
(2012) 04 DEL CK 0104

In the Delhi High Court

Case No : Writ Petition (C) 9013 of 2011 and C.M. No. 23269 of 2011

Dunlop India Ltd.

APPELLANT

Vs

Bank of Baroda and Others

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Citation : (2012) 5 AD 424

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : C. Mukund, Mr. Pankaj Jain, Mr. A.K. Jain, Mr. Ravi and Mr. Abhishek Bansal, for the Appellant; Amit S. Chadha with Mr. Arun Aggarwal, Advocate, for the Respondent

Judgement

Sunil Gaur

1. Alleging discrimination and bias against the Estate Officer, order of 20th July, 2010 evicting the petitioner from 1382.26 sq.ft. space on 7th floor of Bank of Baroda building at 16, Parliament Street, New Delhi (hereinafter referred to as the subject premises) was unsuccessfully challenged by the petitioner by preferring a statutory appeal under Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which stands dismissed vide impugned order of 14th December, 2011. Undisputed facts as noted in the impugned order are that petitioner's lease on the subject premises was last extended with effect from 1st June, 1986 for a period of five years and vide respondent's Communication of 22nd January, 1990, petitioner was called upon to clear the arrears of lease money, due since July, 1988. Having failed to clear the arrears of Rs. 21,68,399.52 p., "notice to quit" of 23rd May, 2006 was served by the respondent - bank upon the petitioner, who had responded to it, by expressing inability to clear the arrears as the petitioner's company was under Board For Industrial & Financial Reconstruction proceedings. It is not in dispute that no fresh Lease Deed was executed after the expiry of the lease on 31st May, 1991. The proceedings under the Public Premises (Eviction of Unauthorised Occupants)

Act, 1971 initiated against the petitioner-company, resulted in passing of the Eviction Order against the petitioner-company.

2. The grounds on which the plea of bias against the Estate Officer is based stands noted in paragraph no: 6 of the impugned order, which negates this plea while threadbare dealing with the grounds upon which plea of bias was based. On the plea of bias, the findings returned in the impugned order are contained in paragraph no: 10, 11 and 17 of the impugned order, which are as under:-

10. The proceedings had commenced on 1.7.2006. The impugned order was passed on 20.7.2010. Therefore, it had taken almost 4 years for the Estate Officer to pass an Eviction Order. Had R-1 filed a civil suit to recover the premises, the same would have been decided by the civil Court in a shorter period than the one consumed by the Estate Officer. The appellant had been allowed to amend WS on three occasions. More than 20 interlocutory applications had been filed.

11. The denial of right to cross-examine the witness of R-1 will have to be seen in the contest of the pleadings. If the parties had admitted facts, no prejudice had been caused to the appellant. In any case, the appellant has not shown as to what prejudice had been caused to it because of denial of the cross-examination. The proceedings under the Public Premises Act are summary in nature.

17. I have considered the submissions. Before I proceed further, I would like to mention that the learned Estate Officer had, on the basis of the averments made by the parties, framed specific issues. Since the Estate Officer had taken into account the pleadings of the parties, therefore, the order dated 23.6.2010 vide which the request of the appellant to permit the cross-examination of witness of Respondent No. 1 was declined, did not cause any prejudice to the appellant. I am also taking into account only the admitted facts to dispose of these appeals.

3. The same very grounds which were raised to allege bias against the Estate Officer, were reiterated at the hearing of this petition, which are as under:-

A) He did not permit the appellant to cross examine witness of the Respondent No. 1. He has referred the order dated 23.6.2010.

B) The arguments before the Estate Officer had commenced on 17/7/2010. No oral arguments had been advanced on behalf of R1, thus there was no occasion for the appellant to meet the contentions of R1. The arguments were concluded on 19/7/2010. Respondent No. 2 (in short R-2) was not a person having legal background. He is only a General Manager. However, he pronounced the judgment running into 17 pages on 20/7/2010, touching all the aspects of the matter.

C) The copy of the judgment was delivered to the appellant only on 29/7/2010, therefore, it can be said that the judgment was not ready till that date.

D) R2 had been transferred on 20/7/2010 and had joined his new place of

posting on 21/7/2010. This has been revealed in reply to the queries made by the appellant to the department under the RTI Act. In the reply it has been clarified by the Department that R2 was transferred on 20/7/2010 and had joined the Mumbai office on 21/7/2010. He (R2) has since retired on 31/8/2010. His successor had taken over the charge on 20/7/2010 (in the afternoon) although he had been relieved from his earlier post on 3/7/2010.

E) Though this appeal was filed on 30/7/2010 yet R1 had filed the caveat on 29/7/2010.

F) Time had been sought by the appellant to cite judgments. However R2 had given little time to cite the judgments.

G) No opportunity was afforded to counsel for the appellant to distinguish the judgment of R1.

