
(2015) 10 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : RSA Nos. 910 of 2013 (OandM) and 2018 of 2014 (OandM)

Gurkanwal Virk

APPELLANT

Vs

Anand Sweets and Restaurant and Others

RESPONDENT

Date of Decision : 20-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Transfer of Property Act, 1882 — Section 106

Citation : (2015) 10 P&H CK 0008

Hon'ble Judges : Raj Mohan Singh, J.

Bench : Single Bench

Advocate : Sunil Garg, Advocate, for the Appellant; Anuj Balyan, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Raj Mohan Singh, J.—Vide this common judgment two appeals i.e. RSA No. 910 of 2013 and RSA No. 2018 of 2014 are being disposed of.

2. RSA No. 910 of 2013 has been filed against the judgment and decree dated 22.11.2012 passed by District Judge, Panchkula vide which judgment and decree dated 14.01.2012 passed by Civil Judge (Jr. Divn.) Panchkula has been affirmed dismissing the suit of the plaintiff.

3. RSA No. 2018 of 2014 has been filed against the judgment and decree dated 19.12.2013 passed by Additional District Judge, Panchkula whereby judgment and decree dated 13.10.2012 passed by the Civil Judge (Jr. Divn.) Panchkula was reversed and suit was dismissed.

4. As common question of law is involved in both the aforesaid appeals, therefore, facts are being taken from first case i.e. RSA No. 910 of 2013.

5. Plaintiff has filed suit for ejectment of the defendants from ground floor of basement of SCO No. 288, Sector 20 Panchkula and for recovery of mesne profits @ Rs. 4500/- per day w.e.f. 29.07.2008 till delivery of possession.

6. It is pleaded by the plaintiff that he is owner of suit land and defendants are tenant therein. Initially rate of rent was Rs. 21,000/-per month excluding water and electricity charges. Thereafter rent was increased to the tune of Rs. 23,152/- per month. Defendants have paid the rent upto 31.07.2008.

7. Plaintiff alleged that she does not want to keep the defendants as her tenants in the suit property and, therefore notice dated 12.07.2008 was issued to the defendants terminating the tenancy. Notice was received by the defendants, however notice sent at the address of the shop was received back with as refused. Defendants were asked to vacate the premises within 15 days from the date of receipt of notice, but the defendants did not do so. Even after receipt of notice, defendants have deposited an amount of Rs. 23,152/- in the account of the plaintiff without consent and knowledge of the plaintiff.

8. The suit property is exempted from applicability of Haryana Rent Act, 1973 in view of exemption clause till 16.03.2010. The plaintiff has also paid property tax for the years 2006-07 and 2007-08. Defendants were also liable to pay the proportionate amount of property tax, but they have refused to do so. In this way an amount of Rs. 27,258/- was claimed to be payable towards property tax. Since the plaintiff has terminated the tenancy, therefore, possession of the defendants has become illegal and they are liable to pay mesne profits @ 4500/- per day w.e.f. 29.07.2008 till delivery of actual possession to the plaintiff.

9. The suit was contested by the defendants by taking pleas in preliminary objection as well as on merits. Relationship of landlord and tenant has been admitted. Defendants claimed that their tenancy has not been terminated by way of any notice, no notice was ever received by them. The defendants are not liable to pay the property tax. They further alleged that they have already paid rent upto July 2008 and have been regularly offering the rent, but plaintiff has not accepted the same against receipt.

10. Defendants also alleged that the plaintiff had also taken post dated cheques in advance till 19.06.2010 and this fact was admitted by the plaintiff in written statement filed by her in another suit. The defendants claimed that they are not in arrears of any rent. They also claimed that they have already spent more than Rs. 10 lacs on maintenance and fixtures in the suit property after taking loan from the Bank.

11. After filing of replication, trial Court proceeded to frame following issues:--

"1. Whether plaintiff is entitled to the decree of ejectment of the defendants from the demised premises? OPP

2. Whether the plaintiff is entitled for recovery of damages, mesne profit, commercial tax alongwith damages/mesne profit? OPP

3. Whether the suit is not maintainable in the present form and the plaintiff has no locus standi to file present suit? OPD

4. Relief."

12. The attempt of the defendants in terms of getting the suit dismissed under Order 7 Rule 11 CPC, was negated by the trial Court on 22.11.2010. The revision was filed against that order and this Court vide order dated 06.07.2011 held in the following manner:--

"Learned counsel for the respondent submits that the provision of Rent Control Act are not applicable in the present case. It is not prudent to go into this question at this stage. Even the findings of the Trial Court to that extent needs to be set aside while maintaining that rejection of the application under Order 7 Rule 11 CPC. The matter is remitted back to the Trial Court with a direction to frame a specific issue in this regard and decide the same in accordance with law."

