(2009) 10 DEL CK 0217

In the Delhi High Court

Case No : I.A. No. 9263 of 2008 in C.S. (OS) No. 1066 of 1999

Gulab Singh and Sons Pvt Ltd. APPELLANT

Vs

The New India Assurance Co. Ltd. RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6
Registration Act, 1908 — Section 17, 49
Transfer of Property Act, 1882 — Section 106, 107, 111, 53A

Citation : (2009) 164 DLT 43 : (2010) 6 RCR(Civil) 254

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Dinesh Garg and Prakash Garg, for the Appellant; Sandeep Sethi Dinesh Mahur and Nikhil Bhalla, for the Respondent

Final Decision : Disposed Off

Judgement

S. Ravindra Bhat, J.—The present order will dispose of an application IA 9263/2008 under Order 12, Rule 6, CPC (CPC) for decree on admissions.

2. The facts in brief are that the plaintiff in the above suit seeks a decree for recovery of possession and mesne profits against the defendant (hereafter "the New India") in respect of the first floor portion (rear wing) measuring 11276 square feet, Gulab Bhawan, Bahadur Shah Zafar Marg (hereafter called "the suit premises"). The uncontroverted facts are that the premises were let out apparently sometime in 1974, to New India; the extent was increased later, on 1-3-1975. Additional space was occupied in 1978. With effect from 1-1-993, the parties agreed to a new arrangement, whereby the lease rent was to be Rs. 1,69,140/- per month for the total extent of 11,276 sq. feet.

3. The tenancy or arrangement terms were indicated in New India''s acceptance letter. The material part of the letter of New India, dated 8-2-1993, outlining the terms of the agreement stated the name of the parties, the rent @ Rs. 15 per sq. foot, with effect from 1-1-993; it also inter alia, stated that:

...4. Period of lease : For 5 years from 1.1.93 5. Renewal of lease : At our option, the lease is renewable every 5 Years with 20% increase in rent, restricted to 4 terms of 5 years each, from 1-1-93. 6. Advance : An advance equivalent to 12 months rent Adjustable in 8 equal quarterly instalments against the quarter''s rent....

4. The plaintiff concurred with these terms, through its letter dated 15-2-1993. New India Assurance paid some amounts, towards advances as agreed between the parties. It is contended that on 31-12-1997, the period of five years ended and on 17-11-1998, the plaintiff caused a notice to be served through its counsel, asking New India Assurance to vacate the suit premises and hand over physical vacant possession. New India Assurance resisted the demand, repelling the allegation that the lease period had ended. It contended that the tenancy was renewed with effect from 1-1-1998. It adverted to the renewal clause in the letter (of 8-2-1993) and asserted that it had a right to renew the lease four times, each for five years. It also contended that the terms were duly acted upon, terming the legal notice asking vacation of the premises as illegal. According to New India, the plaintiff was entitled to receive enhanced monthly rent @Rs. 18/- per square foot.

5. The plaintiff seeks the decree for possession, and mesne profits, contending that since the relationship was not embodied in a registered deed, it was a monthly tenancy, by operation of Section 107 of the Transfer of Property Act, 1882 (hereafter "TPA") and that with the service of notice, in December 1998, that arrangement ended. It is contended that New India Assurance did not dispute receiving the notice, or the nature of the arrangement. The plaintiff also states that since the arrangement is not evidenced by a written and registered lease deed, it amounts to a monthly tenancy, which was determined in accordance with law, with the issuance of the legal notice, and the suit, to the extent it seeks the relief of possession, can be decreed and that the relief of damages can be adjudicated by examining witnesses.

6. New India Assurance, in its written statement, and its reply to the application (for decree on admission) argues that even though the manner of commencement of the relationship - through exchange of letters, in March 1993 is not in dispute, the plaintiff''s position that the relationship was put an end to by notice dated 17-12-1998 is incorrect. It urges that on 22-9-1997, the option to renew the lease for a further period of 5 years, effective for the period 1-1-1998 to 31-12-2002 was exercised by paying an enhanced lease amount of 20% over the existing rent. The defendant also states that a demand to execute the lease deed had also been made; the letter, in this context, inter alia, states that:

...You are requested to get the lease deed executed and registered and return the copy of this letter duly signed in token of having accepted the contents of the same....

