
(1991) 02 MAD CK 0076
In the Madras High Court

Hindustan Petroleum Corporation Limited APPELLANT
Vs
Vummidi Kannan RESPONDENT

Date of Decision : 12-02-1991

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 41
Transfer of Property Act, 1882 — Section 107, 53A

Citation : (1991) 2 MLJ 222

Hon'ble Judges : Nainar Sundaram, J

Bench : Division Bench

Judgement

Nainar Sundaram, J.—This appeal is directed against the judgment and decree in O.S. No. 2439 of 1981, on the file of the second Additional City Civil Judge, Madras. The defendant is the appellant and the plaintiff is the respondent. The facts leading to the appeal maybe traced as follows : On 7.8.1964, an agreement of lease, as per Ex. A-1, was entered into between the plaintiff and Esso Standard Eastern Inc., in and by which a lease of the suit land was given to the defendant. It is sufficient if we recapitulate only the relevant terms of the lease. The period of lease was from 1.7.1964 to 30.6.1974. There was a payment of an advance of Rs. 15, 600 to be adjusted from half of the monthly rent for the first four years. Clause 3(d) of the lease contemplated the renewal of the lease and since a part of the controversy in this appeal arises out of this clause, we feel obliged to extract the said clause as follows:

That the landlord will on the written request of the tenant made 2 calendar months before the expiry of the term hereby created and if there shall not at the time of such request any existing breach or non-observance of any of the covenants on the part of the tenant hereinbefore contained grant to it a lease of the demised premises for the further term of ten years from the expiration of the said term at the rate of Rs. 910 (Rupees nine hundred and ten only) per month and containing the like covenants and provisions as are herein contained except the renewal option clause.

On 15.2.1974, as per Ex. A-2, Esso Standard Eastern Inc. by A letter purported to exercise the option for renewal also suggesting the inclusion of the following clause, in the renewal lease document:

The lessee shall be at liberty to determine this agreement by giving to the lessor three months" notice in writing expiring at any time during the currency of this agreement.

On 30.3.1974, as per Ex. A-3, the plaintiff apprised the defendant that the renewal of the lease shall be on the same terms and like conditions as in the original lease excepting the renewal option clause. The plaintiff in the said letter also indicated that mutual negotiations over the terms of renewal cannot be ruled out. It must be noted here that after Ex. A-2 and before Ex. A-3, the Esso (Acquisition of Undertakings in India) Act 4 of 1974 came into force on 13.3.1974. On 15.4.1974, as per Ex. A-4 the successor to Esso Standard Eastern Inc., namely, Esso Standard Refining Company of India Limited addressed a letter to the plaintiff in the following terms:

We write with reference to our Reg. Ack. due letter 5150/MV of February 15, 1974 and your reply dated 30.3.74. Inasmuch as you are not in favour of including a 3 months notice clause for determining the agreement, please treat our request as withdrawn. We will be forwarding to you our draft lease embodying the same terms and covenants as contained in our earlier registered lease. As per Clause 3(d) of the lease, we have also exercised our option for renewal of the lease for a further period often years commencing July 1, 1974 at a rental of Rs. 910 p.m. on the same terms and conditions contained in the earlier agreement for lease.

On 4.6.1974, as per Ex. A-5, the said company forwarded a draft lease in duplicate to the plaintiff. On 20.6.1974, as per Ex. A-6, the plaintiff replied to Esso Standard Refining Company of India Limited that without the payment of advance there can be no question of renewal of the lease. On 5.7.1974, as per Ex. A-7, the plaintiff by addressing a letter to the Esso Standard Refining Company of India Limited declined to accept a cheque purporting to be the rent for the month of July, 1974 and pointed out that the draft renewal deed has been rejected by the plaintiff since it violated the condition precedent for the exercise of the option for renewal with regard to the payment of advance and the plaintiff wanted delivery of possession of the property. With effect from 12.7.1974, consequent on the merger of LUBE (India) Limited with Esso Standard Refining Company of India Limited, the name of the amalgamated Corporation stood changed to Hindustan Petroleum Corporation Limited, the defendant in the suit. On 15.7.1974, as per Ex. A-8, Esso Standard Refining Company of India Limited, wrote to the plaintiff that no advance need be paid and they enclosed the draft of the lease deed once again for approval by the plaintiff and return. On 22.7.1974, as per Ex. A-9, and again on 4.9.1974, as per Ex. A-10, the defendant has been requesting for the return of the draft lease deed duly signed to proceed with the matter further. On 6.1.1975, as per Ex. A-11, the plaintiff through his counsel

