
(2012) 12 AHC CK 0223
In the Allahabad High Court
Case No : Civil Revision No. 693 of 2012

Canara Bank and Another	Vs	APPELLANT
Ramesh Chandra Singhal		RESPONDENT

Date of Decision : 19-12-2012

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 116

Citation : (2013) 3 ALJ 377

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Siddharth, for the Appellant; P.K. Jain and Diwakar Rai Sharma, for the Respondent

Judgement

B. Amit Sthalekar, J.—This civil revision has been filed by the revisionist tenant of the premises in question challenging the judgment and decree of the court below dated 17.10.2012 passed in Small Causes Court Suit No. 22 of 2010. The facts of the case, in brief, are that a lease deed was executed on 20.6.2001 to be effective from 3.8.2000 in terms of which the premises in question was let out to the revisionist-Bank initially for a period of five years with the condition that the lessee would have the option of renewal of the lease for a further period of five years. The lessee was also given the right to vacate the premises in question on giving of a notice of three months.

2. The dispute in the case arose when a notice u/s 106 of the Transfer of Property Act, 1882 was given to the revisionist to vacate the premises within a period of one month. Aggrieved the opposite party has filed a small causes court suit No. 22 of 2010 for eviction of the revisionist. This suit has however, been decreed on 17.10.2012 and the court below has directed the eviction of the revisionist and has also directed him to handover the vacant possession of the premises in question to the opposite party. The court below has also determined the damages at Rs. 56,000/- per month.

3. I have heard Shri Siddharth, learned counsel appearing for the revisionist and

Shri P.K. Jain, learned senior counsel duly assisted by Shri Diwakar Rai Sharma, learned counsel appearing for the opposite party.

4. The submission of Shri Siddharth is that the lease deed was executed on 20.6.2001 and came into effect from 3.8.2000 and in terms of the lease, the lease was valid for a period of five years. The submission is that after the expiry of the said period there would be no lease between the parties and if at all it is assumed that lease has been automatically renewed it will amount to a fresh lease on payment of fresh stamp duty. In this regard he has relied upon a Division Bench decision of this court reported in 2007 (102) RD 574 Gopal Swarup Chaturvedi v. State of U. P. and others (2007 (4) All LJ (DOC) 209) and has particularly relied upon paragraph 11 of the said judgment which reads as under:

11. Renewal of a lease is nothing but a grant of a fresh lease. The Hon''ble Supreme Court in Delhi Development Authority Vs. Durga Chand Kaushish, has held that while considering such an issue the terms and conditions incorporated in the lease have to be examined as a whole and effect has to be given to each and every term incorporated therein. The Court observed that it is called a renewal simply because it postulates the existence of a period lease which generally provides for renewal as of right. In all other respects it is really a fresh lease. Renewal is merely used to enable the Government to give preference to the previous permit holders who are to be treated on a different footing from the new applicants.

5. Alternatively it is submitted that even otherwise the Bank continued to be in possession over the premises under the doctrine of holding over and the opposite party having accepted rent a fresh lease has come into existence between the parties.

6. Shri P. K. Jain, learned senior counsel, on the other hand, submitted that on the revisionist's own admission if he was to be treated as continuing in possession over the premises in question under the doctrine of holding over he would be at the most a tenant from month to month in terms of section 116 of the Transfer of Property Act and it would always be open for the opposite party to give him a notice u/s 106 of the Transfer of Property Act for eviction from the premises in question.

7. Shri P. K. Jain has relied upon a decision of a learned Single Judge of this Court reported in Central Bank of India Vs. Manohar Lal and Others, . The relevant paragraphs of which are 11, 12, 13, 14 and 18 which read as under:

11. It is thus clear from Section 106 of the Transfer of Property Act that six months'' notice for termination of the lease is required only case of immovable property let out for agriculture or manufacturing purposes. In the case before me the revisionist was not let out the accommodation for agricultural purposes nor for manufacturing purposes. On the other hand, it is running a Bank which cannot be equated with manufacturing classes. Consequently, six months'' notice

is not required to terminate the tenancy within the meaning of Section 106 of the Transfer of Property Act.