7. It is urged that New India also started remitting monthly rent, at an enhanced rate of 20% above the original rate agreed, in due compliance with the terms of the lease, of 1993; consequently the renewal was accepted, and acted upon. It is inter alia pleaded that the plaintiffs have no right to sue since it was obligatory on their part to renew the lease. As per the terms the lease was renewable at the option of New India Assurance, which still continues to be the contractual tenant as it had duly exercised its option to extend the lease for five years. In view of exercise of option, the plaintiffs had to execute a formal lease deed in favour of the defendant for a period up to 31.12.2002. As the lease subsists, there is no question of New India Assurance surrendering the possession of the premises .The entitlement of the plaintiff to claim mesne profit is also disputed.

8. New India Assurance contends - and its learned senior counsel argues, besides, that its occupation never became unauthorized, and invokes the principle underlying Section 53A, TPA, stating that it continues in possession, in part performance of the right to interest, as a leasee, for a further period, in terms of the arrangement agreed. It is also submitted that the defendant is entitled to counter claim for a decree, for specific performance, to extend and register the lease, for the period 1-1-98 to 31-12-2002. This relief, it is urged, arose first on 15-12-1993, when the plaintiff accepted the arrangement, through a letter, and again arose on 22-9-1997, when the defendant requested the plaintiff to execute and register a lease deed. Its counter claim seeks a decree of mandatory injunction directing the plaintiff to execute and register a lease deed for the relevant period in terms of the letter dated 8-2-1993, accepted by the plaintiff.

9. The plaintiffs'' position on the counter claim is that it is premised on the terms of the letter, dated 8-2-1993. That letter, to the extent it purports to create rights for renewal, in favour of the defendant, cannot be examined by the court, as it is an unregistered document. Besides, argues the plaintiff, the defendant never sought for the right to have the initial lease period, w.e.f 1-1-1993 registered, or the agreement enforced through a claim for specific performance. In the circumstances, the defendant cannot now, through the present counter claim, base its demand after expiry of the initial period as that would amount to giving effect to the unregistered document, which has to be otherwise stamped and registered. Also, says the plaintiff, the initial period not being evidenced by a registered deed, the question of a subsequent or consequential renewal cannot arise and that the counter claim is time barred; in any case, urges the plaintiff, the demand is no defence to a claim for possession.

10. It is argued that New India''s reliance on Section 53A is unmerited, and unfounded. The period of lease came to an end, with service of notice dated 17-12-1998; receipt of that notice has not been denied by New India Assurance. Therefore, says the plaintiff, the court should decree the suit, as far as it relates to the claim for possession.

11. The necessary facts, from the above discussion are few; the parties entered

into an arrangement, by exchange of letters, where the plaintiff agreed that the suit premises were to be let out to New India Assurance; the period was five years, ending 31-12-1997. The lessee had the option to renew the period, four times, subject to increase in rent - at each renewal, by 20% over the existing rate. It is also apparent that:

(a) The terms of the lease were not reduced into writing, in a common document;

(b) The arrangement was not put down in a lease deed, that was duly stamped, and registered (since it concerned with property interest of a value of more than Rs. 100/-);

(c) New India Assurance asked the plaintiff, on 22-9-1997 to execute a lease deed, in terms of the renewal clause. It also stated that the option (to do so) was being exercised, and that increased rent would be paid.

(d) The plaintiff refused the offer, stating that the market rent was Rs. 70/- at that time;

(e) The plaintiff asked the defendant to vacate the premises, on 17-12-1998.

12. It can be said, on the basis of the acknowledged facts, that the absence of a registered lease meant that the tenancy was month to month Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd. Vs. Khaja Midhat Noor and Others, where was held that a fixed term lease for a period exceeding one year--oral or in writing, if not registered will be deemed to be a tenancy from month to month terminable by 15 days notice). Thus, the lease dated 8th February, 1993 is not a fixed term lease for five years and would be deemed to be one from month to month.

