
(2010) 09 MP CK 0028
In the Madhya Pradesh High Court
Case No : S.A. No. 766 of 2005

Dena Bank

APPELLANT

Vs

Municipal Corporation

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1, 100
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 3
Transfer of Property Act, 1882 — Section 106, 111, 112, 113, 116

Citation : (2011) ILR (MP) 466

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

U.C. Maheshwari, J.—This appeal is directed u/s 100 of the CPC on behalf of the Appellant/Defendant, being aggrieved by the judgment and decree dated 18.3.2005 passed by the Additional Judge Burhanpur to the Court of District Judge, Burhanpur-Khandwa, in regular civil appeal No. 4-A/04 upholding the judgment and decree dated 24.11.04 passed by the 1st Civil Judge Class-I, Burhanpur in Civil Original suit No. 14-A/2001, dismissing the suit of the Respondent against the Appellant for eviction under the provision of Section 106 and the relevant provisions of the Transfer of Property Act as by virtue of Section 3 of the M.P. Accommodation Control Act, 1961 (for short "the Act") the Respondent/landlord, being Municipal Corporation, the provisions of such Act is not applicable with respect of its property.

2. The facts giving rise to this appeal in short are that on behalf of the Respondent herein, the above-mentioned suit for eviction was filed against the Appellant contending that the Appellant institution, being monthly tenant of the Respondent since the year 1971, is in occupation of the disputed premises described in the plaint and also shown in the Schedule-A annexed with the plaint situated at some square of Ward No. 7 of Burhanpur for non-residential purpose.

The tenancy being monthly, begins from the first day of every month. As per the agreement of the parties, which had taken-place from time to time on every interval of five years, the existing rent was to be enhanced. Pursuant to it, on making repeated request on behalf of the Respondent, instead to consider such request, the unnecessary disputes were raised by the Appellant and as per terms, the rent was not enhanced. In such premises, the Appellant remained adamant to pay the rent of Rs. 850/- per month and the same was stated in the reply of the letters issued to the Respondent to it. As per further averments of it, the rent was also not paid regularly. As per further submission, the Respondent/Municipal Corporation is under need of the aforesaid disputed accommodation to implement its activities. As per decision of the subcommittee of the Respondent/Corporation, by giving a quit notice dated 10.7.2000, the aforesaid tenancy of the Appellant in the disputed premises was terminated on expiry of the tenancy month vide dated 31.7.2000. In alternate, the tenancy was also terminated by giving an option to the Appellant that if it deems the tenancy month of some different date then on receiving such notice, after 15 days, on expiry of the tenancy month accordingly, the tenancy stands terminated and the Appellant was intimated to vacate the premises and hand-over the possession of the same to the Respondent. In spite service of such notice on 11.7.2000 on the Appellant through its Head Office, the same was not complied with and the vacant possession of the accommodation was also not given to the Respondent. With these pleadings, the above-mentioned suit for eviction of the Appellant as well as for mesne profit @ of Rs. 4000/- per month, is filed.

3. In the written statement of the Appellant, by admitting the alleged monthly tenancy in the disputed premises since the year 1971, it is stated that the Respondent being local authority covered u/s 3(c) of the M.P. Accommodation Control Act, 1961, the provisions of such Act are not applicable in the present matter. It is further stated that initially the Appellant was inducted as tenant at the rate of Rs. 355/- per month. But time to time, on enhancing, the same had come upto Rs. 850/- per month. The same is being paid by the Appellant to the Respondent. During subsisting the tenancy, it was settled between the parties that on every interval of five years, the existing monthly rent would be enhanced but no any terms in this regard was settled on which such enhancement was to be carried-out. The Respondent has also not pleaded any such terms in the plaint. The Appellant never created any obstruction in enhancing the sum of the monthly rent. It has also not committed any default in depositing the same. In continuation it is stated that under consultation of the higher officials of the Appellant its local official had enhanced the monthly rent from time to time and the Appellant/Institution is also ready and willing to enhance the existing rent even today. The rent was also paid by depositing the same in the account of the Respondent held with the Appellant as Saving Account No. 1272 and Current Account No. M-33 and also the loan account. On depositing such sum, the same was withdrawn or received by the officials of the Respondent. The Appellant, being Corporation/Institution, its local official of the Branch did not have any

authority to enhance the rent unless sanction or permission is given by the higher authorities. The alleged requirement of the disputed premises to the Respondent is also denied. The alleged quit notice was not given to the local branch of the Appellant and the service of the same on the Head Office, could not be termed to be the valid service on the Appellant as the branch is functioning at Burhanpur. The service of the notice by the Head Office is admitted by the Appellant but as per further averments by such notice, the alleged tenancy could not be deemed to be terminated. It is also stated that some sittings for compromise had also taken-place between the officials of the parties and, in such premises the Appellant is ready and willing to resolve their dispute by compromise. Some averments regarding some new agreement is also stated. In view of such facts of compromise and in the lack of proper cause of action, the instant suit is not tenable. It is also stated that after giving the quit notice, the Respondent's officials, have accepted the offer regarding enhancement of the rent and pursuant to that on depositing the amount of rent in their account, by receiving the same, the Respondent has waived their notice of termination of such tenancy and, in such premises, the suit of the Respondent, could not be decreed for the prayer as made in it. The objection with respect of improper valuation and the deficit Court fees are also taken. With these averments, the prayer for dismissal of the suit is made.