4. Learned counsel for the parties were heard and the record of this case and the decisions in *New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another*, *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, *Damayanti Verma (Deceased) through her L.Rs. Vs. LIC and Another*, ; *Jagjit Singh Vs. State of Haryana and Others*, *Jiwan Dass Vs. Life Insurance Corporation of India and Another*, *Crawford Bayley and Co. and Others Vs. Union of India (UOI) and Others*, *Charanjit Lal Mehra and Others Vs. Smt. Kamal Saroj Mahajan and Another*, *Karamjit Singh Gahunia Vs. Dalmia Industries Ltd.*, ; *Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others*, was perused. Thereupon, it becomes evident that the plea of discrimination was half-heartedly raised by petitioner's counsel while relying upon *Damyanti Verma (supra)*, to allege violation of the Guidelines to Prevent Arbitrary Use of Powers to Evict Genuine Tenants from Public Premises under the Control of Public Section Undertaking/ Financial Institutions of the year 2002, though realizing that the foundation for the plea of discrimination does not exist and so was not raised before the appellate forum.

5. In any case, petitioner-company is precluded from urging the mandatory nature of the aforesaid guidelines of the year 2002 in view of a recent decision of Division Bench of this Court in LPA No. 977/2011, *Life Insurance Corporation of India. vs. Damyanti Verma, (DECD) Through Lrs.*, rendered on 23rd March, 2012. Reliance placed upon decision in *Express Newspapers (supra)* by petitioner's counsel to contend that recourse to Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ought not be taken in respect of commercial tenancies, was not cited before the Division Bench in *Damyanti Verma (supra)* but, the decision in *Express Newspapers (supra)* stands explained by the Apex Court in its later decision in *Ashoka Marketing (supra)* holding that premises belonging to nationalized banks are public premises and thus, amenable to proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

6. On the question of bias, a Constitution Bench of the Apex Court in *Madhya Pradesh Special Police Establishment Vs. State of Madhya Pradesh and Others*, ,

has held that the test of "real danger" of bias is a valid test and not the one of reasonable apprehension of bias. It stands so reiterated by the Apex Court in its recent decision in Lalit Kumar Modi Vs. Board of Control for Cricket in India and Others,

7. In the aforesaid context, I have considered the plea of bias raised and I do find that proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 are certainly not of summary nature but the opportunity to cross examine the witnesses has been denied to both the sides and in such a situation, it has to be seen as to how the petitioner stands prejudiced because the lease in the instant case has come to an end by efflux of time and because the plea of discrimination remains unsubstantiated. At the hearing, it was pointed out by the petitioner's counsel that he had to cross-examine the respondent - bank's witness on the ground of bona fide necessity taken by the respondent in the additional evidence and so the evidence led on the aspect of bona fide necessity needs to be excluded from consideration and thus, the finding on this aspect deserves to be set aside. Even if it is so, still the finding returned against the petitioner being in arrears of lease money remains unassailable, as it is not the case of the petitioner that there were no arrears when the eviction proceedings were initiated. Therefore, in the considered view of this Court, there is no real prejudice to the petitioner upon denial of opportunity to cross-examine respondent's witness.

8. The allegation of bias leveled against the Estate Officer, loses its sting in view of the fact that the eviction of the petitioner from the subject premises was eminent on account of being in arrears of lease money and therefore, on account of Estate Officer promptly passing detailed eviction order, would be of no consequence. So far as the allegation of ante-dating the eviction order is concerned, there is no foundation to base this allegation. Regarding the impropriety of Estate Officer passing the eviction order while under transfer is concerned, not much can be read into it, as no allegations of any malice or vindictiveness have been leveled against the Estate Officer, on behalf of the petitioner.

9. Upon consideration of the factual matrix of this case in its broader perspective, it emerges that the fate of the eviction proceedings, notwithstanding the so-called procedural irregularities pointed out therein, would have been no different, as it is the inability of the petitioner-company on account of being sick, to clear the substantial arrears of lease money running into lacs of rupees, which had led to passing of the eviction order. So, petitioner cannot allege discrimination by pointing out that the respondent-Bank had proceeded to let out some space to SEBI in Bank of Baroda building in the year 2006, as the petitioner is unable to pay the lease charges with statutory increase, what to talk of market rent of the subject premises. It is being so said, as at the preliminary hearing in this matter, it was disclosed by respondent-Bank to the petitioner that in this very building where subject premises is located, the market rent is Rs. 173 per sq. ft. plus

ancillary charges and petitioner's counsel had sought time to obtain instructions in this regard and when there was no response from petitioner's side regarding paying the prevalent market rent of the subject premises, then this matter was heard on merits. Otherwise also, it is not the case of the petitioner that it is no longer a sick company and is able to retain the subject premises at the prevalent market rent.

10. In the aforesaid view of this matter, finding no arbitrariness or discrimination in the impugned eviction of the petitioner from the subject premises, impugned order is sustained on merits while waiving of the exemplary costs of Rs. 50,000/-, as the same are not found to be justified because eviction of the petitioner is not being sustained on ground of bona fide need of the respondent, to use the subject premises but it be maintained on account of petitioner being a chronic defaulter in payment of arrears of lease money etc. This petition as well as pending application stands disposed of with aforesaid observations, with no order as to costs.