13. Additional issue No. 4-A was framed in the aforesaid context on 03.08.2011 by the trial Court in the following manner:--

"4-A. Whether the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 are applicable to the suit property or not? OPP"

14. Both the parties led their respective evidence on the aforesaid issues.

15. Trial Court took up issues No. 1,2,3 and 4-A together. Plaintiff has pleaded that the construction of the property is less than 10 years old and, therefore it is exempted from provision of Rent Act. This period was going to expire on 16.03.2010. The defendants have not denied the corresponding plea made in para No. 6 of the plaint in the aforesaid context. The trial Court while relying upon Vinod Kumar Sehgal Vs. Pushpa Devi, held that on the date of filing of the suit construction of the suit property was less than 10 years old and, therefore, it was exempted from the provisions of the Rent Act.

16. Since the period of 10 years expired during pendency of the suit, the defendants alleged that after expiry of the period of 10 years, the suit had become barred under the provisions of the Rent Act and they could have been ejected only under the provisions of the Rent Act and the present suit was liable to be dismissed.

17. The aforesaid plea was negated by the trial Court on the ground that rights and liabilities of the parties crystallize on the date of filing of the suit. It has to be appreciated on the date of filing of the suit and subsequent expiry of 10 years does not take away the rights of the plaintiff to get the suit property vacated by means of civil suit and at the same time provisions of Rent Act cannot be made applicable to such a situation. The suit which has been filed during currency of period of exemption could be continued and a decree passed therein is lawful decree and has to be executed even though period of exemption came to an end during pendency of the suit.

18. Trial Court relied upon dictum laid down by the Hon''ble Apex Court in Nand Kishore Marwah and Others Vs. Samundri Devi, and held that the law applicable

on the date of filing of the suit alone governs the suit. Merely the statutory period of 10 years expired during pendency of suit does not take away the jurisdiction of civil Court. The civil suit has to be tried and decided without referring to the Rent Act. By relying upon the aforesaid judgment the Apex Court held in Ramesh Chandra Vs. IIIrd Additional District Judge and others, in the aforesaid manner, issue No. 4-A was accordingly decided against the defendants.

19. Property was given on lease vide registered lease deed dated 24.03.2006 Ex. PX. According to learned counsel for the appellant, the lease could have been terminated only according to terms and conditions of the lease settled in the aforesaid lease deed which prescribes in terms of clause 2 that the lease period was from 20.03.2006 to 19.06.2010 and, therefore, tenancy could not have been terminated as the defendants had already invested huge amount in their business and were paying rent regularly. According to them they have already paid rent upto 31.12.2011. In this manner the notice of 15 days was given by the plaintiff and, therefore, the tenancy could not have been terminated by the notice in question. The notice was claimed to be illegal.

20. Trial Court dismissed the suit after discussing the recital of the lease deed Ex. D-1 in terms of clauses 2 and 13.

21. Feeling aggrieved against the judgment and decree of the trial Court, plaintiff filed First Appeal. The lower appellate Court dismissed the appeal vide judgment and decree dated 22.11.2012. Hence this appeal.

22. Following substantial questions of law have been framed by the appellant in para No. 14 of the grounds of appeal:--

"a) Whether the courts below can pass the impugned judgment and decree in favour of respondents when the main issue regarding the payment of property tax, mesne profit and termination of tenancy is not solved?

b) Whether the courts below could can pass judgment and decree on the basis of evidence led by the respondents without consideration the facts of law and evidence produced by the appellant?

c) Whether the courts below have not considered the case of the petitioner/appellant specially when she made out a case of non-payment of the rent and property tax and mesne profits?

d) Whether the courts below could have passed the judgment and decree without taking into consideration the provisions under Section 106 of Transfer of Property Act specially under the circumstances when respondents refused to pay the property tax, mesne profit and rent?

e) Whether the courts could have passed the impugned judgments and decrees when burden and onus of prove was on respondents/defendants to prove the case specially under the circumstances the appellant took the defence that the said property is liable to be evicted under Section 106 of Transfer of Property

Act."

23. I have considered the submissions of both the sides and have also perused the material on record.

24. Learned counsel for the appellant has argued that the exemption from Rent Act was upto 10 years. The suit was brought within 10 years of exemption period and notice under Section 106 of the Transfer of Property Act, 1882 (hereinafter referred to as "the Act") was duly issued and lease was terminated accordingly. In such a process no reasons are required to be given in the notice under Section 106 of the Act. Receipt of notice is an admitted fact in view of statement of DW-2 Ashish Anand.

