

(2006) 04 DEL CK 0171

In the Delhi High Court

Case No : Regular First Appeal (OS) 8 of 2006 and CM 958 of 2006

Central Bank of India

APPELLANT

Vs

Shri Lalit Kumar Bhargava (HUF)

RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 39 Rule 10

Evidence Act, 1872 — Section 115

Transfer of Property Act, 1882 — Section 113

Citation : (2006) 3 CivCC 774 : (2006) 129 DLT 338 : (2006) 3 RCR(Civil) 295

Hon'ble Judges : Markandeya Katju, Acting C.J.; S.N. Aggarwal, J

Bench : Division Bench

Advocate : R.D. Aggarwal and Sameer Aggarwal, for the Appellant; Neeraj Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—A nationalised bank-Central Bank of India (hereinafter referred to as the `appellant'), aggrieved by an order passed by the learned Single Judge under Order XII Rule 6 CPC on 16.11.2005 directing it to hand over possession of the demised premises within one month of the date of the order, has preferred this appeal in its quest to retain possession of the said premises as long as it can by dragging the litigation through misuse and abuse of the legal process unmindful of its public duty to act as a role model for others in such like matters.

2. The demised premises consists of an area of 2709 sq.feet on first floor of property bearing No. 73,74,75/1 and 60/1, Chawri Bazar, Delhi. The said premises was let out by the respondent to the appellant in 1986. The lease of the said premises expired on 7th July, 1996. A notice of termination of tenancy dated 5th July, 1996 was served by the respondent upon the appellant and it was directed in the said notice that in case the appellant would fail to vacate the demised premises by 7th September, 1996, it would be liable to pay damages for

unauthorised use and occupation of the said premises thereafter at Rs. 8,000/- per day. The appellant did not vacate the premises even after service of notice of termination of tenancy on it.

3. In 2002, the respondent filed a suit for possession, damages and mesne profits against the appellant and along with the said suit, he also filed an application under Order XXXIX Rule 10 CPC (IA No. 2525/2002) for directions to the appellant to pay admitted rent and to allow him to encash the cheques which were within validity period received from the appellant before filing of the suit.

4. The learned Single Judge passed the following order on the respondent's application under Order XXXIX Rule 10 CPC (IA No. 2525/2002):-

plaintiff may encash the cheques already issued and the ones which may be issued by the defendant in future to adjust the same on account of use and occupation charges, without prejudice to his rights and contention in the case.

5. The appellant had filed its written statement to the suit for possession, damages and mesne profits filed by the respondent against it. In the said written statement, the appellant admitted the relationship of landlord and tenant between the parties but it denied the validity and legality of the notice to quit served upon it by the respondent.

6. The respondent in view of admission of relationship of landlord and tenant made by the appellant in its written statement moved an application under Order XII Rule 6 CPC and prayed for possession of the suit premises. The learned Single Judge after hearing both the parties passed the impugned order and directed the appellant to hand over possession of the demises premises to the respondent within one month of the date of the order. It is aggrieved by this order that the appellant has come up in this appeal.

7. When this appeal came up for admission hearing on 20th January, 2006, Mr. Manmohan, senior counsel who appeared for the appellant was told that there was no merit in the appeal but at the instance of the counsel, notice of appeal was issued to the respondent so that the appellant could get time for vacating the suit premises. On subsequent dates of hearing, that is on 3rd March, 2006 and 21st March, 2006, the case was adjourned on the request of the senior counsel for the appellant as he informed the Court that the Board Meeting could not take place and some more time was required to vacate the premises. On 31st March, 2006, the Court recorded its displeasure about the conduct of the appellant as on that day also request for adjournment was made on the same ground that the Board of the appellant could not meet for taking a decision. What surprised the Court on that day was the fact that the appellant had changed his earlier senior counsel, Mr. Manmohan, who had assured the Court that the appellant would be vacating the suit premises without telling Mr. R.D. Aggarwal, the new senior counsel, as to what had happened on the earlier dates of hearing.

8. Lastly, on 4th April, 2006, when the matter was taken up for hearing, the learned senior counsel who appeared for the appellant on that date insisted for hearing the appeal on merits and on his insistence, we have heard the arguments advanced by counsel for the parties in detail and now we proceed to decide this appeal on merits.