issued the notice calling upon the defendant to vacate and deliver vacant possession of the property before 31.1.1975. On 31.3.1975, the defendant through its counsel replied, as per Ex. A. 12, insisting for approval of the draft lease. On 13.8.1977, as per Ex. A-13, the plaintiffs counsel called upon the defendant to vacate the property by 1.10.1977 and also to pay damages to the tune of Rs. 40,330. On 18.8.1977, as per Ex. A-14, the defendant replied Ex. A-13 declining to accede to the demand put forth on behalf of the plaintiff in his counsel's letter. On 11.9.1977, as per Ex. A-15, realising that a mistake had crept in with reference to a date, the plaintiffs counsel issued a fresh notice. On 22.3.1978, the plaintiff filed the suit praying for a decree for delivery of vacant possession by the defendant and for damages. The defendant filed the written statement on 16.9.1979. Taking advantage of the extension of the provisions of the Tamil Nadu City Tenants Protection Act III of 1922, hereinafter referred to as the Act, to leases entered into prior to March, 1980, by the amending Act II of 1980, an additional written statement was filed by the defendant on 9.9.1981. We will have occasion to deal with the concerned contentions of the defendant while we consider the submissions put forth before us in this appeal on behalf of the defendant. Suffice it to state at this juncture that in the additional written statement a plea has been projected that the defendant is entitled to protection under the Act. The defendant filed an application u/s 9 of the Act. But, there was an inordinate delay of 500 days in filing that application. The application for condonation of delay was numbered as I.A. No. 13557 of 1981, and the substantive application I.A. No. 13555 of 1981, filed u/s was numbered as I.A. No. 13557 of 1981 was dismissed and consequently I.A. No. 13555 of 1981 was also dismissed. So far as the application u/s 9 of the Act is concerned, the matter was allowed to rest there.

2. The Court below, on the pleadings, framed the following issues:

- (1) Has there been a valid renewal of the lease?
- (2) Are the plaintiffs entitled to claim damages for use and occupation and if so, at what rate?
- (3) Has the suit not been properly valued?
- (4) To what relief, are the plaintiffs entitled? Additional Issue:
 - (1) Whether the defendant is entitled to the benefit of the madras City Tenants "Protection Act as amended by Act 2 of 1980 and if so, whether the suit is bad for want of Section 11 notice?

The plaintiff placed his evidence, oral and documentary. The defendant placed only oral evidence and it had no documentary evidence. The Court below on issue No. 1 held that there has been no valid renewal of the lease. On issue No. 2, the Court below held that the plaintiff is entitled to claim damages for use and occupation at Rs. 2,000 per month from 1.10.1977 till the date of delivery. On issue No. 3, the Court below on the ground that nothing having been

demonstrated as to how the suit has not been properly valued, answered that issue in favour of the plaintiff. On additional issue No. 1, the Court below held that the defendant is entitled to the benefits of the Act. Besides this finding, the Court below did not proceed further to ascertain the amount of compensation payable for the superstructure to the defendant and did not follow the other processes as contemplated u/s 4 of the Act. On issue No. 4, the Court below repelled the plea put forth on behalf of the defendant that Section 53-A of the Transfer of Property Act could be availed of by it and the court below also repelled the contention that there was no valid notice to quit. As a result, the court below decreed the suit for delivery of possession and for damages at the rate of 2,000 per month for use and occupation from 1.10.1977.