25. Learned counsel for the appellant states that when Rent Act is not applicable, even a notice under Section 106 of the Act is not required to be given as the suit itself is notice to quit. Learned counsel relied upon Harikesh Vs. Smt. Narain Devi (Widow) and Others, to contend that if the suit has been filed under general law then it was a notice to quit and no notice is required to be issued under Section 106 of the Act for getting the tenant evicted. The question arises whether the contractual tenancy between landlord and tenant is liable to be terminated merely by filing of an eviction petition?

The Hon'ble Apex Court in the aforesaid judgment held that no notice to quit is required under Section 106 of the Act when the suit is filed under general law for getting the respondent evicted.

26. Learned counsel for the appellant further relied upon Rakesh Rishi Vs. Bakhshish Kaur, in which this Court held the aforesaid proposition and by relying Lakshmi Venkateshwara Enterprises v. S.V. Begum, 1994(2) RCR 121 (SC) it was held that once liability to be evicted is incurred by the tenant, he cannot turn around and say that contractual lease has not been terminated. Learned counsel further relied upon Baba Shadi Ram Kataniwala Vs. Padam Dev Auplish and Others--> to say that service of notice under Rent Act is not a condition precedent.

27. This Court while relying upon V. Dhanapal Chettiar Vs. Yesodai Ammal, observed that by not taking a particular ground of ejectment in the advance notice, if served at all, will not debar the landlord from seeking ejectment on that ground. While relying the aforesaid judgment this Court held that merely because in the notice of termination some ground was not disclosed, the same have no effect and will not debar the landlord from getting ejectment of the tenant. Learned counsel again cited M/s. Nopani Investments (P) Ltd., v. Santosh Singh (HUF), 2008(1) RCR (Civil) 270 on the same premise that notice to quit under Section 106 of the Act is not required to be served on the tenant as filing of eviction suit under general law is itself a notice to quit on the tenant.

28. On the other hand learned counsel for the respondents submitted that admittedly registered lease deed dated 24.03.2006 was executed between the

parties. As per clauses 2 and 13 of the lease deed, the lessor has agreed to give the premises on lease for four years and three months w.e.f. 30.03.2006 to 19.06.2010 subject to payment of lease money. Lessee or the lessor could have determined the lease during its tenure at the time of giving three months advance notice in writing to either of the party.

29. By relying upon aforesaid recital of lease deed, learned counsel for the respondents has argued that the lease was liable to be terminated either by lessee or by the lessor during subsistence of lease by issuing notice of at least three months in writing. There is no pleading to this effect, nor there is any default in making payment of monthly rent at any point of time. Therefore, issuance of notice dated 12.07.2008 under Section 106 of the Act is wholly inconsequential and is not legal inasmuch as of any default has been pointed out in the notice and registered lease deed cannot be terminated in such a manner. The lease could have been terminated only in accordance with the terms and conditions contained in the lease deed.

30. Learned counsel further argued that perusal of Section 106 of the Act reveals that the applicability of this Section is subject to any contract to the contrary and the language of Section 106 of the Act starts with the word "in the absence of contract of local law or usage to the contrary". Since there was a written lease deed between the parties, therefore, the lease was governed by terms and conditions of the lease deed Ex. PX. Learned counsel relied upon *Prince Rubber and Plastics Vs. Remington Land of India Ltd.*, wherein it was held that Section 106 of the Act applies only when there is no written contract as to notice, but when there is a contract regulating the duration of the lease, the same is not terminable by any notice to quit.

31. Learned counsel for the appellant rejoined the arguments by saying that plaintiff has also issued notice dated 02.03.2008 to the defendants whereby three months time was given to the defendants to vacate the suit property and, therefore, compliance was duly made. Learned counsel further contended that the suit was filed in the year 2008. Period of three months already stood expired as well as lease also expired on 19.06.2010. If the tenancy was terminable only after expiry of lease period then in that eventuality also tenancy of defendants stood automatically terminated during pendency of the present suit and after expiry of the period, defendants have no right to remain in possession of the suit property. In any case the lease cannot be held to be perpetual lease, nor the tenants can be termed as statutory tenants in view of the fact that intention to get the premises vacated came to the fore even during subsistence of lease. Firstly no notice is required to be given under Section 106 of the Act and even after expiry of lease during pendency of the civil suit the tenants have no right to remain in possession.

32. Learned counsel for the respondents vehemently argued that withholding of documents and by not basing the case on lease deed by the plaintiff is concealment of fact for which the plaintiff can be thrown at any stage of

litigation. Plaintiff does not dispute the execution of lease deed. No question with regard to execution of lease deed was put to any witness, nor it is a case of plaintiff that the document is forged and fabricated. Lease deed is registered document and was introduced in the evidence by the defendants. Withholding of such plea and document from the Court amounts to fraud by the litigant. The plaintiff being guilty is liable to be thrown out of litigation at any stage as fraud vitiates all solemn acts. Learned counsel relies upon S.P. Chengalvaraya Naidu (dead) by LRs v. Jagannath (dead) by LRs and others.

