
(2012) 05 DEL CK 0487
In the Delhi High Court
Case No : LPA No.290 of 2012

M/s Dunlop India Ltd.

APPELLANT

Vs

Bank of Baroda and Another

RESPONDENT

Date of Decision : 29-05-2012

Acts Referred:

Citation : (2012) 05 DEL CK 0487

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : C. Mukund, Mr. Ashok Jain and Mr. Ravi, for the Appellant; Amit Singh, with Mr. Arun Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This Intra-Court appeal impugns the orders dated 23rd December, 2011 and 10th April, 2012 of the learned Single Judge, dispensing issuance of notice of W.P.(C) No. 9013/2011 preferred by the appellant to the respondent no.2 Estate Officer of the respondent no.1 Bank and ultimately dismissing the writ petition. The said writ petition was preferred by the appellant impugning the order dated 14th December, 2011 of the District Judge exercising power as an Appellate Authority under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, dismissing the appeal preferred by the appellant against the order dated 20th July, 2010 of the respondent no.2 Estate Officer of the respondent no.1 Bank, of eviction of the appellant from premises ad-measuring 1382.26 sq. ft. on the 7th Floor of Bank of Baroda Building, 16, Parliament Street, New Delhi. We had while issuing notice of the appeal, on the application of the appellant for interim relief, stayed the dispossession of the appellant subject to deposit by the appellant in this Court of the entire amount due as per the order of the respondent no.2 Estate Officer. Notwithstanding the fact that the appellant did not make any deposit in this Court and is in arrears, the respondent no.1 Bank, owing to the pendency of this appeal has not dispossessed the appellant from the premises.

2. It is not in dispute that pursuant to the recommendation of the Board for Industrial and Financial Reconstruction (BIFR), the proceedings for winding up of the appellant are pending before the High Court of Calcutta. This appeal has not been preferred by the Official Liquidator and it appears that ex-management of the appellant is pursuing this appeal. Though the authority of the said ex-management to pursue this appeal is doubtful but we have without entering into the said technicality heard the counsels at length on merits.

3. The position which emerges is that the appellant is in possession of the said premises since the year 1971 and was last paying rent @ Rs.23,068.08p per month i.e. @ Rs.16 per sq. ft. The appellant stopped paying the said rent from the year 1998. Admittedly there was no registered lease of the said premises in favour of the appellant. As on 30th June, 2006 a sum of Rs.22,14,535.68p was due from the appellant towards rent. The respondent after serving the appellant with a notice dated 23rd May, 2006 of termination of lease (and the service whereof on the appellant is not disputed, the appellant having even replied to the same) instituted proceedings under the PP Act for ejectment and for recovery of arrears of rent, service charges and damages for use and occupation. The said proceedings continued before the respondent no.2 Estate Officer from the year 2006 till the order dated 20th July, 2010 (supra) of the respondent no.2 Estate Officer. The respondent no.2 Estate Officer though held the appellant liable for ejectment and for arrears at the rate of last paid rent, dismissed the claim of the respondent no.1 Bank for damages for use and occupation for the reason of the respondent no.1 Bank having failed to prove the same.

4. The learned District Judge dismissed the statutory appeal preferred by the appellant holding that the tenancy of the appellant having been determined, the appellant had no right to continue in the premises. Aggrieved therefrom, writ petition aforesaid was preferred.

5. The learned Single Judge vide order dated 23rd December, 2011 issued notice of the writ petition to the respondent no.1 Bank only and dispensed with the notice of the writ petition to the respondent no.2 Estate Officer who had since retired. The learned Single Judge ultimately vide order dated 10th April, 2012 dismissed the appeal holding:-

- a. that the tenancy of the appellant having been determined, the question whether the respondent no.1 Bank had bonafide requirement for the premises or not was irrelevant;
- b. that there were no infirmity in the Estate Officer denying right of cross examination to the appellant; and,
- c. that no case of bias of the Estate Officer was made out.