3. The main contention put forth by Mr. S. Govindaswaminathan, learned senior Counsel appearing for the defendant, appellant herein, is built on the provisions of Section 4 of the Act. The contention gets projected as follows : u/s 4(1) of the Act, in any suit for ejectment against the tenant in which the landlord succeeds, there shall be a determination of the amount of compensation, if any, payable u/s 3 of the Act and the decree shall declare the amount so found due and direct that on payment by the landlord into Court, within three months from the date of the decree, the tenant shall put the landlord into possession of the land with the building and trees thereon. If the amount found due is not paid within three months from the date of the decree, the suit shall stand dismissed. In the instant case, there had been no determination of the amount of compensation and no declaration of the same in the decree inspite of the fact that a finding has been rendered that the defendant is a tenant within the meaning of the Act and entitled to the benefits of the same and consequently no payment of any amount of compensation could be and had been made within the time, limit, and hence the suit has got to be thrown out. Learned senior counsel for the defendant places heavy reliance on the pronouncement of the Supreme Court in V.K.A. Ranganatha Konar Vs. The Tiruchirappalli Municipal Council, by its Commissioner and Another, . As against the submissions put forth on behalf of the defendant through its learned senior Counsel Mr. V. Krishnan, learned Counsel appearing for the plaintiff, would submit that a proper understanding and construction of the provisions of Section 4 of the Act cannot lead to the proposition as advanced by the learned senior Counsel appearing for the defendant; and there has got to be primarily an ascertainment of the amount of compensation by the Court and declaration of the same in the decree and only thereafter if there had been no compliance with the payment of the amount of compensation so ascertained within the period prescribed by the provision itself namely, three months the suit shall be dismissed and in the present case, there had been an omission on the part of the Court below in making the very ascertainment of the amount of compensation and in that contingency the question of making a payment within the time prescribed by the statute would not at all arise and there could not be an entailment of the dismissal of the suit on the ground of non-compliance with payment of the amount of compensation ascertained within the statutory time

limit. Learned Counsel appearing for the plaintiff would submit that the pronouncement of the Supreme Court in V.K.A. Ranganatha Konar Vs. The Tiruchirappalli Municipal Council, by its Commissioner and Another, , cannot be construed-in the manner, as suggested by the learned senior counsel appearing for the defendant. Learned Counsel for the plaintiff would place reliance on the pronouncement of Srinivasan, J. in Mohanambal v. Selvanayaki (1961) 2 M.L.J. 261.

4. Section 3 of the Act has got to be initially looked into because that alone speaks about the payment of compensation on ejectment. That provision runs as follows:

Section 3 : Payment of compensation on ejectment : Every tenant shall on ejectment be entitled to be paid as compensation the value of any building, which may have been erected by him, by any of his predecessors-in-interest, or by any person not in occupation at the time of the ejectment who derived title from either of them, and for which compensation has not already been paid. A tenant who is entitled to compensation for the value of any building shall also be paid the value of trees which may have been planted by him on the land and of any improvements which may have been made by him.

Section 4 lays down the procedure for disposal of suits for ejectment and it has got four Sub-sections and the whole provision runs as follows:

Section 4 : Disposal of suits for ejectment : (1) In a suit for ejectment against a tenant in which the landlord succeeds, the Courts shall ascertain the amount of compensation, if any, payable u/s 3 and the decree in the suit shall declare the amount so found due and direct that, on payment by the landlord into Court, within three months from the date of the decree, of the amount so found due, the tenant shall put the landlord into possession of the land with the building and trees thereon.

