

(1998) 07 DEL CK 0036

In the Delhi High Court

Case No : IAs No. 2435/96, 6970/97 and S.No. 414/91

Kanta Manocha

APPELLANT

Vs

M/s. Hindustan Paper Corpn.

RESPONDENT

Date of Decision : 13-07-1998

Acts Referred:

Citation : (1998) 5 AD 486 : (1998) 74 DLT 493

Hon'ble Judges : J.B. Goel, J

Bench : Single Bench

Advocate : Mr. Debashish Mishra, for the Appellant; Mr. Dalip Mehra, for the Respondent

Judgement

J.B. Goel, J.—In the suit for possession and mesne profits, the plaintiff has filed the application (I.A. 2435/96) under Order 12 Rule 6 read with Section 151 of the CPC (for short "the Code") for passing a decree of possession on admission.

2. The plaintiff's case is that she is the owner of property No.E-525, Greater Kailash-II, New Delhi; had let out the same to the defendant under a lease deed dated 18.1.1982 at a monthly rent of Rs.6,500/-. The lease was duly registered and was for a period of three years and renewable for a period of two years with enhanced rent of 10%, which was so renewed for two years and the rent was raised Rs.7,150/-; that lease being for a fixed period, expired by efflux of time after five years; the defendant did not vacate the premises; after the amendment in the Delhi Rent Control Act in 1988, the premises are out of the purview of that Act as the rent is more than Rs.3,500/- per month. The plaintiff also gave notice dated 20.2.1990 terminating the tenancy though it was not necessary. The defendant has not vacated the premises, the plaintiff also claims mesne profits @ Rs. 35,000/-, hence this suit for possession and damages from 17.1.1987 till the date of filing of the suit and further mesne profits under Order 20 Rule 10.

3. Defendant has filed a written statement contesting the suit. It is alleged that

the suit is not maintainable as the attorney has no locus standi to file the suit. It is admitted that a lease was executed in the year 1982 for a period of three years which was renewed for two years on enhanced rent of 10%. It is alleged that after the expiry of the lease period, the plaintiff had agreed that the defendant will continue to occupy the premises on the same terms as per the lease deed; and on the basis of that agreement, they are occupying the premises as a lawful tenant. The plea thus is of holding over. It is also alleged that amendment made in the Delhi Rent Control Act is prospective in operation and the benefit of the Delhi Rent Control Act is available to them. Validity of the amendment of the Delhi Rent Control Act is also challenged. It is also alleged that no valid notice of termination of the tenancy has been served, the notice dated 20.2.1990 is invalid; suit is not maintainable, and the plaintiff is not entitled to decree of possession or for mesne profits.

4. After the pleadings were completed, the plaintiff has filed the aforesaid application under Order 12 Rule 6 of the Code for decree on admission, alleging that the lease deed dated 18.1.1972 stands admitted; lease has expired on 17.1.1987 and even service of notice of termination dated 20.2.1990 stands admitted and as such a decree for possession be passed. This application is also contested by the defendant denying that the plaintiff is entitled to possession. It is pleaded that the defendant has been making payment of the rent by means of cheques which have been accepted after the expiry of the lease period.

5. Defendant has filed another application being I.A. No. 6970/96 u/s 151 of the Code alleging that the defendant has been paying and the plaintiff has been accepting rent sent by cheques for every month without any demur or objection and against receipts, thereby fresh tenancy has been created and there is novation of contract of lease and the suit is liable to be dismissed. Thus the defendant has taken the plea of holding over. In reply receipt of rent from the defendant is not denied, however it is pleaded that no new right has accrued to the defendant. However, it is admitted that they are holding over the premises within the meaning of Transfer of Property Act (for short "the Act") after the expiry of the lease.

6. The suit for possession and mesne profit was filed on 9.11.1990. In the plaint, it was not alleged that the defendant was in arrears of rent till the date the suit was instituted though mesne profits are claimed but without specifying the amount claimed or due.

7. I have heard learned counsel for the parties.

8. Learned counsel for the plaintiff has contended that the lease has expired by efflux of time on 17.1.1987 u/s 111(a) of the Act and thereafter possession of the defendant was not as a contractual tenant but by holding over for which no notice of termination is required, but still a legal notice of termination of tenancy dated 20.2.1990 was served on the defendant by registered post as such the contractual tenancy, if any, also has been terminated. Thus the relationship of

landlord and tenant, expiry of lease by the efflux of time or by termination through notice dated 20.2.1990 is proved or is not disputed. The plaintiff is entitled to decree under Order 12 Rule 6 CPC. He has inter alia placed reliance on Smt. Shanti Devi Vs. Amal Kumar Banerjee AIR 1981 SC 1550 , Savita Dey Vs. Nageswar Majumdar and Another, , V. Dhanapal Chettiar Vs. Yesodai Ammal, , Bhagabandas Agarwalla Vs. Bhagwandas Kanu and Others, , Harihar Banerjee & Ors. Vs. Ramshashi Roy & Ors. AIR 1918 PC 102 and Daggar Vs. Shepherd 1946 (1) All E.R. 133. Whereas, learned counsel for the defendant has contended that it is admitted that new tenancy has been created or renewed by holding over, for which a valid notice of termination is required and the notice dated 20.2.1990 is not a valid notice u/s 106 of the Act. He has also placed reliance on some case law which will be referred to wherever relevant and necessary.

