
(1997) 08 AHC CK 0103
In the Allahabad High Court
Case No : Civil Revision No. 192 of 1997

Central Bank of India

APPELLANT

Vs

Manohar Lal and Others

RESPONDENT

Date of Decision : 20-08-1997

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 116
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21

Citation : AIR 1998 All 235 : (1997) AWC 858

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Advocate : Kaushal Kant, for the Appellant; M.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

D.C. Srivastava, J.—This is tenant's revision u/s 25 of the Provincial Small Cause Courts Act against judgment and decree dated 30-5-1997 of IIIrd Addl. District Judge (JSCC) Aligarh, decreeing the suit of the landlord opposite party for eviction of the tenant-revisionist from the disputed accommodation.

2. The disputed premises situate at Sadabad Gate Hathras was-in tenancy of the revisionist on monthly rent of Rs. 4285/-. Since monthly rent of this premises exceeded Rs. 2000/- per month, the plaintiff claiming exemption of the provisions of U.P. Act No. 13 of 1972 filed a suit for eviction after serving a registered notice dated 4-9-1995 of ejectment u/s 106 of Transfer of Property Act. The notice was served on 5-9-1995. Since the notice remained uncompiled with and possession of the premises was not delivered, the suit for eviction was filed.

3. The suit was contested on the ground that U.P. Act No. 13 of 1972 is applicable to the premises in question. It was admitted that after periodical enhancement of the rent the rent was lastly agreed to be paid at the rate of Rs. 4285/-per month in pursuance of the order passed by the prescribed Authority u/

s 21(8) of the U.P. Act 13 of 1972. The validity of the notice of eviction was challenged on the ground that initially the tenancy was created for five years under a written lease-deed. In the said deed an option was given to the tenant for renewal for three years at an interval of one year each. However, neither the right of renewal was exercised by the tenant nor tenancy was determined by the landlord and since the landlord accepted the rent and permitted the revisionist to remain in occupation, the notice of eviction is invalid.

4. The trial Court decreed the suit.

5. The finding of the trial Court that U.P. Act No. 13 of 1972 is not applicable to the premises in question was not challenged by the learned counsel for the revisionist. The learned counsel for the revisionist, however, challenged the finding of the trial Court regarding status of the revisionist and invalidity of the notice. The learned counsel for the respondents also appeared and he was heard. The revision is, therefore, being disposed of finally at the admission stage with the consent of the learned counsel for the parties.

6. The only short point for adjudication in this revision is whether the status of the revisionist after expiry of the period of lease will be that of a tenant by holding over or a tenancy at will or the tenancy has been forfeited. The learned counsel for the revisionist stated that on the facts and circumstances of the case the status of the revisionist was that of a tenant by holding over.

7. For appreciating this, certain facts have to be kept in mind. The tenancy was created under a written deed for five years from 15-1-1959 to 15-1-1964. There was covenant in this lease deed that the tenant will have three options for a period of one year each to extend the tenancy with certain requirements, namely, after service of thirty days prior notice this right of renewal shall be exercised by the tenant. Admittedly the revisionist did not exercise the right of renewal nor any notice to exercise this right was given to the landlord. However, it is equally admitted case that after 16-1-1964 till the notice of eviction which was served On 5-9-1995 the tenant remained in occupation of the premises and that he had been paying rent to the landlord and the landlord always accepted the same. On these facts it was contended that the tenancy of the revisionist could not be terminated by one month's notice at the will of the landlord and that it was an yearly lease, hence, six months notice for its termination was needed. In this view of the matter notice u/s 106 of the Transfer of Property Act was argued to be illegal.

8. Section 116 of the Transfer of Property Act reads as under:

"Effect of holding over:-- If a lessee or under lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as

specified in Section 106."

9. It deals with the effect of holding over and clearly contemplates that if the lessee remains in possession after determination of the lease and the lessor or his legal representative accepts rent from the lessee, or otherwise assents to continuing his possession the lease in the absence of an agreement to the contrary is renewed from year to year or from month to month according to the purpose for which the property is leased, as specified in Section 106.

10. Section 106 of the Transfer of Property Act deals with the manner in which the tenancy, can be determined. Inter alia, it provides that in [the absence of a contract or usage or local law 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 months" notice and the 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 lessor or lessee by fifteen days" notice (thirty days in U.P.)

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 in case of immovable property let out for agricultural 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 days" 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 Sections 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. The learned counsel for the revisionist, however, relied upon the case of *Goderham and Worts Ltd. v. Canadian Broadcasting Corporation* AIR 1949 PC 90 and referring to paragraph 20 of the judgment contended that it will be deemed to be yearly tenancy. However, the facts of this case are distinguishable. In this case there was stipulation in the lease-deed or reserving the rent yearly. Consequently, on the ground of this stipulation it was held that the lease will be renewed subject to the terms and conditions of original lease and since yearly rent was reserved in the lease-deed, it shall be deemed to be yearly tenancy terminable by six months' notice. This case was also considered by a Division Bench of this Court in *Zahoor Ahmad Abdul Sattar Vs. State of Uttar Pradesh and Another*, . It was laid down in this case that as a result of holding over the old lease is terminated but is renewed. The terms in the lease would, however, be the same as the old lease except that it will be lease from year to year or from month to month, according to the nature of the tenancy. If a lease is granted for a fixed period and is terminable after expiry of that period and there is holding over the new lease will not be a lease for three years, but will be a lease from year to year or from month to month, according to the nature of the lease, i.e. if it is a lease for industrial or agricultural purposes it would be a lease from year to year and if it is a lease for any other purpose it will be a lease from month to month.

16. Relying upon the Privy Council decision (*supra*) the Division Bench on the facts of that case observed that on the terms and conditions of the lease-deed it was a renewed lease for year to year terminable by six months' notice.

17. Various decisions were considered by the Division Bench and after considering these decisions it further observed that it would thus appear from the trend of authority as also from the plain interpretation of the section that renewed lease would be on the same terms as the original lease except that it would be a lease from year to year or from month to month, according to the nature of tenancy the other conditions remaining the same.

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 costs.