
(2013) 01 AHC CK 0091

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9469 of 2002

Devi Prasad Sachan

APPELLANT

Vs

Special Judge (S.C. and S.T. Act) Kanpur Dehat and Others

RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 111, 111(g), 114

Citation : (2013) 3 ADJ 683 : (2013) 4 ALJ 4 : (2013) 98 ALR 350 : (2013) 4 AWC 3548 : (2013) 119 RD 853

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : B.D. Shukla and Radhey Shyam, for the Appellant; B.N. Singh, V.B. Tiwari and V.P. Tewari, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri B.D. Shukla, learned counsel for the petitioner. This is tenant's writ petition and dispute relates to a shop which is a part of the house situated near Dr. Jatara, Pokhraiyan, Tehsil Bhognipur, District Kanpur Dehat. The shop is at the ground floor of the aforesaid house. The respondent No. 3 instituted Small Cause Suit No. 9 of 1999 in the Court of Small Cause, Kanpur Nagar seeking ejectment of petitioner-tenant from accommodation in question on the ground of default in payment of rent and also sought a decree for arrears of rent etc. The petitioner-tenant contested the suit denying arrears of rent as alleged from 1.6.1998 and also rate of rent. The Trial Court held that Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1972") is not applicable to the building in dispute since it is a new construction and tenancy of petitioner-tenant having been terminated and Section 114 of Transfer of Property Act, 1882 (hereinafter referred to as "Act, 1882") is also not applicable in the present case since there is no written agreement between the parties, hence landlord is entitled for a decree of ejectment etc.

2. The petitioner, aggrieved thereto, preferred SCC Revision No. 6 of 2001 which has also been dismissed by Revisional Court/Special Judge, (SC & SC Act), Kanpur Dehat vide judgment and order dated 22.11.2001.

3. Learned counsel for the petitioner did not dispute before this Court about the factum that Act, 1972 is not applicable in the present case and this is a finding of fact recorded by both the Courts below hence warrant no interference.

4. He, however, made two submission.

5. One, there is no service of notice upon petitioner and therefore, entire proceedings are bad in law. The Courts below have held service of notice upon the petitioner-tenant in view of endorsement of "refusal" recorded by postal authorities. No argument has been advanced on this aspect as to why findings recorded by Courts below on this aspect suffers from manifest error, legal or otherwise, warranting interference.

6. He; then submits that alleged defaulted amount was paid by petitioner-tenant in the Court, hence benefit u/s 114 of Act 1882 ought to have been extended to him but he could not dispute that there was no written agreement between the parties and Revisional Court has recorded a finding that in order to attract Section 114 of Act, 1882, one of the condition precedent is that there must exist a written agreement.

7. The existence of written agreement containing a stipulation empowering landlord to re-enter in demised premises in case of breach of condition regarding payment of rent is essential. In Ram Bali Pandey (Decd.) through L.Rs. Vs. IInd Additional Judge, Kanpur and others, , this Court observed:

The tenancy was terminated u/s 106 of the T.P. Act simpliciter. For the applicability of Section 114, existence of an agreement containing a stipulation empowering the landlord to re-enter in the demised premises in case of breach of a condition regarding payment of rent is essential. In the present case there was no such agreement and as U.P. Act No. 3/47 was not applicable to the premises, there warn simpliciter termination of tenancy u/s 106 of the T.P. Act serving a notice thereunder. The mere fact that the notice stated about non-payment of rent also besides termination of monthly tenancy and demand of vacant possession it would not be a case of forfeiture under Clause (g) but one of determination of tenancy by exercising power under Clause (h) of Section 111 of the T.P. Act. No authority is required for the proposition that where there is simpliciter termination of tenancy u/s 106 of the T.P. Act and not u/s 111 (g) of the T.P. Act then provisions of Section 114 of the T.P. Act cannot be attracted. This argument of respondent's counsel also does not appeal to the Court and has to be rejected.

(emphasis added)

8. In Mohammad Nasir Vs. District Judge, Nainital and others, , this Court said:

Section 114 of the Act confers a power on the Court to grant an equitable relief to the defaulting lessee. In order to claim benefit under this section, it has to be shown by the tenant that one of the terms of the lease was that the landlord will have a right of re-entry if the rent for any specified period remained unpaid and he has to show further that forfeiture has been incurred as provided u/s 111 (g). Section 114, of the Act thus postulates existence of determination of lease by forfeiture as a condition precedent and provisions contained in this section will have no application where the lease has been determined by serving a notice to quit u/s 106, of the Act. The relief u/s 114 of the Act is confined to those cases only which are strictly covered u/s 111 (g) and not to those cases which fall u/s 106 of the Act. A monthly tenancy is determinable by one month's notice by either party and if the tenancy is terminated by serving one month's notice u/s 106 of the Act, there is no forfeiture of tenancy and in that event, Section 114 cannot be applied. Thus, a notice u/s 106, of the Act by no means could be treated as one u/s 111(g).

Section 114 applies to those cases where the landlord invokes his rights under what is known as forfeiture clause and determines the lease by forfeiture and sues for the ejectment of the tenant. I may illustrate it by an example which will make the picture more clear. Suppose there is a lease for a fixed term of five years containing a clause that the landlord will be entitled to determine the lease and to re-enter upon the demised premises even during the period of five years if the tenant does not pay rent for more than three months. But for this clause, the lease must run for the entire period of five years and the landlord during the said period will have no right to eject the tenant before the expiry of the fixed period of five years. If the tenant fails to pay rent for more than three months, forfeiture clause enables the landlord to determine the lease before its expiration. In such a case, the subsisting tenancy cannot be determined by serving a notice simpliciter u/s 106 of the Act and it can only be determined where the landlord forfeits the tenancy by serving a notice u/s 111 (g). In such an event, Section 114 can be pressed into service but where the tenancy runs from month to month and the same has been determined by a valid notice u/s 106 of the Act, Section 114 of the Act shall have no application.

(emphasis added)

9. The aforesaid judgments have been referred to and followed by this Court in Writ Petition No. 3115 of 2000 (Smt. Noorul Subah and another v. Additional District Judge-I, Bijnor and others) decided on 6.12.2012.

10. In Arjun Khiamal Makhijani Vs. Jamnadas C. Tuliani and Others, , Apex Court observed:

In a case where forfeiture of lease is claimed for non-payment of rent, it would, therefore, have to be established that one of the express conditions of the lease provided that on breach of that condition namely on non-payment of rent the lessor was entitled to re-enter. It is only in those cases where such an express

condition is contained in the lease and the lessee breaks the said condition and the lessor on his part gives notice in writing to the lessee of his intention to determine the lease that a lease of immovable property determines by forfeiture for non-payment of rent.

11. From the aforesaid authorities and also bare perusal of Section 114 of Act, 1882 makes it very clear that genesis of Section 114 of Act, 1882 is a written agreement between the parties containing expressed terms and conditions and in breach whereof, when a right of re-entry is exercised u/s 111(g) of Act, 1882, Section 114 of Act, 1882 may be attracted and not otherwise.

12. Learned counsel for the petitioner could not make any substantive argument so as to pursue this Court to take a different view from what has been observed hereinabove.

13. In absence of any written agreement, the Courts below have rightly declined to extend benefit of Section 114 of Act, 1882 to the petitioner.

14. No other argument has been advanced.

15. In view of the above, I find no merit in the writ petition.

16. Dismissed. Interim order, if any, stands vacated.