(2) In an application u/s 41 of the Presidency Small Causes Courts Act, 1882, in which the landlord succeeds, the Court shall ascertain the amount of compensation payable u/s 3 and shall pass an interim order declaring the amount so found due and stating that, on payment, by the landlord into Court within three months of the date of the said interim order of the amount so found due, the landlord shall be entitled to the order contemplated by Section 43 of the Presidency Small Cause Courts Act, 1882.

(3) If in such suitor application the court finds that any sum of money is due by the tenant to the landlord for rent or otherwise in respect of the tenancy, the Court shall set off such sum against the sum found due under Sub-section (1) or Sub-Section (2), as the case may be, and shall pass a decree of interim order declaring as the amount payable to the tenant on ejectment, the amount, if any, remaining due to him after such set-off.

(4) If the amount found due is not paid into Court within three months from the

date of the decree under Sub-section (1) or of the interim order under Sub-section (1) or of the interim order under Sub-Section (2) or if no application is made u/s 6, the suit or application, as the case maybe, shall stand dismissed, and the landlord shall not be entitled to institute a fresh suit for ejectment, or present a fresh application for recovery of possession for a period of five years from the date of such dismissal.

For the purpose of this case, we are more concerned with Sub-Sections (1) and (4) Section 4 of the Act. As we could see from the very language of Sub-Section (1) of Section 4, it says that in a suit for ejectment against a tenant in which the landlord succeeds, the Court shall ascertain the amount of compensation, if any, payable u/s 3 and the decree in the suit shall declare the amount so found due and direct that, on payment by the landlord into Court, within three months from the date of the decree, of the amount so found due, the tenant shall put the landlord into possession of the land with the building and trees thereon. Hence, there has got to be first an ascertainment of the amount of compensation and that is the duty of the court. It can be stated that there has got to be assistance rendered by the parties with reference to the ascertainment of the amount of compensation by exposing and placing the requisite evidence therefore before the Court. We will keep aside that aspect for the time being. Then, the amount ascertained as compensation shall be declared in the decree and there shall be a direction that on payment by the landlord into Court of the amount within three months from the date of the decree, the tenant shall put the landlord into possession of the land with the building and trees thereon. Sub-section (4) of Section 4 is only supplementary to Sub-section (1) when it contemplates that if the amount found due is not paid into court within three months from the date of the decree under Sub-section (1), the suit shall stand dismissed. But, where there is a failure or omission on the part of the Court to ascertain the amount of compensation and declare the same in the decree, there is no scope for considering the other aspect of compliance by the landlord with regard to the payment of the amount so ascertained within the period of three months as per Sub-section (1) of Section 4. This is the position plainly visible as per a cogent-reading of and as per the express language employed in the provisions of Sub-sections (1) and (4) of Section 4.

5. We shall now resort to the pronouncement of the Supreme Court in V.K.A. Ranganatha Konar Vs. The Tiruchirappalli Municipal Council, by its Commissioner and Another, . We find there that the decree dated 26.3.1956 passed by the Trial Court omitted to prescribe the time limit, which is a matter of statutory prescription, though the amount of compensation was ascertained and declared in the decree. An application was taken out by the defendant to dismiss the suit filed by the plaintiff on the ground that there was no deposit made within three months from the date of the decree. The plaintiff filed an application for amendment of the decree to specify the time within which the deposit should be made. The trial Court on 20.11.1956 ordering the amendment of the decree inserted a direction to the effect that the deposit should be made before June 23,

1956 that is to say within three months from March 26, 1956, the date of the original decree. Obviously, the amendment of the decree was not helpful to the plaintiff and that resulted in the dismissal of the suit u/s 4(4) of the Act. The dismissal of the suit was challenged before this Court and this Court countenanced the plea that only when the decree makes a direction calling upon the plaintiff to deposit a certain amount by way of compensation to the defendant-tenant within three months, the requirements of Section 4(1) could be stated to have been complied drawn in accordance with the requirements of Section 4(1), that the mandatory provision of Section 4(4) could be invoked. This Court allowed the appeal and the original decree passed on March, 26, 1956 was confirmed. The result of the decision of this Court was that the plaintiff had the liberty to take out execution for obtaining possession of the property. On a certificate being granted, the matter went to the Supreme Court, there was an advertence to the object to the Act and the implications of Section 4(1) and Section 4(4) of the Act have been discussed in the following terms:

Reverting them to the question of construing Section 4(1) and (4), it would appear that what Section 4(1) purports to do is to require that the decree in the suit to which it applies shall, in the first instance, declare the amount found due by way of compensation. The said provision also requires that the decree shall declare that the tenant shall put the landlord into possession of the land on payment by the landlord into Court, within three months from the date of the decree, of the amount, found due. The two operative parts of the decree as contemplated by Section 4(1) are the declaration of the amount due to the tenant, and the direction to the tenant to deliver possession of the land to the landlord in case he paid into Court within three months of the date of the decree the amount declared due. It is true that the decree would state that the landlord has to pay the amount within three months from its date, but having regard to the specific and mandatory terms in which Section 4(4) is couched, it would not be reasonable to construe Section 4(1) as controlling Section 4(4). The relevant clause provides that the decree shall direct that on payment by the landlord into Court, within three months, of the amount found due, the tenant shall put the landlord into possession. The clause in respect of the payment by the landlord into Court within three months, amount to a condition which has to be satisfied by the landlord before the tenant is required to deliver to him possession of the property in question. In other words, reference to the payment by the landlord of the amount found due within the specified period in Section 4(1) is not so much a direction issued by the Court as specification of a condition expressly and independently provided by Section 4(4).

The provision of Section 4(4) clearly shows that if the amount found due is not paid within three months, the suit of the landlord shall stand dismissed. The opening clause of Section 4(4) shows that the amount has to be paid within three months from the date of the decree passed under Sub-section (1). The expression "the decree under Sub-section (1)" merely describes the subsection under which the decree is passed, the emphasis in the context being on the date

of the said decree and not so much on the strict compliance with the form prescribed by Section 4(1). If the decree is passed u/s 4(1), its date is material for the purpose of deciding the period beyond which Section 4(4) would come into operation. In other words, as soon as it is shown by a tenant that a decree has been passed u/s 4(1), declaring the amount of compensation due to him from the landlord, he is entitled to claim that he is no longer under obligation to deliver possession of the property to the landlord, because three months have passed from the date of the decree and the amount declared as compensation has not been paid to him. If the decree happens to be defective in the sense that it does not reproduce the requirement of Section 4(1) expressly in its terms, that would not take the case outside the purview of Section 4(4). We are inclined to think that having regard to the mandatory terms used in Section 4(4), it would be) illogical and unreasonable to suggest that a defective decree like the present enables the landlord to circumvent the provisions of Section 4(4). The applicability of Section 4(4) cannot be repelled merely on the ground that the decree passed u/s 4(1) does not specify the period of three months within which the amount found due has to be paid. In our opinion, the logical way to reconcile Section 4(1) and Section 4(4) would be to treat the provision prescribed by Section 4(4) as mandatory and paramount and read the relevant portion of Section 4(1) accordingly. That is why even if the decree does not mention that the amount has to be paid within three months, the landlord's obligation to make the payment within three months is still enforceable u/s 4(4), otherwise defective decrees would deprive the tenants of the benefit intended to be conferred on them by Section 4(4). We are, the before, satisfied that the High Court was in error in reversing the order passed by the trial court. Respondent No. 1 has not paid the amount within three months from the date of the decree and the suit instituted by it shall stand dismissed u/s 4(4).

