of the plaintiff and the notice under Ext.A-7 to quit issued u/s 106 of the T.P. Act is a valid and the plaintiff is entitled for possession of the suit scheduled property after evicting the defendant-bank.

10. On Issue No. 2, the Trial Court held that the suit is maintainable and the suit is not bad for non-joinder of necessary parties.

11. On Issue No. 3 as regards to the claim of the enhanced rent and interest, the Trial Court held that there was no fresh lease deed executed by the plaintiff with effect from 1.6.1994 and therefore, the plaintiff is not entitled for any such enhancement of rent along with interest and the said issue is answered against the plaintiff.

12. Aggrieved by the said judgment in holding that the notice to quit issued u/s 106 of the T.P. Act is valid and the defendant-bank is liable to vacate the premises, defendant-bank filed A.S. No. 650 of 2000, and the plaintiff filed A.S.No. 3303 of 2004 in rejecting her claim by the Court below on Issue No. 3 holding that the plaintiff is not entitled for the claim of enhanced rent and interest.

13. The only question that arises for consideration as to whether the notice issued by the plaintiff under Ext.A-7 u/s 106 of the Act is valid or not?

Section 106 of the T.P. Act reads as follows:

"Duration of certain leases in absence of written contract or local usage :--In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six month's notice expiring with the end of a year of tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessee, by fifteen days" notice expiring with the end of a month of tenancy."

14. As per the proviso to Section 106 every notice under this section must be in writing signed by or on behalf of the person giving it and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants, at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

15. In the instant case, admittedly the lease is not renewed and there is no renewal of the lease, pursuant to the oral lease. Therefore, the tenancy is deemed to be month-to-month tenancy. To terminate the said month-to-month tenancy the lease can be terminated by giving 15 days notice expiring with the end of the tenancy. 15 days notice given to the defendant was expired. There

shall be a clear 15 days notice so as to enable the defendant to vacate the premises by the end of the month. The lease shall be terminated giving clear 15 days notice ending with the month of the tenancy.

16. In the instant case admittedly the notice though is dated 16.12.1995 and the said notice was received by the defendant on 18.12.1995, and therefore, there is no clear 15 days notice given by the plaintiff expiring with the end of the tenancy month. The tenancy month expires by 31 December, 1995. Admittedly, the defendant was not given 15 days notice and therefore, I am of the opinion that the notice to quit is illegal and contrary to Section 106 of the T.P. Act. Therefore, the plaintiff is not entitled to seek for eviction of the defendant. However, during the pendency of the first appeal, the defendant-bank vacated and handed over the vacant possession of the suit premises, though the appeal filed by the bank has become infructuous. I am of the opinion that the Trial Court is not right in holding that the notice issued by the plaintiff is in accordance with the provisions of Section 106 of the T.P. Act, and accordingly, I hold that the plaintiff is not entitled to seek eviction pursuant to the said notice issued u/s 106 of the T.P. Act.

17. Now, the question that survives for consideration as to whether the plaintiff is entitled for the enhanced rent?

18. It is the case of the plaintiff that the existing rent was Rs. 2.25 ps and no doubt the said rent was agreed to be enhanced from Rs. 2.25 ps to Rs. 4.75 ps per month from the date of execution of the lease deed. Admittedly, the lease was not executed. The said agreement was intimated through a letter to the plaintiff by the defendant under Ext.A-9, dated 18.9.1995. Though the letter was addressed by the defendant agreeing for the enhancement of the rent but the said rent was not paid on the ground that the regular lease deed was not executed. It is not the question of claiming any mesne profits or the damages for use and occupation of the premises. But, it is a question of demanding the agreed rent only which is lesser than the market value of the rent and as agreed by the defendant alone. Therefore, it is contended that even the quit notice issued by the plaintiff is not valid, but still the plaintiff is entitled to seek for the enhanced agreed rent, if the lease is executed, it is valid up to a certain period but that does not mean that the agreed rent is not liable to be paid by the defendant. In support of his contention the learned Counsel for plaintiff relied on the Division Bench judgment of this Court in Bank of India Vs. V. Swaroop Reddy, , and the judgment of Apex Court in Food Corporation of India v. Babulal Agrawal 2001 (4) JT NRC (SC) 220. The sum and substance of the said judgments is that there cannot be any justification on the part of the tenant in refusing to pay the enhanced rent as the said enhanced rent cannot be said as damages or mesne profits for use and occupation of the premises illegally occupied in the absence of any lease deed. It is only agreed amount of fair rent, which is liable to be paid.

19. In view of the same, I am of the opinion that the Trial Court is not right in negating the said contention of the plaintiff. Therefore, I am of the opinion that

the plaintiff is entitled for the enhanced rent as agreed by the defendant-bank under Ext.A-9 from the date of filing of the suit OS No. 48 of 1996 till the vacation of the premises by the defendant at the rate of Rs. 4.75 ps per month per square feet on the carpet area of 2,800 square feet, which was under the occupation of the defendant-bank till its vacation. Though the plaintiff claimed interest at the rate of 12% per annum, I am of the opinion that it is just and proper to hold that the plaintiff is entitled to the interest at the rate of 9% only on the difference of the enhanced rate of rent from the date of filing of the suit till payment.

20. Accordingly, the AS No. 650 of 2000 is dismissed and AS No. 3303 of 2004 is allowed to the extent indicated above. Each party shall bear their own costs of these appeals.