9. The only argument canvassed before us by the learned senior counsel for the appellant is that the notice to quit issued by the respondent in 1996 stood waived as the respondent had accepted the rent for a long period after sending notice to quit. The learned Counsel relied upon the provisions of Section 113 of the Transfer of Property Act, 1882 and Section 115 of the Evidence Act, and relying on the same he contended that the respondent is estopped from seeking eviction of the appellant as he had accepted rent after service of notice to quit.

10. The learned senior counsel also relied upon the adjustment of TDS given by the respondent in the statement of outstanding amount filed along with respondent's application under Order XXXIX Rule 10 CPC (IA No. 2525/2002) for direction to the appellant for payment of admitted rent. Relying on the adjustment of TDS, he contended that since the respondent himself has given adjustment of TDS, it should be presumed that the tenancy of the appellant in respect of the suit premises was renewed after service of notice to quit. This argument, in our opinion, does not cut any ice. We are not at all impressed with any of the above arguments advanced on behalf of the appellant. In case the respondent would not have given adjustment of TDS while claiming admitted rent, the appellant would have urged that it was entitled to get adjustment of TDS as it was the liability of the respondent to pay tax on rental income. As the respondent has given adjustment of TDS, the appellant chose to contend that the said adjustment has brought out a new contract of fresh tenancy between the parties. The plea in regard to the above raised on behalf of the appellant reminds us of the proverb "head I win, tail you lose"

11. The contention of the appellant that the respondent has accepted rent after service of notice to quit is based on incorrect facts. Admittedly, the respondent did not encash any of the cheques sent by the appellant after service of notice to quit and the order passed by the learned Single Judge on 13th March, 2002, on respondent's application (IA No. 2525/2002) speaks volumes about the intention of the parties that the respondent never intended to treat the appellant as its tenant in respect of the demises premises after service of notice to quit. Had his intention been to treat the appellant as its tenant, then nothing could prevent him from encashing the cheques tendered by the appellant towards rent/damages after 1996. The very fact that the respondent encashed only those cheques which were within the validity period and that too after getting an order for the same from the Court by itself shows that the respondent had adjusted the amount covered by the said cheques towards part damages for use and occupation of the suit premises by the appellant.

12. The law is well-settled that no tenant can be allowed to retain possession of

the tenanted premises without payment of rent/damages for its use and occupation. The law is equally well-settled through a catena of judgments, both of High Courts and of Supreme Court, that mere acceptance of rent after service of notice to quit does not amount to creation of a new tenancy and that the notice to quit is not waived by mere acceptance of rent.

13. The learned Single Judge has noted various judgments in paragraphs 5 and 14 of the impugned judgment in support of the above legal proposition. The learned senior counsel for the appellant could not cite even a single judgment to support his plea that acceptance of rent by the landlord after service of notice to quit amounts to waiver of said notice.

14. On going through the impugned order, we find that the learned Single Judge was absolutely right in directing the appellant to hand over the possession of the demised premises to the respondent within one month of the date of the order exercising his power under Order XII Rule 6 CPC. The learned Single Judge was further right in holding that the case hardly requires any evidence on the point of legality and validity of the service of notice. It is not every case that needs to be sent for trial. The Court is fully competent to pass a decree in favor of one party and against the other to the extent of admissions contained in the written statement. Needless to say that by adopting such a procedure, the delay in trial can be conveniently avoided, at least, to some extent and this will help the Court in giving speedy justice.

15. From the conduct adopted by the appellant, it seems to us that the appellant's only interest is to retain possession of the suit premises as long as it can because the last paid rent at the time of service of notice of termination of tenancy was less than Rs. 10 per sq. feet whereas, with passage of time, rent has increased in geometrical proportion and the present rent of similar premises is stated to be Rs. 85/- per sq. feet and that implies an increase of rent by almost eight times.

16. For the aforementioned reasons, we hardly find any infirmity in the impugned order calling for our interference in exercise of our appellate jurisdiction. The impugned order is maintained. This appeal is hereby dismissed. Looking at the conduct of the appellant, we burden it with costs of Rs. 20,000/-.

17. This appeal is hereby dismissed. Looking at the conduct of the appellant, we burden it with costs of Rs. 20,000/-.