4. In view of the aforesaid pleadings of the parties, after framing as many as nine issues and recording the evidence, on appreciation of the same, by holding the relationship of the parties as landlord and tenant and the provision of M.P. Accommodation Control Act, is not applicable to the Respondent/institution and the quit notice terminating the tenancy was duly served on the Appellant through its Head Office, the suit of the Respondent was decreed by the trial Court for eviction as well as for the mesne profit of Rs. 2300/- per month from 1.8.2000.

5. On challenging such decree by the Appellant before the subordinate appellate Court, on consideration, by affirming the judgment and decree of the trial Court, the same was dismissed, on which, the Appellant has come forward to this Court with this appeal.

6. Shri R.N. Roy, learned appearing Counsel of the Appellant after taking me through the pleadings of the parties, available evidence and the exhibited documents said that the alleged quit notice Ex.P/2 for termination of the tenancy was not duly served on the Appellant through its Branch Manager of Burhanpur. The service of such notice on the Head Office only, could not be deemed to be the proper service of notice. He also argued that such quit notice was not given in accordance with the provision of Section 106 of the Transfer of Property Act. By referring such provision, he said that there is no such provision for terminating the tenancy by giving any alternate option to the tenant and as the notice was given with alternate option, hence, it being contrary to such provision, the same could not be deemed effective for passing the impugned decree against the Appellant. He also argued that in the lack of proper evidence regarding

nature of the lease, it could not be assumed that the alleged lease was determinable only by giving a notice of 15 days period. He also argued that after determination of the lease by the aforesaid notice, on depositing the rent by the Appellant in the account of the Respondent, the same was accepted by the authorities of the Respondent, hence such circumstance is sufficient to draw an inference that the Respondent has waived its right to prosecute the suit on the foundation of the aforesaid notice terminating the alleged tenancy. In support of his argument, he also referred Section 112, 111(g), (h), 113 and 116 of the Transfer of Property Act. In continuation he said that the factum of compromise between the parties was not taken into consideration with proper approach by the Courts below while passing the impugned decree for eviction and, prayed for admission of this appeal on the proposed substantial questions of law mentioned in para-11 of the appeal memo. Although, before winding-up the arguments, Appellant's Counsel stated to submit some citations but the same were not supplied subsequent to his arguments till 23.9.2010.

7. Having heard the Counsel, keeping in view the arguments advanced, after perusing the record of the Courts below along with the impugned judgments, I am of the considered view that the Courts below have not committed any error in decreeing the suit of the Respondent against the Appellant for eviction as well as for mesne profit.

8. So far the arguments of the Appellant's Counsel regard service of notice on the Appellant is concerned, as per the provision of Order 29 Rule 1 of the Code of Civil Procedure, if the matter is relating to the Corporate body the notice of the suit to the Head Office is a sufficient compliance of the provision. In such premises, no separate notice to Branch of the Appellant is required and according to my opinion, such analogy could be adopted even for issuing the quit notice of termination of tenancy and, in such premises, the quit notice Ex.P/2 was duly served on the Head Office of the Appellant. So, the branch of the Appellant at Burhanpur or its official did not have any authority to say that the notice was not duly served on it. Even otherwise, it appears from the record that before inducting the Appellant in the disputed premises, the Respondent/institution with the Head Office of the Appellant, entered into an agreement to create the alleged tenancy and, in such premises, if the notice of termination of tenancy Ex.P/2 was given to the Head Office then, in the lack of any notice to the branch office, it could not be said that the notice was not properly served. In such premises, the approach of the Courts below in this regard does not appear to be contrary to the record or the existing legal position.

9. In the course of entire argument, I am not apprised by the Appellant's Counsel with any document or situation showing that after receiving the notice of termination of tenancy Ex.P/2 by the Head Office of the Appellant, at any point of time, some agreement or compromise has been finalized between the parties and pursuant to that any enhanced rent was accepted by the Respondent or its officials. So, in the lack of it, it could not be deemed that the Respondent has

waived his right to evict the Appellant from the premises under the provision of Section 112, 113 read with Section 111(g), (h) of the Transfer of Property Act. Mere on account of depositing some of the money at the rate of existing rent on the date of termination of tenancy in the account of the Respondent which was with the branch office of the Appellant, it could not be deemed to be waiver of such right. In any case, the Appellant, after terminating its tenancy became the statutory tenant under the law and, being statutory tenant, if any, sum of the rent was paid by the Appellant or deposited by it in the account of the Respondent then it could not be deemed that the same has created either a new tenancy between the parties or the Respondent has waived its right of eviction. On arising the occasion, such question was answered by the Division Bench of this Court in the matter of Nagar Palika Nigam, Gwalior v. Rajeshwar Dayal 1996 (Vol. XLI) MPLJ 97 in which it was held as under:

20. In view of the conclusion arrived at the question of waiver of notice or its issuance by a person, who was not competent to issue the same becomes meaningless. It may, however, be observed that the question of waiver of notice would arise only when there is express acceptance of rent by the landlord, in the Nigam/Appellant. Deposit of some amount with an employee of the Nigam, which is later on credited in the Municipal fund, would be of no consequence. The concept of acceptance of rent and waiver was considered in case of AIR 1949 124 (Federal Court) . It was held thus:

On the determination of a lease, it is the duty of the lessee to deliver up possession of the demised premises to the lessor. If the lessee or a sub lessee under him continues in possession even after the determination of the lease, the landlord obviously has the right to eject him forthwith, but if he does not, and there is neither assent or dissent on his part of the continuance of occupation of such persons, the latter becomes in the language of English law a tenant at sufferance who had no lawful title to the land but holds it merely through the laches of the landlord. If now the landlord accepts rent from such person or otherwise expresses assent to the continuance of his possession a new tenancy comes into existence as is contemplated by Section 116, Transfer of Property Act, and unless there is an agreement to the contrary, such tenancy would be regarded as one from year to year or from month to month in accordance with the provisions of Section 106 of the Act

In cases of tenancies relating to dwelling house to which the Rent Restriction Act apply, it was observed by their Lordships of the Federal Court thus:

...in cases of tenancies relating to dwelling house to which the Rent Restriction Acts apply, the tenant may enjoy the statutory immunity from eviction even after the lease has expired. The landlord cannot eject him except on specific grounds mentioned in the Acts themselves. In such circumstances, acceptance of rent by the landlord from a statutory tenant whose lease has already expired could not be regarded as evidence of a new agreement of tenancy and it would not be open to such a tenant to urge by way of defence in a suit for ejectment brought

against him under the provisions of Rent Restriction Act that by acceptance of a rent a fresh tenancy was created which had to be determined by a fresh notice to quit.

The aforesaid decision was followed by the Apex Court in *The Custodian of Evacuee Property, Bangalore Vs. Khan Saheb Abdul Shukoor, etc.*, and it was held thus:

The High Court was in our judgment right in holding that by merely accepting rent from the Appellant and by failing to take action against him, the Appellant did not acquire the rights of a tenant holding over. It is true that in the notice dated October, 10, 1950, the Appellant is described as a "monthly tenant" but that is not indicative of conduct justifying an inference that a fresh contractual tenancy had come into existence. Within the meaning of West Bengal Premises Rent Control Act, 1950, the Appellant was a "tenant" and by calling the appellant a tenant the Respondent did not evince an intention to treat him as a contractual tenant. The use of the adjective "monthly" also was not indicative of contractual relation. The tenancy of the Appellant was determined by efflux of time subsequent occupation by him was not in pursuance of any contract express or implied, but was by virtue of the protection given by the successive statutes. This occupation did not confer any right upon the Appellant and was not required to be determined by a notice prescribed by Section 106 of the Transfer of Property Act.

10. In view of the aforesaid settled principle of law, on examining the case at hand, the case cited is directly applicable in the present circumstances and, in such premises, this appeal is not involving any question of law rather than substantial question of law on the above- mentioned subject requiring any consideration u/s 100 of the Code of CPC at this stage.

11. It is settled proposition of the law that in the matter of eviction if the suit is filed under the provision of Transfer of Property Act, after serving the quit notice on the tenant u/s 106 of the Transfer of Property Act then only on proving the service of such notice on the tenant like Appellant, the landlord like the Respondent is entitled to get the decree of eviction and in the aforesaid circumstances it has been proved and established tenancy of the Appellant was terminated by the Respondent by serving the notice dated 10.7.2000 Ex.P/2 u/s 106 of the Transfer of Property Act on the Head Office of the Appellant, therefore, I have not found any circumstance giving rise to any substantial question of law on this subject.

12. Even otherwise, as per the concurrent findings of the Courts below, the quit notice for termination of the tenancy has been served on the Appellant under the existing legal position and such findings being based not only on the documents Ex.P/2 and P/3 but also on appreciation of the evidence, is a finding of fact and such finding of fact howsoever, the same is erroneous, could not be interfered at this stage u/s 100 of the Code of CPC as laid down by the Apex Court in the

matter of Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others, .

13. In view of the aforesaid, it is apparent that the Courts below have passed the impugned decree after taking into consideration the above-mentioned circumstances and, in such a situation, I have not found any substance or the circumstance in the appeal giving rise to any question of law rather than substantial question of law requiring any consideration u/s 100 of the Code of CPC at this stage, resultantly, it being devoid of any such question, deserves to be and is hereby dismissed at the stage of motion hearing.

14. In view of such dismissal, the interim order dated 29.4.05 has also come to end and IA No. 3015/05, IA No. 4776/05 Appellant's application for grant of stay and IA No. 3781/2010 Respondent's application for vacating the stay, do not require any further consideration, hence the same are also dismissed. There shall be no order as to the cost.