13. An established principle of the law relating to decree on admissions is that the Court has to read the pleadings of the parties meaningfully. The pleas of the defendants in a case have to be clear and unambiguous; disputes if any raised in regard to facts to fall within the scope of the order, should be such, as do not call for any trial whatsoever. The object of the provision is to curtail the period for determination of disputes and to see that a decree on admission is passed without any unnecessary hindrance. ''Admission'' comprehends admissions by a party in pleadings or otherwise, orally or in writing. Another canon of interpretation here is that the provisions are to be liberally construed. The Court should satisfy itself that all the elements which constitute admission are present, before issuing a decree. An admission to enable the plaintiff, to relief, should be unambiguous, clear and unconditional. The judgment of the Supreme Court, in Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Others, is an authority on the issue; it states that:

When a statement is made to a party and such statement is brought before the Court showing admission of liability by an application filed under Order 12 Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the Court, we do not think the trial Court is helpless in refusing to pass a decree. We have adverted to the basis of the claim and the manner in which the trial Court has dealt with the same. When the trial Judge states that the statement made in the proceedings of the Board of Directors meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made is in dispute. And the Court had a duty to decide the same and grant a decree. We think this approach is unexceptionable.

14. It would be useful in this context to recollect the Division Bench ruling in Dunlop India Ltd. Vs. Shri Sunil Puri and others, where a somewhat similar situation had arisen:

5. Considering the submissions made at the Bar, we are of the view that there is hardly any force in the appeal. We have gone through the entire written statement. Particulars of the alleged fraud have not at all been alleged. Assuming the case of the defendant at the highest that there was some oral understanding arrived at between the plaintiff and Mr. Banerjee, the same was not incorporated in the lease deed, which was duly registered. The period fixed in the registered lease deed stood expired on 31.8.1997. The terms of lease provided for an extension of two years at the option of the lessee to have the lease renewed on mutual terms and conditions. The said period has also expired on 31.8.1999. We are also informed that at one stage the defendant had given to understand that a suit for specific performance had been filed by the defendant. But it was pointed out by the plaintiff at the Bar that no such suit was ever filed. The statement is not refuted by the defendant. A suit was filed by the defendant seeking a decree for declaration against the plaintiff not to rescind the alleged oral agreement of 1995. It is now stated that the said suit was also dismissed in default. Assuming that there was an oral arrangement not to evict the defendant till 2007, even in that case the defendant cannot successfully resist a suit for possession by the plaintiff inasmuch as the said oral arrangement was not made a part of the registered lease deed. No benefit or advantage could be taken by the defendant of the alleged oral understanding as a defence to a suit filed by the plaintiff seeking eviction of the defendant. Section 107 of the Transfer of Property Act require that a lease of immovable property from year-to-year or for any term exceeding one year or reserving yearly rent can be made only by a registered instrument. In the absence of any registered instrument incorporating the alleged oral understanding, this plea itself will be of no avail and on this plea a suit for possession cannot be resisted. Particulars of fraud have also not been alleged. Plea of the alleged oral understanding not being tenable in law, there is no illegality and irregularity in the Trial Court''s conclusion that on the admitted facts the tenancy having come to end the plaintiff is entitled to a decree for possession. To that extent the impugned judgment, which has granted a decree for possession in favour of the plaintiff against the defendant cannot be assailed. However, Trial Court was not justified in passing a decree for mesne profits without due trial. In view of the denial by the defendant of the quantum of mesne profits, the Trial Court ought to have kept the said part of the suit as

regards the quantum of mesne profits pending to be decided after due trial.

15. In this case, the document is inadmissible by virtue of Section 49 of the Registration Act, except for the collateral purpose of proving the nature and character of possession of the defendant. The proviso to Section 49 of the Registration Act is not applicable in the present case inasmuch as the terms of a lease are not a "collateral purpose" within its meaning. Satish Chand Makhan and Others Vs. Govardhan Das Byas and Others, Thus, the letter dated 8-2-1993 is inadmissible in evidence to prove the terms of lease. It is also ineffectual to create a valid lease for a renewed term for want of registration u/s 17 of the Registration Act. (See Amar Chand Talwar and Others Vs. Export Promotion Council for Handicrafts, Consequently, the court concludes that in this case, the lease was one from month-to-month, terminable, by either party by 15 days'' notice u/s 106 of the Transfer of Property Act expiring with the end of a month of the tenancy.

