

(2007) 02 DEL CK 0148

In the Delhi High Court

Case No : Regular Second Appeal No. 406 of 2006

Continental Advertising Pvt. Ltd.

APPELLANT

Vs

Captain Pritpal Singh and Smt. Abnash Kaur Sasson

RESPONDENT

Date of Decision : 07-02-2007

Acts Referred:

Citation : (2007) 02 DEL CK 0148

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : Vinay Bhasin and Anil K. Kher, for the Appellant; M.L. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Malik, J.—The Civil Judge vide his order dated 10.08.2006 decreed the respondents"/plaintiffs" suit for possession in respect of Flat No. 609, Gagan Deep Building, 12, Rajendra Place, New Delhi measuring 676 square feet. He also passed decree in the sum of Rs. 13,520/- @ Rs. 20/- per square feet per month. The Civil Judge also directed that the respondents are also entitled to interest @ 12% per annum from the date of filing of the suit till realization. He further ordered that the respondents are also entitled to damages @ Rs. 20/- per square feet from 01.03.1996 till the possession from the appellant and the respondents are also entitled to interest @ 6% per annum on future damages. The first Appellate Court vide its order dated 14.11.2006 dismissed the appeal.

2. I have heard the learned Counsel for the parties. Learned Counsel for the appellant argued with vehemence that at least two substantial questions of law arise in the instant case. First of all, he pointed out that as per the lease deed dated 03.01.1977, the rate of rent is less than Rs. 3500/- and consequently, the Civil Judge has got no jurisdiction to entertain this case. He opined that this petition should have been filed before the Rent Controller. Clauses 1 and 3 of the said lease deed are hereby reproduced in order to understand the position clearly:

1. To pay the monthly rent of Rs. 2197/- per month reserved on or before the 7th day of each English calendar month, effective from January 1, 1972.

3. To pay all or any taxes levies or charges imposed by the Government or local authority or Delhi Municipal Corporation in respect of the Lessee's trade or profession in or upon the said premises.

3. Learned Counsel for the appellant also drew my attention towards notice dated 12.02.1983 sent by Abnash Kaur Sasson, respondent No. 2. The relevant portion, thus runs as follows:

As per the lease deed executed by you dated 3.1.77, please note that w.e.f. January, 1983 you are to pay a rent of Rs. 2658.37 (Rupees two thousand six hundred, fifty eight and paise thirty seven only) being an increase of 10% over the last rent paid. As such you are requested to pay the balance of Rs. 241.67 on account of January, 83 rent. I am already in receipt of your cheque dated 7.1.83 for Rs. 2416.70. Kindly Therefore remit the new rent from January, 83 and onwards.

As per Clause (3) para 5 of the lease deed, I am enclosing a schedule of claims on account of reimbursement of scavenging tax/ education cess/ difference of enhancement in general tax of MCD up to the year ending 31.03.83 amounting in aggregate to Rs. 11346/- (Rupees Eleven thousand three hundred forty six only). Kindly arrange to settle the concerned outstanding amount at your earliest and oblige.

An early response from your side would be very highly appreciated since I have to meet certain tax liabilities and claims/commitments. Thanking you for your cooperation in the matter in advance.

4. Learned Counsel for the appellant also submitted that letter written by Smt. Abnash Kaur Sasson goes to show that she had asked for giving schedule of claims on account of reimbursement of Scavenging Tax/Education Cess/ Difference of enhancement in General Tax of M.C.D. up to the year ending 31.03.1983. She has asked the appellant to pay a sum of Rs. 11,346/- for a period of six years starting from 1977-1978 to 1982-1983 in respect of the above said subjects.

5. It may be also mentioned that learned Counsel for the respondents did not pick up a conflict with these documents. Learned Counsel for the appellant vehemently argued that if the Tax is excluded, it will bring the monthly rent to be less than Rs. 3500/- per month and thereby bring the proceedings within the ambit of Delhi Rent Control Act.

6. The argument urged by the learned Counsel for the appellant carries no conviction. Normally, this is the liability of the landlord to pay the House Tax, Scavenging Tax, Education Cess, however, if the parties have agreed that all these amounts would be paid by the tenant, it would definitely form a part and parcel of the rent. These amounts cannot be separated from the rent itself.

