
(2002) 05 DEL CK 0113

In the Delhi High Court

Case No : CM No. 774 of 2002 and Regular First Appeal No. 193 of 2002

Modern Food Industries (India) Limited

APPELLANT

Vs

I.K. Malik and Others

RESPONDENT

Date of Decision : 17-05-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 20 Rule 12, Order 23 Rule 3

Registration Act, 1908 — Section 2(7), 49

Transfer of Property Act, 1882 — Section 106, 107, 53A

Citation : (2002) 8 AD 88 : (2002) 98 DLT 593 : (2002) 63 DRJ 451 : (2003) 1 RCR(Civil) 118 : (2002) 2 RCR(Rent) 689

Hon'ble Judges : Usha Mehra, J;Om Prakash Dwivedi, J

Bench : Division Bench

Advocate : Amitabh Narayan, for the Appellant; Sudhanshu Batra, for the Respondent

Final Decision : Dismissed

Judgement

Usha Mehra, J.

CM No. 774/2002

1. Appellant Modern Food Industries (India) Limited was a tenant in the premises bearing No. C-17, L.S.C.-I Paschimi Marg, Vasant Vihar, New Delhi. The premises consisted of first and Mezzanine floors measuring an area of about 1817 Sq. ft. The tenancy was on month to month basis. The tenancy month commenced from 1st day of each English calendar month. The tenancy period was to expire in July, 1998. The landlords of the property asked the appellant/defendant to vacate the premises. When it was not vacated, legal notice dated 11th July, 1998 was issued. It was got served on the appellant/defendant on 14th July, 1998 thereby terminating the tenancy from the midnight of 31st July, 1998. In the notice it was also made clear that if the appellant/defendant continue to occupy the premises he shall be liable to pay damages/mesne profit @ Rs. 1,25,000/- per

month. Appellant/defendant while acknowledging the notice declined to vacate the premises on the plea that the lease in question could not be terminated as the tenancy period had yet not expired. That lease period was extended by mutual consent. Tenancy period was to come to an end only on 31st May, 2002.

2. The appellant/defendant's defense was that the premises was in its occupation much before the respondent/plaintiff purchased this property. The appellant/defendant was tenant in the premises since 12th April, 1972. That the said lease stood extended for a further period of 10 years vide letter dated 1st June, 1992. With extension of lease period the rate of rent was also increased to Rs. 11,500/-. That the respondent started accepting the revised rate of rent after lease was renewed. Hence respondent/plaintiff could not be allowed to terminate the tenancy till 31st May, 2002.

3. Respondent/plaintiffs moved an application under Order 12 Rule 6 of CPC (in short C.P.C.) and sought decree. According to him since the facts were admitted hence decree forthwith could be passed. By the impugned judgment the learned trial court passed the decree of ejectment in favor of the respondent/plaintiffs and also directed payment of future mesne profits payable with effect from 1st August, 1998 till recovery of possession. But with regard to quantum of damage, the trial court ordered initiation of an enquiry under Order 20 Rule 12 C.P.C.

4. It is against this order that the present appeal has been preferred. Before we take up the appeal on merits, we would like to pin down the disturbing trend which is taking place at the Bar. In this case on the very first date when the case was taken up for admission, Mr. Amarjeet Singh Chandhok, Senior Advocate with Mr. Raman Kapoor appeared. Counsel made a statement that the appellant volunteered to hand over the vacant peaceful possession of the premises in question to the respondent on 30th April, 2002. We accordingly recorded this concession and disposed off the appeal. But thereafter appellant engaged a new counsel. The new counsel filed the present application challenging the authority of the counsel who made the concession on behalf of the appellant. According to this new counsel the appellant never instructed the counsel that premises shall be vacated on 30.4.2002. Therefore, according to Mr. Amitabh Narayan the concession made by the counsel amounted to oral agreement which was in violation of the provision of Order XXIII Rule 3 and Rule 11 C.P.C. The said oral compromise having not been signed by any party hence not enforceable in law and that direction be given to the trial court not to proceed with enquiry under Order 20 Rule 12 C.P.C. We are surprised on this conduct of the appellant and the counsel because till date power of attorney of Mr. Raman Kapoor has not been withdrawn. By merely changing the counsel a litigant cannot be allowed to make accusation against another counsel. Secondly if such applications are allowed and entertained then the court will never believe any statement made by a counsel in the court. We accept counsel's statement because they are officers of the court. It cannot be believed nor appreciated that the counsel for the appellant who represented earlier made the statement/concession without

instruction. With the change of counsel the appellant has tried to over reach the court. This disturbing trend at the Bar is not appreciable. We must make it clear that concession is not an oral agreement hence does not require signatures of the parties. Ordinarily, we would have dismissed this application on this short ground but keeping in view the interest of justice, we permitted the appellant to withdraw the concession/statement and consequently our order dated 18th March, 2002 and heard the appellant on merits.