6. The counsel for the appellant before us has urged only two grounds i.e. of bias of the respondent no.2 Estate Officer against the appellant and of the proceedings before the respondent no.2 Estate Officer being vitiated for denial of

right of cross examination. Much reliance is placed on New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another, on the aspect of bias. Reliance is also placed on A.K. Kraipak and Others Vs. Union of India (UOI) and Others, and on Shri N.K. Sareen v. Punjab National Bank ILR (1995) 1 Delhi 822.

7. The counsel for the respondent no.1 Bank has contended, that this appeal is in the nature of a third appeal against the order of the respondent no.2 Estate Officer; that the District Judge exercising powers of appellate Authority and the learned Single Judge exercising powers of judicial review have rendered concurrent findings in favour of the respondent no.1 Bank and against the appellant; that no question of law arises; even bias is a matter of fact and the District Judge and the learned Single Judge having held no case of bias to have been made out, the said question cannot be permitted to be agitated in this appeal.

8. The counsel for the respondent no.1 Bank has further contended that the argument of the denial of opportunity of cross examination is also misconceived. It is contended that -

- (i) the relationship of landlord and tenant was admitted;
- (ii) the factum that the appellant was in arrears of rent was admitted;
- (iii) the service of notice of termination of tenancy is admitted;
- (iv) no ground of invalidity of the notice of termination is raised.

It is contended that in the circumstances there was no disputed question of fact to be adjudicated, for which a right of cross examination had to be given to the appellant. It is argued that even the Courts, leave alone Estate Officers, in such circumstances/situations pass decrees for eviction under Order 12 Rule 6 of the CPC. It is further urged that huge public monies are held up with no possibility of recovery from the appellant and allowing the appellant to continue in possession would only cause further loss of public monies.

9. We may take judicial notice of the fact that the premises aforesaid are situated in the prime commercial district of the city of Delhi and would for the last over 10 years have had letting value at least of Rs.200/- per sq. ft. per month.

10. We find much merit in the contentions of the counsel for the respondent no.1 Bank. Merely because the respondent no.1 Bank had at one time also pleaded its requirement for the premises and to determine/adjudicate which requirement cross examination of witnesses of Bank may be necessary, would not justify interference for non-grant of such right of cross examination when the order of eviction is otherwise sustainable in law and does not rest on the claim of the Bank of requirement of premises. The counsel for the appellant has not been able to dispute the service of the notice of termination of tenancy and has also not argued on the validity thereof. The Supreme Court in K.L. Tripathi v. State

Bank of India (1984) 1 SCC 43 though held right of cross examination to be part of the concept of fair play in action but only where the testimony is in doubt. It was held where there is no lis regarding the facts, there is no requirement of cross examination to be fulfilled to justify fair play in action. It was further held "when on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement". Once it is found that the tenancy of the appellant was monthly and has been duly determined, the appellant became an unauthorized occupant of the public premises belonging to the respondent no.1 Bank and no error can be found in the approach of the respondent no.2 Estate Officer. Merely because the Bank had claimed relief of eviction on more than one ground did not compel the Bank to prove all the grounds when it found itself entitled to succeed on one ground, the facts in support whereof were undisputed.

11. In the circumstances aforesaid, we do not feel the need to discuss in detail the arguments of bias raised by the appellant. The appellant undoubtedly has overstayed in the public premises. We may notice that it is the case of the respondent no.1 Bank that the appellant is not even using the premises since the year 1998 and the same are lying locked. Rather, from the respondent no.2 Estate Officer, in the absence of any evidence in support of the claim of the respondent no.1 Bank of damages for use and occupation, dismissing the same, is found to have acted in a fair manner.

We even otherwise do not find any case of bias having been established. Merely because the Estate Officer pronounced the order soon after conclusion of hearing or was transferred immediately thereafter or even if was already under transfer would not make out a case of bias. There could be no penalty for efficiency. It is also not as if the proceedings under the PP Act were concluded in a jiffy. The same remained pending for over four years.

Such an erstwhile tenant does not deserve any sympathy from any Court of law. There is no merit in the appeal, the same is dismissed.

We refrain from imposing costs on the appellant.