9. The execution of the lease deed dated 18.1.1982 is not disputed by the defendant. This lease deed is a registered one, the lease was for three years commencing from 18.1.1982 at a rent of Rs. 6500/- p.m. with the option to renew it for a period of two years on the existing terms but with increased rent by 10%. This renewal for two years is also not disputed. This lease, thus came to an end by efflux of time after expiry of five years on 17.1.1987 as provided u/s 111(a) of the Act. At that time, Delhi Rent Control Act was applicable and because of the restriction under that Act the plaintiff could not seek eviction of the defendant except on specified grounds. The defendant thus enjoyed protection as a statutory tenant. However, the Delhi Rent Control Act was amended and the premises whose rent was more than Rs. 3,500/- per month was excluded from the purview of that Act w.e.f. 1.12.1988. The legality and validity of this amendment as well as the fact that this amendment is also applicable in respect of tenancies which had commenced before this amendment has been upheld by the Supreme Court in the case of D.C. Bhatia Vs. Union of India JT 1993 (7) SC 114. As such, the premises ceased to be governed by the Delhi Rent Control Act w.e.f. 1.12.1988. The landlord could seek eviction under the ordinary law.

10. As noticed above, the defendant has been paying and the plaintiff has been accepting the amount of rent thereafter. It is also admitted by the plaintiff and not disputed during argument that this is a case of holding over. Case of holding over falls u/s 116 of the Act. That Section and its illustrations read as under:-

"116. Effect of holding over - If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the Lesser or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106.

Illustrations

(a) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs.100/-. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

11. The plaintiff has been accepting the rent from the defendant lessee and allowed them to continue in possession. It is not the case of the plaintiff that there was any agreement to the contrary for accepting the rent nor it is her case that rent was accepted under any reservation. The lease was thus renewed from month to month after 1.12.1988. It has also been so held in *Gooderham & Worts Ltd. Vs. Canadian Broadcasting Corporation* AIR 1949 PC 90 that where on the termination of the lease, the rent is paid and accepted and the tenant continues with the possession, the tenancy is renewed and would be terminated by serving a notice as contemplated u/s 106 of the Act.

12. Till 30.11.1988, the premises were governed by the Delhi Rent Control Act and the plaintiff could not have sought ejectment except on fulfillment of certain specified conditions.

13. It is well settled that where a contractual tenancy to which the rent control legislation applies has expired by efflux of time or by determination of notice to quit and the tenant continues in possession of the premises, acceptance of rent from the tenant by the landlord after the expiration or determination of the contractual tenancy will not afford ground for holding that the landlord has assented to a new contractual tenancy. (AIR 1949 124 (Federal Court) and *Ganga Dutt Murarka Vs. Kartik Chandra Das and Others*,).

14. What is the position after the restriction ceased to exist on 1.12.1988 in the present case. In that case, as held in *Kai Khushroo* (supra), if after the termination of lease, the lessee continues in possession and the landlord accepts rent from such person or otherwise expresses assent to the continuation of its possession a new tenancy comes into existence as is contemplated by Section 116 of the Act, and unless there is an agreement to the contrary, such tenancy would be regarded as one from year to year or from month to month in accordance with the provisions of Section 106 of the Act.

15. In *Bhawanji Lakhamshi and Others Vs. Himatlal Jamnadas Dani and Others*, , the scope of Section 116 of the Act has been considered and after referring to the aforesaid two cases and other cases, it has been observed that the basis of Section 116 is that, in case of normal tenancy, a landlord is entitled, where he does not accept the rent after the notice to quit, to file a suit for ejectment and obtain a decree for possession. But if he accepts the rent, his acceptance of rent is an unequivocal act referable only to his desire to assent to the tenant continuing in possession.

16. The tenant having paid the rent and the landlord having accepted it as rent,

a month to month tenancy came into existence. And before the defendant could be evicted, the provisions of Section 106 of the Act have to be complied, that is, a notice of termination of tenancy must be served giving 15 days notice expiring with the end of the tenancy month. This condition is essential and must be complied with. The case of V. Dhanapal Chettiar Vs. Yesodai Ammal, , is not relevant on this point as in that case overruling the decisions taking the contrary view, it was held that notice u/s 106 of the Act is not necessary for seeking eviction under State Rent Act cases. The plaintiff is not seeking ejectment under the provisions of the Delhi Rent Control Act but under the general law as contained in the Transfer of Property Act.

17. In Savita Dey Vs. Nageswar Majumdar and Another, , the suit was filed after the expiry of the lease period of 21 years. In this case, it was held that the lease expired by efflux of time and there was no renewal of the contract by mere increasing the rent because of increase in taxes. It was not the case of holding over as contemplated u/s 116 of the Act. This authority also is not relevant.