RFA No. 193/2002

5. Before we take up the grounds raised by the appellant, we would like to mention the admitted facts which are relevant for determination of the issues raised in this appeal. Admittedly there never existed any registered lease deed. Even the letters by virtue of which the lease period is alleged to have been extended is not a registered document. The tenancy period is admittedly for more than one year. The lease for such a tenancy requires compulsory registration. In the absence of a registered lease deed, tenancy was on month to month basis. Admittedly landlord terminated the tenancy of the appellant vide legal notice dated 11th July, 1998 which was duly received by the appellant/defendant on 14th July, 1998. The rate of rent of the premises was revised to Rs. 10,000/- and for the subsequent period to Rs. 11,500/- p.m. Therefore, so far as relationship of landlord and tenant, termination of tenancy by a legal notice and rate of rent being more than Rs. 3,500/- p.m. are concerned, these are admitted facts on record.

6. The question for consideration is whether the trial court, on these admitted facts, was justified in passing the decree under Order 12 Rule 6 C.P.C. Main thrust of Mr. Amitabh Narayan's argument is that the appellant had been in occupation of the tenanted premises since 12th April, 1972 @ Re. 1/- per sq. ft. This rent was first increased to Rs. 10,000/- per month and then to Rs. 11,500/- p.m. While increasing the rent, tenancy period was also extended till 31st May, 2002. According to Mr. Amitabh Narayan the lease period was extended by exchange of letters. That vide letter dated 1.6.92 respondent offered to renew the lease agreement till 31.5.2002 subject to increase of monthly rent for the first five years at Rs. 10,000/- and for the remaining five years till 31st May, 2002 @ Rs. 11,500/- i.e. 15% increase in rent. The appellant accepted the offer vide its letter dated 3.7.92. Therefore, according to Mr. Amitabh Narayan it is only after 31st May, 2002 that the tenancy could be terminated. According to him the respondent/plaintiff after having accepted the increase in rent, was estopped from taking any action against the appellant prior to 31st May, 2002. He could only terminate the tenancy during the tenancy period if any breach had been committed by the appellant. But that was not the case of the respondent. Hence, till 31.5.2002 appellant could not have been evicted. To support his arguments he placed heavy reliance on the provisions of Section 53A of the Transfer of Property Act, which is reproduced as under:-

"Section 53A, Part performance.-

Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed Therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

7. Section 53A brings about a bar against enforcement of rights by a Lesser in respect of property of which the lessee has already taken possession. Mr. Amitabh Narayan, relying on these provisions contended that even if there is no registered lease deed or renewed lease deed, it did not affect the rights of the appellant u/s 53A of the Transfer of Property Act. He can always enforce this right under the provision of Section 53A of the Transfer of Property Act. Initially the appellant was paying rent @ Rs. 1/- per sq. ft. which rent was less than Rs. 3,500/- p.m. Had the respondent not offered to renew the lease for another period of 10 years, the appellant would not have increased the rent to Rs. 10,000/- and subsequently to Rs. 11,500/- p.m. In that eventually, appellant would have remained protected by the provisions of Delhi Rent Control Act. It was only to get the lease renewed that appellant increased the rent. Now, after having taken advantage of the increased rent, respondent cannot deny the right of occupation to the appellant till 31st May, 2002. To support his contentions he placed reliance on the following decisions; Banarsi Das and Anr. v. Ali Muhammad and Anr., AIR 1936 Lahore Page 5; Jumman Khan v. Jagannath and Anr. AIR 1939 Oudh 85; Ramchandra Annappa Vs. Subraya Timmaya, ; Lal Behari Sasmal Vs. Kanak Kanti Roy, ; Rajendra Nath Sarkar Vs. Gour Gopal Ghosh and Another, ; Conceicao Antonio Fernandes v. Dr. Arfano De Lovola Patricio Furtado and Anr., AIR 1975 Goa 27 and Technicians Studio Private Ltd. Vs. Smt. Lila Ghosh and Another, .