7. Moreover, it may also be mentioned that the letters written by the appellant, Ex.DW1/P-1 to Ex.DW1/P-4, clearly mention that the appellant was paying rent @ Rs. 3892.05 in respect of the suit property. The respondents had reiterated their stand in the notice Ex.PW1/4 at paragraph No. 6. The defendant in its corresponding paragraph of its reply of Ex.PW1/5 explained that the contents of paragraph No. 6 of their notice is a matter of record and hence needs no reply. Secondly, the attention of the Court was drawn on the following findings given by the trial court:

This witness also admitted the letters Ex.DW1/P1, Ex.DW1/P2, Ex.DW1/P3, Ex.DW1/P4. Vide these letters a rent of Rs. 3,892.05 paise was being paid by the Defendant to the plaintiffs. It is also admitted by this witness that it is not mentioned in these letters that amount of Rs. 3,892.05 paise includes House Tax and other Taxes. The witness in the cross-examination has stated that he was paying House Tax of Rs. 1,200/- or Rs. 1,300/- per month but the witness has not brought any document to show that he was paying House Tax @ Rs. 1,200/- per month. The Defendant admitted to have increased the rent @ 10% after every three years. Thus, the Defendant is not able to prove this issue and this issue is decided in favor of the plaintiffs and against the Defendant.

8. It is, thus, clear that the admission of this case comes out from the horse's mouth itself. The rate of rent is already Rs. 3850.05 i.e. more than Rs. 3500/-. Consequently, the argument urged by the counsel for the appellant deserves no consideration.

9. Second submission made by the learned Counsel for the appellant was that the Courts below have granted mesne profits @ 20% without any evidence. The attention of the Court was drawn towards orders passed by the Courts below. The judgment by the Civil Judge reveals that the respondents had claimed the future damages @ Rs. 40/- per square feet. He pointed out that the respondents did not adduce any independent evidence to show that this rate was prevailing in the locality where the suit premises is situated. The respondent admitted that he was not in a position to produce any document to show that the market rate of flat was Rs. 40/- per square feet. On the other hand, DW1 Shri V.K. Mehta, M.D. of the appellant stated that he was not aware whether the rent in 1996 at the time of filing the suit was Rs. 20/- per square feet. The Civil Judge found that the respondents were entitled to damages @ Rs. 20/- per square feet from 01.03.1996 till the possession was delivered to the respondents.

10. Now, I turn to the judgment delivered by the first Appellate Court. The learned Judge placed reliance on an authority reported in M/s. G.M. Enterprises (P) Ltd. Vs. M/s. Shyam Ahuja Limited., . In view of this authority, the learned Judge found that grant of damages by learned trial court @ Rs. 20/- per square feet per month i.e. @ Rs. 13,520/- per month w.e.f. 01.03.1996 till delivery of possession cannot be said to be unreasonable.

11. It is also mentioned that in the notice of termination, the respondents have

clearly, specifically and unequivocally stated that the market rate of the said flat was @ Rs. 20/- per square feet per month.

12. This Court in a case reported in Bakshi Sachdev (D) by L.Rs v. Concord 1993 (1) R.L.R. 563 has held:

The learned Counsel for the plaintiffs has, however, submitted that the court should take judicial notice of the fact of phenomenal rise in rents in Delhi and particularly in posh colonies like Golf Links where the property in suit is located. On this basis, the damages/mesne profits are claimed at a rate higher than agreed rate of rent. The agreed rate of the premises is Rs. 6,000/- per month. The plaintiffs have claimed damages/mesne profits @ Rs. 50,000/- per month. Nobody can deny the fact that there has been phenomenal rise in rents in Delhi and particularly in the area where the property in suit is located. However, the claim of the plaintiff is unsubstantiated. The rent of Rs. 6,000/- per month was fixed in the year 1974. In the year 1989, i.e. on termination of the tenancy 15 years had passed. The increase is sought after the termination of the tenancy. Taking a judicial notice of the fact of increase in rents and in order to provide fair compensation to the plaintiffs, I consider a sum of Rs. 10,000/- per month to be a fair amount towards damages/mesne profits to be awarded in favor of the plaintiffs.

13. To the same effect, are the authorities reported in Surjit Singh and Another Vs. Kumar Pahilaj and Others, ; State Bank of Bikaner and Jaipur Vs. I.S. Ratta and Others, .

14. The above said discussion does not give rise to any substantial question of law. The appeal is dismissed in liming. No orders as to costs. Stay order already granted stands vacated. Copy of this order be sent to the Trial Court forthwith.

CM No. 16698/2006 in RSA No. 406/2006

In view of the dismissal of the appeal, no further orders are required to be passed in the application and the same is dismissed.