6. We do not think that the ratio expressed by the Supreme Court could have a play beyond the sphere of the question and the facts on the basis of which the question arose in that case. There was, in fact, an ascertainment of the amount of compensation. But, there was an omission to direct payment within three months. It was opined construing Sub-sections (1) and (4) of Section 4 that time limit of three months is not so much the result of a direction by the Court, but a specification of a condition expressly and independently provided by Section 4(4), failing which the consequence of dismissal of the suit will entail. If there had been an ascertainment of the amount due by way of compensation and even if there is an omission to make a provision for payment of the same, within the period of three months, which is a prescription and a condition under the statute the provision of the statute, namely, Section 4(4) will have its play and the plaintiff omitting to make the deposit within the time limit, will have to face the scathe of Section 4(4) of the Act in having his suit dismissed. The decree not directing payment, and in that sense being defective would not make the implications of Section 4(4) read with Section 4(1) unworkable, and despite the defect in the decree, they will have their force and effect. In the present case,

there had been no ascertainment of the quantum of compensation and there had been no declaration of the same in the decree and in the said circumstances, it is not possible to fall back upon Section 4(4) of the Act that on the failure of the plaintiff to pay any amount of compensation, his suit must be thrown out. The Supreme Court had no occasion to consider a case where there had been no ascertainment of the amount of compensation at all, as in the present, case. The ascertainment is the first step, followed up by a declaration in the decree. Then whether there is a direction to pay within three months or not, the obligation to do so, arises by the force of the statutory prescription or condition and failure thereof will lead to dismissal of the suit.

7. In *Mohanambal v. Selvanayaki* (1961) 2 M.L.J. 261, Srinivasan, J., in an ejectment application u/s 41 of the Presidency Small Cause Courts Act, found that there was no ascertainment at the time of determining the ejectment application in favour of the landlord and there was no consequent interim order declaring the amount ascertained as per Section 4(2), and an ascertainment done long prior to the determination of the ejectment application and the failure of the landlord to pay the amount within time after such ascertainment were put against him to throw out the ejectment application itself. The learned Judge deemed fit to remit the matter back for ascertainment of compensation and passing of orders as per Section 4(2). The reasons expressed by the learned Judge run as follows:

It seems to me that the order made on 19th August, 1958 was not an interim order within the meaning of Section 4(2). What this provision contemplates is that at the time of disposal of the application u/s 41 of the Presidency Small Cause Courts Act, in which "the landlord succeeds", the Court shall ascertain the amount of compensation payable. It is quite clear that the stage, at which the Court is called upon to determine the amount of compensation is the date on which it comes to the conclusion that the landlord is entitled to vacant possession of the premises, and it is at this stage that the Court is under a duty to pass what is called an interim order declaring the amount so found due, and directing its payment within three months from the date. This obviously amounts to a conditional order in the sense that, if the amount is deposited as directed the landlord would be entitled to vacant possession, and, if he fails to make the deposit his application for ejectment would stand dismissed. The provisions of the Act do not contemplate an order, determining compensation, and directing its payment at any point of time anterior to the determination of the ejectment application itself. Even an application proceeding from a party, plaintiff or defendant is uncalled for in a matter which comes within the scope of Section 4(2) of the City Tenants' Protection Act. The Court is under a mandatory duty in such cases to determine the compensation and make an order in terms, of the section. It is clear, the before, that the order dated the 19th August, 1958, when the Court had not thought fit to come to a decision as to the right of the plaintiff-landlord to vacant possession, was wholly beyond the jurisdiction of the Court.

The proper order u/s 4(2) of the Act is one made when the Court decides that the landlord is entitled to a decree for vacant possession. The order that was made in this application, the one dated 21st September, 1959, did not incorporate any determination of the compensation or its payment into Court, as required by Section 4(2). At the stage of disposal of the application for eviction, this matter appears to have been completely lost sight of by the trial Judge. It is clear, the before, that the Court has failed to discharge a duty that has been statutorily laid upon it. It must be noted here that a case u/s 4(2) is also covered by Section 4(4) with the same implications as in the case of Section 4(1). Mr. V. Krishnan, learned Counsel for the plaintiff, wants us in the present case to adopt the same reasonings and the course, as done by the learned Judge. This, in our view, is a legitimate suggestion.