16. As far as the submissions regarding Section 53A are concerned, the court notices that an identical plea was advanced in Shukla Malhotra and Ors Vs. M/s.Vyasa Bank Limited, where it was held:

7. The exercise of option by the defendant for renewal in 1985 and 1990, or later, did not ipso facto extend the term of lease beyond one year. At best it only entitled the lessee to obtain a fresh lease, which again required registration. No document of "regular deed" contemplated in Clause 25 of the agreement or a "fresh" lease deed for the stated extensions was executed. Similarly no registered instrument has been placed on record to support defendant''s plea of further extension w.e.f. 1st February, 1995. The plaintiff''s letter dated 13th April, 1991 agreeing to the said extensions, not being a registered document cannot create a tenancy for five years. The requirements of Section 107 of the Act having not been complied with, the stated renewals were invalid and of no consequence and the tenancy continued to be a monthly tenancy right from inception in February, 1980, determinable u/s 106 of the Act by 15 days'' notice expiring by the end of a month of tenancy.

8. Faced with this situation Mr. Dewan, learned Counsel for the defendant, pressed into service the doctrine of part performance, stipulated in Section 53A of the Act and urged that the defendant having taken possession under lease agreement dated 1st February, 1980, executed by the parties; and being in possession as such, the plaintiff landlords are debarred from enforcing any right to evict the defendant. Mr. Dua, learned Counsel for the plaintiffs, controverted the contention with equal vehemence on the grounds; (i) that Section 53A of the Act does not apply to lease agreement, and (ii) in any case the defendant lessee having failed to perform its obligations, envisaged in the lease agreement dated 1st February, 1980, is not entitled to protection under the said section. According to the learned Counsel the defendant having never moved for execution of a regular registered lease deed in terms of Clause 25 of the lease agreement (supra) is not entitled to protection u/s 53A of the Act. He maintains that there is

no plea of the defendant having been or being ready and willing or to have called upon the plaintiffs to execute a regular lease deed in terms of Clause 25 of the agreement dated 1st February ,1980 or any alleged subsequent arrangement being completed or formalised u/s 107 of the Act, the defendant is not entitled to seek protection u/s 53A of the Act....

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...15. Assuming Section 53A of the Act was applicable, the defendants herein cannot have the invalid instrument enforced under umbrella of Section 53A of the Act because Section 53A, if applicable, would be available only as a defence to it as a lessee, merely to protect his possession. At best, it can be used to show the nature and character of its possession. It does not create a title in the lessee nor confers any right on the basis of which the lessee could claim any rights against the lessor. The unregistered lease cannot be used to prove the terms of the lease. The section only provides a shield for protection and not a sword to attack.

16. Further, in order to be entitled to the protection of Section 53A of the Act, the lessee must perform or must be willing to perform his part of the contract. In the present case, Clause 25 of the lease agreement specifically enjoined the defendant to have a ''regular lease deed'' executed by the plaintiffs and have the same registered. This was stipulated to comply with the mandatory requirements of Section 107 of the Act. There is no allegation much less a plea or proof that the defendant did call upon the plaintiffs to do so, nor that, despite it, the plaintiffs did not respond in which case also the defendant could seek legal remedy, if any, to have obligations under Clause 25 of the lease agreement enforced. It cannot, therefore, be said that the defendant was ready and willing to perform its part of the obligation under the lease agreement thus negating compliance with the third limb of Section 53A of the Act. The defendant, as such, cannot claim protection under the said section.

17. Now reverting back to the main question, viz assuming Section 53A of the Act were applicable to a case where a person entered into possession of the property pursuant to a lease agreement which was not registered, whether the presumption u/s 106 of the Act would be attracted? I have no hesitation in holding it so. Though possession or the occupation of the property by that person may be lawful and permissive, but as regards duration of the tenancy, it will be governed by the provisions of Section 106 of the Act, and, as in the present case, the tenancy would be deemed to be from month to month, terminable by a notice of 15 days by either side.

18. Having come to the finding that the lease in the present case was from month to month, the only question which remains to be considered is whether it was lawfully determined. Admittedly, legal notice dated 9th January, 1995, issued on behalf of the plaintiffs by their Counsel, terminating the tenancy of the defendant w.e.f. midnight of 31st January, 1995 and asking the defendant to

deliver the vacant possession of the subject premises, was duly served on the defendant. The defence in resistance taken in para 6 of the written statement, based on plea of fixed tenancy for 5 years and its extension is that the said notice is as such uncalled for and misconceived as communicated in defendants'' reply dated 23rd January, 1995, received by Counsel for the plaintiff. Nothing is pointed out in the written statement nor during the course of arguments to show that the said notice did not fulfil the requirements of Section 106 of the Act. What is stipulated in Section 106 of the Act, is that notice under the section has to be in writing which should be signed by or on behalf of the person giving it and is to be served on the party either by post or tendered or delivered in person. Consequently, I hold that notice dated 9th January, 1995, terminating the tenancy and duly served on the defendant was valid and the tenancy stood lawfully terminated w.e.f. 1st February, 1995 as envisaged u/s 111(h) of the Act.