12. On the other hand, the instant lease was for the purpose other than agricultural or manufacturing purposes. Hence, it will be deemed to be a lease from month to month terminable by thirty day's notice.

13. From the facts narrated above, it is clear that after expiry of five years period contemplated in the original lease, the lease was not subsequently renewed on the request of the tenant, but at the same time the landlord accepted the rent from the tenant and tenant's continuing in possession was consented by the landlord. Under these circumstances, within the meaning of Section 106 of the Transfer of Property Act status of the revisionist will be a tenant by holding over.

14. Further the effect of holding over is that the tenancy in the absence of contract to the contrary shall be deemed to have been renewed from year to year or from month to month, according to the purpose for which the property is leased as is specified in Section 106 of the Transfer of Property Act. The purpose of the lease was neither for agricultural nor for manufacturing purpose. If it was a lease for any other purpose, then the nature of lease which stood renewed as a result of holding over will be a lease from month to month. It may also be mentioned that there is no agreement between the parties to the contrary. It may further be mentioned that in the lease the rent was payable monthly and it was not a case where the landlord reserved yearly rent. Consequently, on the facts of the case and in view of Section 106 and 116 of the Transfer of Property Act renewed lease will be monthly lease which could be terminated by a month's notice.

15. to 17.

18. Thus, from the aforesaid discussion, it follows that the nature of tenancy after holding over in the instant case will be monthly tenancy terminable by thirty days' notice. The notice was, therefore, valid and the decree for ejectment cannot be disturbed. There is no merit in this revision and it is hereby dismissed. No order as to cost.

8. I have considered the submissions of the learned counsel for the respective parties as well as the case law referred to by them. In the Division Bench case of Gopal Swamp Chaturvedi (2007 (4) All LJ (DOC) 209) (supra) the controversy was confined only to the question as to whether even if a lease deed has not been executed whether it could be said that a lease deed has come into existence between the parties by automatic renewal and the Division Bench of this Court in that context held that on automatic renewal it would be deemed that a fresh lease has come into existence and it would be necessary for payment of fresh stamp duty on this lease deed. In my opinion the said decision has no application to the facts of the present case. There is no dispute between the parties that the revisionist is a tenant holding over in terms of Section 116 of the Transfer of Property Act and, therefore, his status is that of a tenant from

month to month and his tenancy could be terminated at any time on giving him a notice of one month as provided u/s 106 of the Transfer of Property Act.

9. At this stage Shri Siddharth submitted that the revisionist is willing to vacate the premises in question if some reasonable time is given. To this suggestion Shri P. K. Jain submitted that six months would be a reasonable time provided the revisionist continued to pay damages at the rate determined by the trial court including the entire amount in terms of the decree dated 17.10.2012. This condition was accepted by Shri Siddharth although there was some dispute as to whether the damages of Rs. 56,000/- per month is excessive. However, Shri P. K. Jain referred to a portion of the impugned judgment wherein the revisionist has accepted that in that area the rent is Rs. 28/- per sq. ft. which in the present case having regard to the area of the premises comes to Rs. 56,000/- per month. This amount has now been accepted by Shri Siddharth as the amount which would be paid by way of damages to the opposite party.

10. This revision is therefore, disposed of on the undertaking given by Shri Siddharth that the revisionist would vacate the premises in question by 30.6.2013 subject to the condition that the revisionist would deposit the monthly damages determined by the court below in its judgment and decree dated 17.10.2012 month to month and further he would continue to pay damages at the rate of Rs. 56,000/- per month till 30.6.2013. Till 30.6.2013 the opposite party shall not take any steps for eviction of the revisionist from the premises in question. So far as the deposit of the decretal amount is concerned, it is directed that the revisionist shall deposit the entire amount by 31.1.2013 with the opposite party, failing which the protection granted to the revisionist in this order shall automatically stand vacated.