
(2011) 12 CAL CK 0114
In the Calcutta High Court

Case No : G.A. No's. 3673 and 3436 of 2010 and C.S. No. 197 of 2009

Kusum Rathod

APPELLANT

Vs

West Bengal Financial Corporation

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 113

Citation : (2012) 3 CHN 244

Hon'ble Judges : I.P. Mukerji, J

Bench : Single Bench

Advocate : Abhrajit Mitra, Jishnu Chowdhury and P. Saha, for the Appellant; A.K. Dhandhanian and A.K. Sur, for the Respondent

Final Decision : Allowed

Judgement

I.P. Mukerji, J.—The application numbered as G.A. 3673 of 2010 is a Chapter XIII A Application. The plaintiffs seek a final judgment for vacant possession from the defendant of a portion of the first floor of premises No. 4, Kiran Sankar Roy Road, Kolkata - 1. The total area is about 5, 200 sq. ft. The plaintiffs demised the above property to the defendant for a period of ten years by a registered lease executed on 16th August, 1969. Upon expiry of the lease the defendant continued as a monthly tenant. The defendant last paid rent @ Rs. 41,600/- per month. By a notice dated 19th January, 2009 issued u/s 106 of the Transfer of Property Act, 1882, the plaintiffs determined the lease of the defendant. However, since the plaintiffs had accepted occupation charges, without prejudice, as stated in the plaint they issued another notice on 17th March, 2009 determining the lease u/s 106 of the Transfer of Property Act, 1882. The defendant was asked to deliver vacant possession by 7th April, 2009. According to the plaintiffs the defendant is in wrongful possession. They claim eviction of the defendant and mesne profit for such wrongful occupation from 7th April, 2009.

2. Only two very feeble points in defence have been taken.

3. It is said that in the lease the lessors were described as Narbada Bai and Ors. whereas the plaintiffs are differently described. Hence, they have no locus standi. The original lease was of 16th August, 1969 and since then the original lessors or some of them, have died, according to the plaintiffs. Furthermore, according to them, it was then decided by the co-owners that they would be called "Sm. Narbada Bai and Ors." The defendant has paid rent to Narbada Bai and Ors. This has been explained in paragraph 4 of the affidavit-in-reply, to my satisfaction.

4. This principle is too well known for reiteration that a tenant cannot deny the title of the landlord from whom he has taken the tenancy. This is a rule of estoppel. This principle would also be true in case of acceptance of rent receipt issued by a landlord or a group of landlords. This is the case here. Therefore, this defence on the part of the defendant has got no substance.

5. The second point taken by the defendant is that after issuance of the notice stated 19th January, 2009 determining the tenancy, the defendant could not issue the second notice on 17th March, 2009.

6. I don't understand what is the purpose of this kind of an objection. If the second notice dated 17th March, 2009 could not be issued, then it is to be taken by admission that the first notice was good and the tenancy had been determined. When it can be said conclusively that the first notice had determined the lease, there is no need of a second notice. This argument does the defendant no good because it determines the tenancy earlier. [See Hoaremillar & Co Ltd. vs. Bank of India reported in AIR 2011 Cal 239].

7. There is really no challenge to the fact that it was a monthly tenancy capable of being determined.

8. There is authority for the proposition that issuance of a second notice to quit is waiver of the first notice (See illustration "b" of section 113 of the Transfer of Property Act, 1882). Therefore, taking the assertion of the plaintiffs to be true that the first notice to quit was waived and a second notice to quit was issued the lease stood determined on and from 7th April, 2009.

9. In view of the discussion above there is no defence whatsoever to the claim of the plaintiffs. The defendant is not entitled to leave to defend.

10. Hence, I allow this application by passing an order in terms of prayer "a" of the Master's Summons. I hereby order determination of mesne profit by a special referee. Mr. R.N. Bandopadhyay, Advocate and retired Jt. Secretary, Ministry of Law, Kolkata is appointed special referee to determine the mesne profit as claimed according to law. He may be paid remuneration at the rate of Rs. 7,500/- per sitting to be shared equally by the parties. He should complete the enquiry within three months of communication of this order, by filing a report. The other application being G.A. 3436 of 2010 is disposed of without any order.

11. Let the suit be decreed accordingly. Urgent certified photocopy of this

judgment and order, if applied for, to be provided upon complying with all formalities.

Later:

Mr. Sur, learned Counsel appearing for the defendant prays for stay of operation of the judgment and decree for a period of four weeks in order to enable his client to prefer an appeal. Such prayer is allowed.