33. The notice to quit in terms of Section 106 of the Act is not liable to be weighed in terms of its faulty mechanism or otherwise. Even Section 106 of the Act is not strictly applicable, only equitable principles are applicable in State of Punjab. A notice to quit must be construed not with a desire to find faults in it, which would render it defective, but it must be construed but *res magis valeat quam pereat*. The validity of a notice to quit ought not to turn on the splitting of straw, it must not be read in hyper-technical manner, nor must its interpretation be affected by pedagogic pendantism or over refined subtlety, but it must be construed in a common sense way. This principle of interpretation has been highlighted in Harihar Banerji v. Ramsashi Roy, AIR 1981 PC 102.

34. The view expressed in Harikesh's case (supra) that no notice to quit was necessary under Section 106 of the Act is a binding precedent and the same view has been indorsed in Rakesh Rishi's case (supra). The aforesaid view stood corroborated in the verdict of Hon'ble Apex Court in M/s. Nopani Investments (P) Ltd.'s case (supra).

35. Once the contemplated action is resorted to within 10 years of construction, Rent Act is strictly not applicable. Binding nature of lease deed cannot be pressed into service as general law is applicable authorising the plaintiff to get the tenant evicted by showing his intention to terminate the tenancy either by issuing notice under Section 106 of the Act or by showing his intention by any other means. During currency of this period of 10 years, Rent Act is not to apply and only intention of the landlord is to be seen in the context of his desire to get the suit land vacated as observed earlier. The Section 106 of the Act is not strictly applicable, only equitable principles of the Act are applicable and even the issuance of notice under Section 106 of the Act cannot be found faulted as mechanism is not such to pin point fault in the same, rather intention of the landlord is to be gathered. Even in the absence of notice under Section 106 of the Act, filing of suit itself is a notice to the tenant. The suit is in the domain of general law. Since the specific law was subject to expiry of period of 10 years, therefore, it cannot be held that the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 would have precedence over general law. Even specific issue in terms of issue No. 4-A was specifically framed and that was answered in favour of the landlord.

36. In view of findings recorded hereinabove, question No. (a) does not arise at all as the eviction has been ordered on basic principle of law. Question No. (b)

has to be answered in favour of the landlord as the judgment is being passed on due consideration of legal position. The issue is a pure legal issue revolving around interpretation of Section 106 of the Act. Questions No. (c) to (e) also have their own answers in view of interpretation of proposition as answered in preceding paras. The provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 were applicable only after expiry of 10 years of exemption period. Before expiry of such period remedy of general law was applicable to the landlord and that was resorted to by the landlord by filing present suit. Filing of present suit itself is a notice to quit as has been authoritatively passed by the Hon'ble Apex Court in the judgment as mentioned in preceding paras of the judgment.

37. Terms and conditions particularly in view of clauses 2 and 13, would have arisen in case a Rent Act is applied for seeking ejection of the tenant. Since the suit was filed within period of currency of 10 years of construction of suit property, therefore, the conditions as formulated in clauses 2 and 13 have no application. Once a notice under Section 106 of the Act is not the basic requirement and only filing of suit has been held to be an intention to get the premises vacated would serve as a notice to quit, contemplating period under clause No. 13 of the lease agreement has nothing to say in this controversy. Fault finding mechanism even in terms of notice under Section 106 of the Act has been deprecated by the Hon'ble Apex Court in the manner as pointed in the earlier paragraph.

38. In view of aforesaid, the legal propositions as formulated in the appeal have to hold that provisions of Section 106 of the Act are only meant to show intention of the landlord to evict the tenant during currency of period of 10 years of construction. Secondly issuance of notice under Section 106 of the Act is not sine qua non for filing such a suit. Filing of suit itself is a notice to quit to the tenant. Thirdly the terms and conditions of the lease agreement have nothing to say once remedy of public law is being resorted to. Special Act could have precedence over general law, in the event of expiry of period of 10 years, but once remedy of general law is resorted to, protection to the tenant in terms of Rent Act is not applicable. Fourthly even in the notice under Section 106 of the Act, the same cannot be assailed on fact finding mechanism, therefore, issuance of 15 days notice and not in terms of recital of the lease deed for giving three months notice become totally redundant in general law.

39. Since the period of lease has already expired during pendency of suit, in any eventuality tenants cannot retain the possession by any stretch of statutory tenancies or otherwise particularly in view of the fact that suit was filed before expiry of lease period.

40. The net result of aforesaid discussions is that the landlord has proved her case for getting the premises vacated from the tenants.

41. In view of above, impugned judgments and decrees passed by both the Courts below are hereby set aside. Both the Appeals are hereby allowed,

decreeing the suit(s) with costs throughout.