8. Mr. Amitabh Narayan then contended that in view of the provision of Section 53A of the Transfer of Property Act, it becomes irrelevant whether the original lease deed or the renewed terms conveyed vide letter dated 3.7.92 were

registered or not. Non-registration of the lease deed/or renewed lease deed as required u/s 107 of the Transfer of Property Act has no application to the facts of this case. He, Therefore, contended that though Section 49 of the Registration Act, 1908 requires registration of a document, the effect of which is transferring of the immovable property but the proviso to Section 49 carves out exception. It stipulates that even if the document is not registered it can still be accepted in evidence in a case based on part performance of a contract as stipulated u/s 53A of the Transfer of Property Act. To prove part performance, the non-registration of the document is of no consequences. To support his contentions he relied on the observation of Apex Court in the case of Sheth Maneklal Mansukhbhai Vs. Hormusji Jamshedji Ginwalla and Sons, wherein the Apex Court observed:-

"An agreement of lease creating a present demise but not registered is admissible u/s 49, Registration Act as evidence of part performance."

9. On the strength of this observation and the provisions of Section 53A of Transfer of Property Act and relying on the proviso of Section 49 of the Registration Act, Mr. Amitabh Narayan contended that the impugned judgment cannot be sustained. Tenancy prior to 31st May, 2002 could not be disturbed even if the document on the strength of which he was claiming tenancy and the renewal of tenancy were unregistered.

10. On the other hand Mr. Sudhanshu Batra contended that after the expiry of the initial lease in 1992, no fresh lease deed was executed. Neither the initial lease deed executed in 1972 nor the two letters on which reliance has been placed by the appellant dated 1st June, 1992 and 3rd July, 1992 are registered documents. He further contended that the original lease deed dated 12th April, 1972 was never placed on record by the appellant, Therefore, the terms and conditions contained in the original agreement are not known. Therefore, reliance by the appellant on the letter dated 3rd July, 1992 purporting to be a renewal lease agreement cannot be looked into being unregistered. To support his contention, he placed reliance on the decision of Supreme Court in the case of Delhi Development Authority Vs. Durga Chand Kaushish, to say that even the renewal lease require registration. In the absence of registration as envisaged u/s 107 of the Transfer of Property Act, a lease of immovable property which is more than one year and not registered, its terms cannot be looked into. He also placed reliance on the division bench judgment of this court in the case Uptron Powertronics Ltd. v. Shri G.L. Rawal, 1999 4 AD (Del) 861, and another decision of this court in the case of Kidarsons Industries Pvt. Ltd. v. Allahabad Bank, 1999 4 AD (DEL) 822.

11. After hearing counsel for the parties and perusing the record, we are of the considered view that the Clauses of the lease deed or renewal of deed dated 3.7.1992 cannot be looked into for want of registration. If a document is inadmissible for non-registration, all its terms are inadmissible including the one dealing with the landlord's permission for the renewal of the lease and the increase of the rent. The letter dated 3rd July, 1992 cannot be disassociated from

the initial lease of 1972 purported to have been executed between the erstwhile landlord and the appellant containing the terms and conditions of the tenancy. We are told at the Bar that even the initial lease was not registered, Therefore, the contention of Mr. Sudhanshu Batra, counsel for the respondents that the terms as stipulated in letter dated 3rd July, 1992 cannot be looked into for want of registration appears to be correct. Fazal Ali, J. in Sachindra Mohan Ghose Vs. Ramjash Agarwalla, observed that if a decree purporting to create a lease is inadmissible in evidence for want of registration, none of the terms of the lease can be admitted in evidence and that to use a document for the purpose of proving an important clause in the lease is not using it as a collateral purpose.

12. Admittedly the letters dated 1st June, 1992 and 3rd July, 1992 constitute a lease or at least an agreement to renew the lease falling within the provisions of Section 2(7) of the Indian Registration Act, since the agreement to renew the lease by virtue of these two letters in writing and these having not been registered, no right can be enforced by the appellant on the basis of these two letters. Since the lease in question as per appellant's own showing was for a period of more than one year consequently the provision of Section 107 of the Transfer of Property Act becomes applicable. The terms of unregistered lease cannot be looked into for the purpose of enforcing a right flowing there from.