18. In Smt. Shanti Devi Vs. Amal Kumar Banerjee AIR 1981 SC 1550, it was held that where a lease is for a fixed period, it expires by efflux of time u/s 111(a) and service of a notice u/s 106 of the Act is not necessary in such a case. It was not the case of the tenant that he was a tenant holding over within the meaning of Section 116 of the Act. The suit was filed on the expiry of lease after agreed renewals. As such, no notice of termination was necessary. This authority is also of no help.

19. The present case is a case of holding over. A notice of termination of tenancy as provided u/s 106 of the Act is necessary and without such a notice, suit for possession would not be maintainable.

20. However, the plaintiff has also pleaded that a notice dated 20.2.1990 terminating the tenancy was served on the defendant. Learned counsel for the defendant has contended that this is not a valid notice u/s 106 of the Act.

21. Copy of notice dated 20.2.1990, its postal receipt No.1269 dated 24.2.1990 and acknowledgement card of its delivery have been annexed with the plaint as Annexure "C". Receipt of this notice is not denied. The tenancy by holding over became a monthly tenancy which commenced on 18.1.1982. The month of tenancy thus became from 18th of the English month to the 17th of the following month. The notice dated 20.2.1990 was sent by registered post on 24.2.1990; the acknowledgement card does not indicate the date of its delivery and it could be presumed that this was delivered within 2-3 days after it was sent by post. In para 6, the plaintiff notified as under:-

"6. I hereby give you notice that the lease deed dated January 18, 1982 entered between you and my clients stands terminated from the date of the issue of this letter and you are called upon to deliver vacant and peaceful possession of the premises.....to my clients within 15 days of the receipt of this notice."

22. The two requirements of notice u/s 106 of the Act are (1) it should give 15 days notice; (2) expiring with the end of the month of tenancy. This notice terminates the tenancy from the date of the issue of the notice which is not valid. It gave 15 days period to vacate, this period of 15 days also does not expire with the end of the month of tenancy. Both the conditions of Section 106 are not fulfilled. Notice u/s 106 of the Act is essential and must be strictly complied with. In *Mangilal Vs. Suganchand Rathi*, it was held that before a tenant can be evicted by a landlord, he must comply with the provisions of Section 106 of the Act. The requirement of Section 106 is that a lease from month to month could be terminated only after giving 15 days notice expiring with the end of the tenancy month either by the landlord to the tenant or by the tenant to the landlord and such a notice is essential for bringing an end to the relationship of landlord and the tenant. Unless the relationship of landlord and tenant is validly terminated, the landlord has no right to obtain possession of the premises by evicting the tenant. On that basis, this notice relied by the plaintiff does not fulfill the requirement of Section 106 of the Act and has not validly terminated the tenancy.

23. Learned counsel for the plaintiff has contended that a notice to quit should be liberally construed and has relied on the decision in *Harihar Banerji & Others Vs. Ramshashi Roy & Others* AIR 1918 PC 102. In this case, the Judicial Committee of the Privy Council had observed (at page 107) as under :-

".....that notices to quit, though not strictly accurate or consistent in the statements embodied in them, may still be good and effective in law; that the test of their sufficiency is not what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to refer, but what they would mean to tenants presumably conversant with all those facts and circumstances, and further, that they are to be construed not with a desire to find faults in them which would render them defective but to be considered *ut rest magis valeat quam pereat*."

24. In that case, the defect which was said to invalidate the notice pertained to the description of the demised premises and the Privy Council held that the recipient of the notice would be quite conversant with the actual description and could know what the description stood for. In that case, the question whether the notice complied with the requirement of 15 days notice expiring with the end of the month of tenancy was not under consideration. This authority also thus is of no help.

25. In *Dagger Vs. Shepherd* 1946(1) All E.R. 133 (CA), the tenancy started on March 25, 1939 and was terminable by three months' notice. The notice to quit dated 20.12.1944 purported to terminate the tenancy "on or before March 25 next, which would be March 25, 1945. On construction, it was held that it gave an offer to the tenant to accept the determination of the tenancy on any earlier date than that named to give up possession. The notice was held to be a valid notice as it had the effect of terminating the tenancy with the end of the tenancy month. This is not the case in the present case. This authority also is of no help.

26. In Francis Jerone Fernandis Vs. Anthony Pedad Cardoza, , it was held that a notice giving mere 15 days" time by itself will not answer the requirement of Section 106 but it must also indicate that 15 days period expires with the end of the tenancy month.

27. Assuming this notice dated 20.2.1990 validly terminated the tenancy, but even thereafter the plaintiff has been admittedly receiving rent from the defendant till the suit was instituted on 9.11.1990 and even thereafter. Thereby, this notice also stood waived u/s 113 of the Act.

28. In view of these circumstances, it cannot be said that the tenancy of the defendant has been validly terminated before instituting the suit.

29. The suit and consequently the application under Order 12 Rule 6 are thus not maintainable.

30. Both the suit and I.A. No.2435/96 are accordingly dismissed. In the circumstances, the parties are left to bear their own costs.

31. The suit and the I.As. No.2435/96 and 6970/97 are disposed of accordingly.