

(1987) 01 MP CK 0005
In the Madhya Pradesh High Court
Case No : First Appeal No. 78 of 1979

M.P.S.R.T. Corporation

APPELLANT

Vs

Indore Divn. Bus Association

RESPONDENT

Date of Decision : 28-01-1987

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 13(6)
Transfer of Property Act, 1882 — Section 106, 108(9)

Citation : (1987) 01 MP CK 0005

Hon'ble Judges : R.K. Varma, J;G.G. Sohani, J

Bench : Division Bench

Advocate : H.M. Zelawat, for the Appellant; R.C. Mukati, for the Respondent

Final Decision : Allowed

Judgement

R.K. Varma, J.—This is an appeal IN filed by the plaintiff-Corporation against the judgment and decree dated 25th April, 1979 passed by the VII Additional District Judge, Indore in Civil Suit No. 20-A of 1977, whereby the learned trial Court has disallowed major portion of the suit claim of arrears of rent and mesne profits in respect of the suit premises.

2. It is not disputed that the defendant-Association had taken the premises of the old bus stand known as "Ahilya Bus Stand" on lease at the rate of Rs. 1800/- per month from 1-7-1973 and had paid rent till Sept. 1974 and had initially deposited one month's advance rent as security.

3. The plaintiff-appellant filed the suit on 1-5-1976 for eviction and arrears of rent alleging that the defendant had taken the said Bus Stand on lease from the plaintiff and the defendant did not pay the rent for the period after Sept. 1974 in spite of notices dated 20-12-1974, 1-1-1975 and 3-4-1975. The plaintiff claimed ejectment and arrears of rent and mesne profits amounting to Rs. 65,800/-. The defendant-Association in their written statement filed on 13-4-1977, stated that they had already vacated the suit premises on 31-12-1974 pursuant to a notice

dated 16-12-1974 (Ex. D-1) allegedly sent by them to the Depot Manager of the plaintiff-Corporation. After filing of the written statement by the defendant alleging that they had left possession of the suit premises, the plaintiff has taken possession of the premises. As such, the claim for eviction did not survive. However, the only dispute that remained to be decided was regarding the arrears of rent and mesne profits due to the plaintiff from the defendant in respect of the suit-premises.

4. For determining the amount due from the defendant it was necessary for the trial Court to resolve the controversy as to when the defendant restored possession of the suit premises to the plaintiff. According to the plaintiff-Corporation, it acquired possession of the suit premises only after knowing from the defendant's written statement dated 13-4-1977 that they had vacated the suit premises but according to the defendant-Association the suit premises were vacated by them on 31-12-1974 pursuant to their notice dated 16-12-1974 (Ex. D-1) to the plaintiff. The crucial point of controversy which arose on the pleadings of the party was as to on what date the defendant surrendered the possession of the suit premises to the plaintiff-landlord.

5. The learned trial Court has given a finding that the defendant had given up the possession of the leased premises (Bus-stand) on 1-1-1975 and therefore, the plaintiff is not entitled to the rent of mesne profits thereafter. The trial Court accordingly decreed the claim of the plaintiff for an amount of Rs. 36.00/-only and dismissed the suit for the remaining amount. Being aggrieved by the judgment and decree of the learned trial Court the plaintiff-appellant-Corporation has filed this appeal. The defendant-respondent has, however, filed a cross-object ion alleging excess amount paid to plaintiff-appellant and claiming refund.

6. In this appeal the plaintiff-appellant has challenged the finding of the learned trial Court as to the delivery of possession of the suit premises and accordingly the amount of the rent and mesne profits payable to them by the defendant. But before the arguments on merits, the learned counsel for the defendant-respondent has raised a preliminary objection that this appeal is barred by limitation by six days. In reply the learned counsel for the appellant has submitted that it was due to counsel's mistake in calculation of the period of limitation. The certified copy was ready on 12-6-1979 which is also a date on which the applicant was told to appear. The certified copy, however, was delivered on 18-6-1979. It is submitted that the counsel for the appellant reckoned the time spent in copying with reference to the date of delivery of the certified copy and failed to notice that the applicant was told to appear on 12-6-1979 which date was also mentioned as the dale on which the copy was ready. Learned counsel relying on a decision in Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, , submitted that the mistake in calculating the period of limitation can be a sufficient cause for condonation of delay u/s 5 of the Limitation Act, as is the situation in the present case. In the circumstances, we are of the opinion that the appellant's application I. A.

2180/79 u/s 5 of the Limitation Act must be allowed. This appeal is accordingly treated as filed within time.

