
(2014) 11 AHC CK 0233
In the Allahabad High Court
Case No : S.C.C. Revision No. 517 of 2014

Canara Bank

APPELLANT

Vs

Virendra Prakash Agarwal

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25
Transfer of Property Act, 1882 — Section 106, 111, 113

Citation : (2014) 11 ADJ 490 : (2014) 107 ALR 873 : (2014) 6 AWC 6036 :
(2015) 126 RD 558

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Siddharth, Advocate for the Appellant; Swapnil Kumar, Advocate for the Respondent

Judgement

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Pankaj Mithal, J.—This is a revision under section 25 the Provincial Small Causes Courts Act, 1887 against the judgment and order dated 23 August, 2014 passed by the District Judge as a Small Causes Court in SCC Suit No. 1 of 2009, Virendra Prakash Agarwal v. Canara Bank and others. The Court below by the impugned judgment and order has decreed the suit of the landlord for eviction of the tenant from the premises in dispute.

2. The suit was instituted on the basis of the notice dated 1.5.2008 by which the tenancy was determined under section 106 read with section 111 of the Transfer of Property Act, 1882.

3. Sri Siddharth and Sri Swapnil Kumar, learned Counsel for the respective parties have agreed for final disposal of the revision at the admission stage itself in view of the fact that only a short legal question is involved in this revision without involving any dispute of fact.

4. Sri Sidharth, learned Counsel for the tenant has advanced only one argument

that the notice determining the tenancy was waived by the landlord by his subsequent action and, as such, no decree could have been passed treating the tenancy as determined.

5. It appears that the defendant/revisionist Canara Bank is the tenant of the premises in dispute. Its lease expired but it continued to be in possession. The parties negotiated for creating a fresh lease. The bank insisted for a fresh lease of ten years w.e.f. 1.10.2006 whereas the landlord was not inclined for the leasing out the premises for more than five years. In this connection a letter dated 30.9.2008 was written by the landlord stating that the rent of Rs. 9/- per sq. ft. i.e., Rs. 18,900/- per month is acceptable to him for the period 1.10.2006 to 30.9.2011 but he is not in a position to leasing out the premises for a further period of five years thereafter. He, however, permitted the bank to prepare a lease agreement for a period of five years from 1.10.2006 to 30.9.2011 at a rent of Rs. 18,900/- per month. There is no evidence on record that the said offer of the landlord was accepted by the tenant, inasmuch as neither any lease deed pursuant thereof was executed nor any written communication was submitted by the bank accepting the lease for the above period of five years. On the contrary, the evidence on record demonstrate that under the guidelines prescribed, the bank was not in a position to take any premises on lease for a period of five years only. The guidelines provided for a lease of atleast ten years as is evident from the cross-examination of D.W. - 1 Umesh Chandra Gaur.

6. It is in the above facts and circumstances, the question arose as to whether the landlord by his aforesaid letter has waived the notice dated 1.5.2008 as contemplated under section 113 of the Transfer of Property Act.

7. The Court below in decreeing the suit has held that there is no waiver of the notice under section 113 of the Transfer of Property Act.

8. Now here in this revision it has to be seen whether the said notice was waived or not as held by the Court below.

9. Section 113 of the Transfer of Property Act reads as under:

"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."

A bare reading of the above provision indicates that the waiver has to be bilateral. It provides that the notice would be waived with the express or implied consent of the person to whom it is given, meaning thereby that the express or implied consent of the tenant is one of the conditions for the waiver of the notice. Secondly, it provides that a notice can be waived on the part of the person giving it by showing his intention to keep the lease subsisting. This part of the provision stipulates intention/consent on the part of the landlord. Thus, the waiver of the notice has to be with the consent of the landlord and the tenant both.

10. It may not be out of context to refer to C. Albert Morris Vs. K. Chandrasekaran and Others, to emphasis that the judicial opinion in this country is that mere continuation in occupation of the demised premises after the expiry of the lease, notwithstanding the receipt of an amount by the landlord would not create a tenancy so as to confer on the erstwhile tenant the status of a tenant or a right to be in possession.

11. In Sarup Singh Gupta Vs. S. Jagdish Singh and Others, it has been held that the notice may be treated to have been waived with the intention expressed by the landlord to treat the lease as existing and at the same time by the express or implied consent of the person to whom such notice is given. The relevant portion of the aforesaid decision is quoted below :

"A mere perusal of section 113 leaves no room for doubt that in a given case, a notice given under section 111, clause (h), may be treated as having been waived, but the necessary condition is that there must be some act on the part of the person giving the notice evincing an intention to treat the lease as subsisting. Of course, the express or implied consent of the person to whom such notice is given must also be established. The question as to whether the person giving the notice has by his act shown an intention to treat the lease as subsisting is essentially a question of fact. In reaching a conclusion on this aspect of the matter, the Court must consider all relevant facts and circumstances, and the mere fact that rent has been tendered and accepted, cannot be determinative."

12. In the instant case the evidence on record amply prove that there is no consent either expressed or implied of the bank accepting the offer of the landlord to take on lease the premises in dispute for a period of five years from 1.10.2006 to 30.9.2011 and, on the other hand, there is no intention on the part of the landlord to accept the bank as a tenant for a period of ten years from 1.10.2006 to 30.9.2016. In such a situation, in the absence of any intention of the landlord and consent of the tenant none of the two conditions stipulated under section 113 for waiver of the notice get attracted.

13. Accordingly, there is no waiver of the notice dated 1.5.2008 and, as such, the Court below is not in error in passing the impugned order.

14. Sri Siddharth in the end submitted that the tenant is a Nationalized bank and it may not be possible for it to immediately vacate the premises in dispute and to shift in an alternative accommodation with all its fixtures and fittings. He, therefore, submits that the bank is ready and willing to pay the reasonable rent as may be fixed by the Court looking to the demand of the landlord provided some fair and reasonable time is allowed for vacating the premises in dispute.

15. Sri Swapnil Kumar, learned Counsel for the landlord leaves it open to the Court to grant some suitable time subject to payment of amount/damages for the use and occupation at the rate of Rs. 50,000/- per month which was actually demanded by the landlord at one time.

16. It is quite settled that damages for use and occupation of a premises are awarded at the prevailing agreed rate of rent unless the evidence proves the market rate to be higher. There is no material to prove the rate of rent different from what is agreed.

17. In view of the aforesaid facts and circumstances, a period of six months from today is allowed to the bank to vacate the premises in dispute provided entire amount of rent/damages for its use and occupation as per the judgment and order of the Court below dated 23rd August, 2014 @ Rs. 18,900/- per month is paid/deposited after adjusting any amount which may have already been paid and subject to payment of Rs. 20,000/- as rent/damages for its use and occupation after 23rd August, 2014 till its actual vacation.

18. A responsible officer of the bank would also file an undertaking on affidavit within a period of one month from today that the bank will vacate and handover the peaceful possession of the premises in dispute and that the bank shall clear all dues as aforesaid. The revision is dismissed as above.