(2012) 10 DEL CK 0314

In the Delhi High Court

Case No : CS (OS) No. 1012 of 1996

M/s. Priya Exhibitors (P) Ltd. APPELLANT

Vs

Oriental Bank of Commerce RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Court Fees Act, 1870 — Section 7(3)(e)
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2

Citation : (2012) 10 DEL CK 0314

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sanjay Poddar with Ms. Shobhana Takiar, for the Appellant; V. Kanagaraj, With Mr. Vipin Jai, for the Respondent

Judgement

Valmiki J Mehta, J.—The subject suit for possession and mesne profits was filed by the plaintiff/landlord against the defendant/bank/tenant with respect to the suit premises which are of 3000 sq.ft. area in the first floor of the premises bearing no. 61, Basant Lok Community Centre, Vasant Vihar, New Delhi-57. Before proceeding any further, I must state that so far as the relief of possession is concerned, the suit by a detailed judgment was decreed on 27.11.1998. At that stage various contentions as raised by the defendant, including of the tenancy continuing on account of payment of rent, were considered, and the same were held against the defendant. The judgment dated 27.11.1998 has become final as it was not appealed against. Once the judgment dated 27.11.1998 is final, the issues which have been addressed in that judgment, have also become final. The judgment dated 27.11.1998 holds that the defendant was not in authorized occupation from 9.1.1996. I have therefore to calculate mesne profits from 9.1.1996 till 1.2.2000, the date on which possession was admittedly given by the defendant to the plaintiff. The following issues were framed in this suit on 25.7.1997:-

1. Whether the plaint has been signed and verified and suit instituted by an

authorized person on behalf of the plaintiff. OPP

2. Whether the occupation of the suit property by the defendants became unauthorized w.e.f. 10.1.94. OPP

3. Whether the plaintiff is entitled to mesne profits upto 9.1.96 @ 60,000/- per month and thereafter @ Rs. 8,000/- per day, as alleged. OPP

4. Whether the plaintiff is entitled to recover possession of the suit property from the defendants. OPP

5. Whether no legal notice was served on the defendants, as alleged. OPD.

6. Whether the suit has not been properly valued for the purposes of payment of court fee and jurisdiction. OPD.

7. Whether the suit is barred by limitation. OPD.

8. Whether the suit property is the public premises within the meaning of Section 2 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and if so, its effect. OPD.

9. Relief.

2. All the aforesaid issues, except issue nos. 3, 6, 7 and 8, have been held against the defendant in the judgment dated 27.11.1998 and therefore I do not have to decide the same.

3. Let me now take up issue nos. 3, 6, 7 and 8 for decision.

Issue no. 7

4. This issue is as to whether the suit is barred by the limitation. The suit has been filed on 23.4.1996. The tenancy was terminated on 9.1.1996, and therefore, I fail to understand as to how the suit can be barred by limitation. This issue is decided in favour of the plaintiff and against the defendant.

Issue no. 8

5. This issue is as to whether the property is public premises and therefore governed by the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. I really have failed to understand in fact why at all this issue has been framed because the plaintiff is an admitted owner/landlord of the suit property and plaintiff is not the State or a Public Undertaking or Government Company etc, and the Public Premises Act applies only to premises belonging to Government and its companies etc but not to private persons who do not fall under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. This issue is accordingly decided against the defendant and in favour of the plaintiff.

Issue no. 6

6. The issue is as to whether the suit has not been properly valued for the

purpose of the court fee and jurisdiction. As per the plaint, the plaintiff has claimed the reliefs of possession, mesne profits and damages. So far as the relief of possession is concerned, since this is a suit for possession by the landlord against the tenant, the suit has to be valued for the purposes of jurisdiction and court fee at 12 months'' rent in terms of Section 7(3)(e) of the Court Fees Act, 1870. The plaintiff has paid court fees on the 12 months'' period rent. The suit is therefore properly valued for the relief of possession and court fees have accordingly been paid. So far as the relief for the purpose of mense profits and damages are concerned, the plaintiff has valued the suit at the rate of damages claimed by it and the total of which damages and mesne profits has been valued at Rs. 20,08,000/- and on which court fees have been properly paid. I therefore hold issue no. 6 in favour of the plaintiff and against the defendant and hold that the suit has been properly valued for the purpose of court fees and jurisdiction and appropriate court fee paid.