8. In *N.A. Munavar Hussain Sahib and Another Vs. E.R. Narayanan and Others*, , which is a decision relied on for the defendant, the rigour of Sections 4(1) and 4(4) has been generally discussed as follows:

The three months' time limit in Section 4(1) of the Act is a rigid, fixed and inflexible, and unalterable one incapable of extension either by court or by agreement of parties. Even if no time is fixed under a decree, only period of three months will be available u/s 4(1) and failure to deposit the amount within that time would automatically attract Section 4(4) of the Act resulting in the dismissal of the suit.

This decision could be of no assistance at all to the defendant on the facts of this court. The Bench of this Court was not dealing with a case where there had been no ascertainment of the amount of compensation at all.

9. Then the question that relevantly arises for consideration in the present case is what is the proper course to be adopted, when the Court below has found that the defendant is entitled to the benefits of the Act and yet has not proceeded to ascertain the amount of compensation and declare it in the decree. Mr. V. Krishnan, learned Counsel for the plaintiff, though would complain about the lack of positive move on the part of the defendant to have the amount of compensation ascertained, yet was not averse to the matter going back to the Court below for ascertainment of the compensation as per Section 4(1) of the Act and the prosecution of the further processes on that basis under the Act. As opined by Srinivasan, J. in *Mohanambal v. Selvanayagi* (1961) 2 M.L.J. 261, it is a mandatory duty cast upon the Court by the statute. It would be a different matter, if the parties wilfully obtain from extending any co-operation in that process. But, such could not be stated to be the case here. In the interests of justice, we think that we should give this much relief to the defendant, once it is found that it is entitled to the benefits of the Act. Hence, only for this limited purpose, we are obliged to remit the matter back to the Court below as per our direction to be given hereunder.

10. There is another contention, which, though not vehemently argued, yet has

been expressed by the learned senior Counsel appearing for the defendant and that is, the renewal of the lease had come into existence and force by the exercise of option for renewal by the defendant and hence the suit laid before the lapse of the period of the renewed lease was incompetent. With regard to the exercise of option for renewal, we can construe Ex. A-4 as amounting to exercise of the option, dropping the addition of any new clause, as suggested in Ex. A-2. However, Mr. V. Krishnan, learned Counsel for the plaintiff, would submit that the set of expressions "please treat our request as withdrawn occurring in Ex. A-4 would mean the withdrawal of the very exercise of option for renewal. Strain we may, yet we are not able to fall in line with this thinking of the learned Counsel for the plaintiff. It is only with reference to the new clause suggested in Ex. A-2 the request of the defendant has been withdrawn and nothing more. Then the learned Counsel for the plaintiff would submit that the expressions "we have also exercised our option for renewal of the lease", are in the past-tense, and would not amount to exercise of option by Ex. A-4 itself. A harmonious reading of the document along with the preceding correspondence leaves no room for ambiguity in our mind, that by Ex. A-4, there had been a valid exercise of option for renewal. But, a bare exercise of option for renewal could not be of any avail to the defendant, because the law is well settled that a covenant for renewal contained in a lease does not ipso facto extend the tenure or term of the lease, but only entitles the lessee to obtain a fresh lease. If there is a clause for renewal in the original lease, and that clause has been taken advantage of and any option pursuant thereto has been properly exercised it only gives a lever for the lessee to obtain a new lease in accordance with and in due satisfaction of the law governing the making of leases. If to the renewed lease, the requirements of the first part of Section 107 of the Transfer of Property Act are attracted, as obviously are in the present case, no valid lease would come into existence unless the said requirements are satisfied. So far as present case is concerned, even if the defendant is stated to have exercised its option for renewal, which position we have accepted, it has not improved the lot of the defendant to say that there had been a renewed lease, which had enured in Us favour, because admittedly the requirements of Section 107 of the Transfer of Property Act were not satisfied. The proposition of law has been clearly recapitulated by Ismail, J., as he then was, after tracing the authorities on the subject, in *Rasiklal M. Mehta and Another Vs. The Hindustan Photo Films Manufacturing Company Ltd.*, ; a decision cited by Mr. v. Krishnan, learned Counsel for the plaintiff-in the following terms:

The result, is, once the option is exercised either by the lessor or by the lessee, a valid lease as such does not come into existence unless a registered document is executed, if the renewed lease in question satisfies the requirements of Section 107 of the Transfer of Property Act. After all, the option conferred either on the lessee or on the lessor is more or less in the nature of a pre-emption and neither the conferment of such option itself nor the exercise thereof automatically or of its own force brings into existence a new lease irrespective of other statutory

provisions regarding the form, procedure or the modalities by which alone such a lease can be brought into existence. The before, looked at from any point of view, I am of the opinion that once a renewed lease comes within the scope of Section 107 of the Transfer of Property Act, such a lease can be made only by a registered instrument. I am emphasising that notwithstanding the option conferred on the lessor or the lessee in the light of the judgment of the Federal Court referred to above, it is a new lease that comes into existence as a result of the exercise of the option for renewal and that too by the bilateral acts of the parties and consequently the new lease is made within the scope of the expression occurring in Section 107 of the Transfer of Property Act and the before it has to be only by a registered instrument. In this case, admittedly the renewed lease was for a period of three years and if it has not been a renewed lease, the initial lease itself, there was no dispute that it required registration. Simply because it happened to be a renewed lease, it does not follow that no registered document was necessary to bring into existence such a lease. In this particular case, the appellants instituted the suit only on the basis of a valid renewed lease for a period of three years and the respondent herein having committed a breach of that contract by surrendering possession or terminating that lease prior to the expiration of the period prescribed there under. Once I hold that such a lease should have been made only by a registered instrument and there-being no registered instrument, there was no valid lease for a period of three years, the appellants were not entitled to institute the suit for recovery of the amounts in question as damages for breach of the contract alleged to have been committed by the respondent herein.

11. In Delhi Development Authority Vs. Durga Chand Kaushish, , which again is a decision, relied on by Mr. V. Krishnan, learned Counsel for the plaintiff, there are observations as follows indicating that the renewal of a lease is really a fresh lease:

A renewal of a lease is really the grant of a fresh lease. It is called a, "renewal" simply because it postulates the existence of a prior lease which generally provides for renewals as of right. In all other respects, it is really a fresh lease.

In the present case, as we could see from the correspondence, the parties were at loggerheads even with regard to terms of the lease to be renewed and no document of fresh lease as per the requirements of Section 107 of the Transfer of Property Act had come into existence to bring about a renewed lease valid in the eye of law. Hence, we do not think that the defendant through his learned Counsel could successfully put forth a plea that there had been a renewed lease, and hence the suit for ejectment was not competently laid.

12. There was a contention raised with reference to the validity of the notice to quit. Though we did not hear any expatiative submission on this question by the learned senior counsel for the defendant, yet we must express the view concurring with that of the court below that no exception could be taken to the validity of the notice to quit in the present case. No other point was argued

before us.

13. As per our above discussion, we allow this appeal to the extent of remitting the matter back to the Court below for the purpose of the Court below ascertaining the amount of compensation; to declare the same in the decree; to give directions with regard to deposit of the same; and to work out further processes as set down u/s 4 of the Act. In the peculiar facts and circumstances of the case, the parties are directed to bear their costs upto and inclusive of the disposal of this appeal. Further costs will abide the results before the Court below, pursuant to this order of remittal. The defendant, appellant herein, is entitled to refund of the court-fees paid on the memorandum of this appeal. We make it clear that the remittal is only for the purposes indicated above and we have not disturbed the findings of the Court below on any of the issues.