13. The argument of Mr. Amitabh Narayan is that proviso to Section 49 of the Registration Act protects the appellant to the extent that these unregistered letters can be received in evidence for the purpose of enforcing the right u/s 53A of the Transfer of Property Act. We find no force in this submission. At best the appellant can use this unregistered document for the purpose of proving the nature of possession but it does not create any right in favor of the appellant to continue as tenant for a year or more. The Supreme Court in the case of Rana Vidya Bhushan Singh v. Ratiram, Civil Appeal No. 460 of 1966, decided on 28th January, 1969 21 U.J. (69) (S.C) observed that:-

"A document required by law to be registered, if unregistered, is inadmissible as evidence of a transaction affecting immovable property, but it may be admitted as evidence of collateral facts, or for any collateral purpose, that is for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property.

14. Therefore, a document which requires compulsory registration is not admissible for want of registration to prove the terms of the lease. It is admissible only to prove the character of the possession of the person who holds the property. Therefore, even the proviso to Section 49 of the Registration Act is of no help to the appellant. At best the appellant can prove the nature of his possession but not the terms of the lease. Admittedly creation of lease is not a collateral purpose nor the terms of the lease are collateral within the meaning of Section 49 of the Registration Act as held by Supreme Court in the case of Satish Chand v. Goverdhan Das AIR 1984 SC 413.

15. As already pointed out above, a lease or a renewed lease even though a letter if not registered, its terms cannot be looked into. It has been so held by the Supreme Court in the case of Durga Chand Kaushik (Supra) which observations are reproduced as under:

"A renewal of 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 aspects, it is really a fresh lease."

16. Since it is appellant's own case that period of lease was renewed vide letter dated 3.7.92, Therefore, it required registration as held by the Apex Court in Kidarsons Industries Pvt. Ltd.'s case (Supra). There also the letters were exchanged between the parties to renew or extend the lease subject to increase of rent and Apex Court held it required registration. Since the renewed lease is not registered as required, Therefore such a lease has to be treated as a lease from month to month basis determinable by a statutory notice u/s 106 of the Transfer of Property Act. The letter dated 3rd July, 1992 relied by the appellant renewing the lease up to 31st May, 2002 required registration, having not done so this letter postulating the extension of lease up to 31st May, 2002 which term is not for collateral purpose hence cannot be used nor admissible in evidence for showing creation of lease/renewal lease except for proving the nature of possession.

17. Next contention of Mr. Amitabh Narayan is that the letter dated 3rd July, 1992 can be relied upon u/s 53A of the Transfer of Property Act to prove that in part performance of the contract the rent was increased, and Therefore, the respondent cannot be allowed to commit a breach of this contract by terminating the tenancy prior to 31st May, 2002. Section 53A of the Transfer of Property Act, to our mind, is only available as a defense to the lessee. It does not confer any right on the basis of which the lessee can claim relief against the Lesser. Section 53A of the Transfer of Property Act can be set up as a defense but does not give any right to the lessee on the basis of an unregistered lease. This has been so held by the Privy Council in the case of AIR 1940 1 (Privy Council) .

18. We also find no merits in the arguments of Mr. Amitabh Narayan that because of the contract entered into by the parties vide their letter dated 1.6.92 and 3.7.92, the appellant had been deprived of the protection under Delhi Rent Control Act. This arguments deserve rejection for the simple reason that Amended Delhi Rent Control Act came into force in 1988 thereby providing that if the rent is more than Rs. 3,500/- p.m. then the tenant is not protected under the said Act and in that case Act would not apply to such landlord and tenants. The appellant voluntarily choose to give up the protection of the Delhi Rent Control Act in 1992 when he increased the rent to Rs. 10,000/- per month and thereafter to Rs. 11,500/- p.m. Appellant, now, cannot turn around to say that he was misled in increasing the rent in order to deprive him the protection of the Delhi Rent Control Act. The appellant ought to have known that by paying the rent at the rate of Rs. 11,500/- p.m., it will come out of the protection of the Delhi Rent

Control Act. Hence, at this stage appellant cannot be allowed to urge that he has been deprived of the protection of the Delhi Rent Control Act which he did voluntarily. The mere fact that enhanced payment was made and accepted in terms of the unregistered letter dated 3rd July, 1992, to our mind, does not give rise to a right of tenancy for more than a year in favor of the appellant.

19. For the reasons stated above, we find no merit in the appeal. The same is accordingly dismissed but with no order as to cost.