Issue no. 3

7. That takes me to the main and real issue in the case as to what mesne profits the plaintiff is entitled to from the defendant. As already stated above, I have to decide the mesne profits payable for the period from 9.1.1996 to 1.2.2000. The plaintiff has filed on record and proved a lease deed dated 5.6.1996, Ex. PW 3/1 and which is with respect to the ground floor portion of the property situated at 5, Community Centre, Basant Lok, Vasant Vihar, New Delhi that is very much in the same area where the suit premises are located and which is also in the Basant Lok Community Centre, Vasant Vihar, New Delhi. In terms of Ex. PW3/1, the rate of rent is Rs. 1,50,000/- for 727 sq.ft. i.e. about Rs. 206/- per sq.ft. This lease deed is dated 5.6.1996, and is therefore relevant to determine the rate of mesne profits from 9.1.1996 to 1.2.2000.

8. Considering that the suit premises are situated on the first floor, the rate of rent of the first floor has to be lesser than rate of rent of the premises which are subject matter of the Ex. PW3/1 which are on the ground floor. The ground floor can be used as a showroom and which can fetch more rent, whereas, the suit premises situated on the first floor can only be used for office-cum-commercial purposes. Accordingly, I am of the opinion that the plaintiff should be entitled to 50% of the rate as proved through Ex. PW3/1 i.e. Rs. 103/- per sq.ft. I have also factored in the issue that the mesne profits are payable from January, 1996 and the document, Ex. PW3/1 is of June, 1996. The plaintiff will also be entitled to an increase of 15% every year from 9.1.1997 till 1.2.2000, the increase being a cumulative increase i.e. the increase will be 15% increase on the rate of rent for the previous year in terms of the judgment in the case of M.C. Agrawal HUF vs. Sahara India & Ors., 2011 (183) DLT 105. Plaintiff will also be entitled to interest at the rate of 12% per annum simple on the arrears of the mesne profits till the time the payment is made to the plaintiff in view of the judgment in the case of Indian Oil Corporation Vs. Saroj Baweja (2005) 12 SCC 298.

9. Learned senior counsel for the defendant argued that the defendant has made

various payments to the plaintiff during the pendency of the suit, and also made payments to the Municipal Corporation of Delhi with respect to claim made by the Municipal Corporation of Delhi with respect to unpaid house tax on the property. Accordingly, it is observed that the defendant will be entitled to adjustments with respect to all the amounts which it has paid to the plaintiff from 9.1.1996 to 1.2.2000 including the amounts the defendant has paid to the Municipal Corporation of Delhi in discharge of the house tax liability of the plaintiff. Of course, I must clarify that if there are any disputed issues on this aspect, then such aspect will be examined in the execution proceedings, if any.

Relief

In view of the above, suit of the plaintiff is decreed against the defendant for mesne profits at the rate of Rs. 103/- per sq.ft. per month from 9.1.1996 to 8.1.1997. The rate of mesne profits from 9.1.1997 to 8.1.1998 will be 15% more than the rent payable from 9.1.1996 to 8.1.1997, and for the period from 9.1.1998 to 8.1.1999 the rate of mesne profits will be 15% more than as payable for 9.1.1997 to 8.1.1998, and so on till 1.2.2000. The plaintiff will be entitled to interest at the rate of 12% per annum simple on the arrears of mesne profits, making it clear that before calculating the arrears of mesne profits the amounts which the defendant has paid to the plaintiff or to the MCD legally on behalf of the plaintiff, then such amounts will be reduced from the total amounts payable under today''s judgment, and interest will only be payable on the balance amount payable. The plaintiff will also be entitled to costs in terms of the Rules of this Court. Decree sheet be prepared on the plaintiff paying the necessary court fee with respect to the mesne profits.