7. Coming to the merits of the case the learned counsel for the appellant has contended that the learned trial Court was wrong in holding that the plaintiff had come in possession of the suit premises with effect from 1-1-1975. It is his submission that the defendant's application under Order 6, Rule 5 of the CPC dated 30-8-1976 and the reply dated 28-1-1977 to the plaintiffs application u/s 13(6) of the M. P. Accommodation Control Act, which are on record, do not disclose any contention of the defendant disputing the amount of rent, on the ground that they had vacated the premises with effect from 1-1-1975. Learned counsel, therefore, contends that had the defendant vacated the premises on 1-1-1975, as pleaded by them later in the written statement dated 13-4-1977, they would not have missed to mention that fact and would have certainly raised the contention that they were not liable to pay the arrears as claimed by the plaintiff-Corporation in its application u/s 13(6) aforesaid.

8. Learned counsel for the plaintiff-appellant has further submitted that it has not been proved by the defendants that the plaintiff had come in possession of the suit premises before the filing of the written statement of the defendant, which disclosed that the defendant had left the premises. Learned counsel for the appellant has also submitted that there is no valid termination of lease by the defendant by their alleged notice dated 16-12-1974 (Ex. D-I) the receipt of which has also been denied by the plaintiff. The notice Ex. D-I is said to have been posted under Certificate of posting to the Depot Manager of the plaintiff-Corporation. There is, therefore, a presumption about posting of a letter by the defendant. But the receipt of that letter has been denied by the plaintiff and the defendant has neither proved the despatch of the alleged notice Ex. D-I from their despatch Registers nor its receipt is proved from the despatch Register of the plaintiff who have denied the receipt of Ex. D-1. In the circumstances, according to the learned counsel for the appellant the learned trial Court was not right in presuming receipt of the notice Ex. D-I by the plaintiff.

9. Furthermore, for a valid termination of the lease by the lessee 15 days" notice expiring with the end of a month of tenancy is required to be given by the lessee u/s 106 of the Transfer of Property Act. In the instant cases it is pointed out that Ex. D-I which is dated 16-12-1974 directs termination of the tenancy with effect from 31-12-1974. As such it cannot be regarded as 15 days" notice from the date of receipt of Ex. D-I, even assuming that the same had been despatched by the defendant and that the plaintiff received the same. The notice being in contravention of the legal requirements u/s 106 of the Transfer of Property Act cannot validly terminate the lease of the suit premises. Besides there is no reliable oral evidence on record to show that the plaintiff was put in possession or that the defendant tried to restore possession of the suit premises to the plaintiff. In the circumstances, it cannot be held proved that the possession of the suit premises was delivered by the defendant to the plaintiff.

10. On the other hand, there is evidence on record to indicate that the defendant continued to be in possession of the suit premises until filing of the written statement. There is evidence to show that the public telephone booth which was affixed to the suit premises on the application of the defendant continued to be there long after 31-12-1974 and the payments were being made on behalf of the defendant to make up the minimum amount necessary for continued use of the public telephone on the premises leased to the defendant. The continued payment of electric bills and water charges in the name of the defendant in respect of the suit premises beyond 31-12-1974 as per the evidence on record further supports the plaintiff's case that the defendant continued to be in possession beyond 31-12-1974 and shows that the defendant's case of having vacated the suit premises on 31-12-1974 is not true.

11. As per requirement of Section 108(q) of the Transfer of Property Act, on the determination of the lease the lessee is bound to put the less or into possession of the property. This obviously not having been done, in view, of the evidence on record, the defendant cannot be absolved of their liability to pay the arrears of rent and mesne profits as has been claimed in the suit by the plaintiff. The learned counsel for the respondent-Association, however, has urged that the instant case is one of determination of lease by implied surrender u/s 111(1) of the Transfer of Property Act. In our opinion, the facts of the case do not warrant inference of implied surrender and the provision referred to by the learned counsel is wholly inapplicable to the present case.

12. Having heard the learned counsel for the parties and having considered the evidence on record and the judgment passed by the learned trial Court we are of the opinion that the defendant Association has failed to prove determination of the lease by any valid notice and it has also not been proved that the possession of the suit premises was restored to the plaintiff or that the plaintiff had come in possession of the same at any time before the filing of the written statement by the defendant-Association.

13. In view of the discussion aforesaid, this appeal succeeds and is hereby allowed with costs, throughout. The cross-objection filed by the defendant-respondent is, however, dismissed. The judgment and decree passed by the learned trial Court are modified. The plaintiff-appellant is held entitled to recover the rent and mesne profits at the rate of Rs. 1800/- per month from the defendant-Association for the entire period from 1-10-1974 to 2-5-1977 when the plaintiff appellant came in possession of the suit premises pursuant to the information received from the written statement dated 13-4-1977 that the defendant had vacated the suit premises. The amount of Rs. 1800/- being the one month's advance rent deposited as security by the defendant shall be deducted from the total amount of rent and mesne profits, payable for the period from 1-10-1974 to 2-5-1977 at the rate of Rs. 1800/- per month as aforesaid. Counsel's fee as per Schedule, if certified.