19. The factum of tenancy and its valid determination u/s 111 of the Act not being in dispute, I am of the considered opinion that the plaintiff is entitled to a judgment under Order XII Rule 6 of the Code of Civil Procedure.

17. It is evident that even in cases, where an unregistered lease deed is set up as a defence to say that the tenant has a right to continue in the premises, the court should not exercise its power under Order XII, Rule 6, if a counter claim for specific performance to enter into a lease deed is set up. The court''s jurisdiction under that provision is discretionary. Whether in the facts of a given case, in such instances, where a claim to execute exist, and whether there is authority to continue in the premises, would depend on all relevant facts. Neither the CPC, nor provisions of the TPA, constrict or limit jurisdiction, to issue a decree for possession, as contended by the defendants here.

18. Apart from the undisputed position that the lease was unstamped and unregistered, and consequently, the tenancy was a monthly one, another significant fact is that the defendant has not sought specific performance to execute and register a lease, during the period it could have, effective from 1-1-1993. It sought registration for the renewal and curiously, for the period 1-1-1998 to 31-12-2002. The primary period, i.e. 1-1-1993 is not embodied in a registered lease deed; nor, as held earlier, can the terms be considered to construe them for the purpose of extending the tenancy into anything more than a monthly tenancy. There can be no debate that even that renewable period for which the defendant counter-claims, ended on 31-12-2002. There is no claim for further renewal or registration; nothing to such effect exists on the record, nor was any letter, or suit brought to the notice of the court. In any event, that is not the subject matter of the suit, or counter-claim. The counter claim, in a sense has exhausted itself. Even if the court were to grant the decree for that purpose, each succeeding renewal has to be embodied in a separate registered lease deed. The last period ended on 31-12-2007.

19. In view of the above discussion, the court is of opinion that the suit, so far as it concerns the relief of possession, has to be decreed. For the same reasons, the

counter claim cannot be granted; it is rejected.

20. Normally, the court would not have, in such cases, made an order for costs, at this stage, and might justifiably have left that to be seen at a later stage. However, one cannot be unmindful of the fact that the New India Assurance is a public sector undertaking. The law on the obligations of a monthly tenant is well settled; it appears to have contested the relief for possession as a matter of course, and even counter claimed. It has displayed a recalcitrance to respect the rule of law, which the legal system sees more in the agitation of private rights. This recalcitrance has rendered speedy resolution of disputes almost impossible. If one sees that lease rentals have spiraled over the past 15 years, this attitude is inexplicable. In these circumstances, the court is constrained to take the view that actual costs, for the hearing of the application, should be directed.

21. This Court notes that after the application under Order XII Rule 6 was filed, about five dates of hearing effectively took place. The court also notes that the defendant had not deposited the arrears of amounts towards use and occupation of the premises, as previously directed in the proceeding, and over Rs. 19,00,000/- was given only last year, belatedly. In view of these circumstances, the defendant is directed to pay Rs. 40,000/- towards each of the said five hearings, i.e Rs. 2,00,000/- as costs. This direction for costs is confined to the application under Order XII Rule 6; the court would pass appropriate orders at the final stage. The said amount shall be paid to the plaintiff, within four weeks. The defendant New India Assurance Co. Ltd is required to take appropriate steps to see whether any of its officials was responsible for putting up such defence, and issue suitable orders, in the event of fixing responsibility, for recovery of the said amount, or any other amounts.

22. IA 9263/2008 under Order 12, Rule 6, CPC (CPC) is accordingly allowed, in the above terms. The suit is decreed, in part to the extent of relief claimed in Para 15(a) - of the plaint. The suit would, however, continue in respect of the other reliefs. Counter claim No. 652/2000 is, for the above reasons, dismissed. Let a decree to the above extent be drawn, (in respect of the claim for possession, and also rejecting the counter-claim.).

CS (OS) 1066/2008

List before the Joint Registrar for further proceedings and to record evidence of parties on 4th December, 2009.