

(2002) 07 SC CK 0019

In the Supreme Court Of India

Case No : C.A. No.-004389-004389 / 2002

Naveen Chand and Another

APPELLANT

Vs

Nagarjuna Travels and Hotels Pvt. Ltd.

RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : AIR 2002 SC 2870 : (2002) AIRSCW 3265 : (2002) 5 ALD 23 : (2002) 4 ALLMR 255 : (2002) 5 ALT 1 : (2002) 6 JT 70 : (2002) 3 MLJ 176 : (2002) 4 RLW 600 : (2002) 5 SCALE 482 : (2002) 6 SCC 331 : (2002) 5 Supreme 193 : (2002) 2 UJ 1161

Hon'ble Judges : Shivaraj V. Patil, J;D. P. Mohapatra, J

Bench : Division Bench

Advocate : P.V. Kapur, Krishna Kumar and Jeevesh Nagrath, for the Appellant; P.P. Rao D. Rama Krishna Reddy and D. Bharathi Reddy, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—Leave granted.

2. This appeal, filed by the defendants of O.S. No. 778 of 1996 on the file of the City Civil Court, Hyderabad, is directed against the judgment of the High Court of Andhra Pradesh in City Civil Court Appeal (CCCA) Nos. 99 and 100 of 1999 dismissing the appeal filed by the appellants and confirming the judgment/decreed passed by the Trial Court. The dispute raised in the case relates to eviction of the tenants from the premises described as "Central Studio", Door No. 3-6-356/8, Basheer Bagh Road, Hyderabad and Door No. 119/A, WhiteHall, Sardar Patel Road, Hyderabad. The appellants, who were travelers of the "Central Studio", were tenants of the premises under the respondent Nagarjuna Travels and Hotels Pvt. Ltd., which is the owner of the plot.

3. The respondent filed the aforementioned suit against the appellants seeking the decree of eviction from the suit premises. In the suit the following reliefs were sought by the plaintiff:-

"a) Plaintiff company be put in possession of the suit premises by evicting the defendants therefrom.

b) Arrears of rent i.e. 2,600/- p.m. for the months of September, 1995 and October, 1995 be awarded from the defendants jointly and severally.

c) An amount of Rs. 2,40,000/- be awarded towards compensation and damages for the use and occupation of the suit premises for the period between 1.11.1995 and 30.4.1996 from the defendants jointly and severally.

d) Pendente lite and post decretal compensation/damages be awarded from the defendants jointly and severally at the rate of Rs. 40,000/- per month for the use and occupation of the suit premises..."

The case of the plaintiff was that in pursuance of the registered lease dated 3.8.1970 executed between the parties, the suit premises were given on lease by the plaintiff to the defendants for a period of 25 years on payment of rent of Rs. 1300/- p.m. with effect from 1.8.1970. The said period of 25 years expired on 1.8.1995. Thereafter on 10th October, 1995 the plaintiff issued a notice to the defendants of termination of the lease by given 15 days notice expiring on 31st October, 1995. The notice was stated to be issued u/s 106 of the Transfer of Property Act. The defendants were required to handover vacant possession of the premises on expiry of the notice period. Since the defendants did not vacate the premises in compliance with the notice and continued to remain in possession of the premises, the plaintiff filed the suit seeking reliefs noted earlier.

4. The defendants contested the suit. Their case, shortly stated, was that it was stipulated in the lease deed that on expiry of the period of lease in the first instance (25 years) the lessee shall have the right of renewal; under the said covenant the defendants exercised the right of renewal, paid rent for the months of August and September, 1995 and continued to remain in possession of the property; though the plaintiff initially accepted the rent but subsequently declined to do so. The defendants also questioned the jurisdiction of the Civil Court to entertain the suit and contended that the proceeding for eviction could be filed only before the Rent Controller since the proportionate rent payable by them, for the premises after the area was reduced on a portion of it being taken over for the purpose of the widening of the road, was less than Rs. 1000/-.

5. The trial Court on the pleadings of the parties framed several issues including the issue whether the plea of the defendants that there was a renewal of lease for a further period of 25 years on the same terms and conditions is true and whether the defendants are entitled to make such a claim under law? And whether the Court has jurisdiction to try the suit in view of the plea raised by the defendants vide Andhra Pradesh Building, Lease, Rent and Eviction Control Act?

6. It is relevant to state here that the appellants also filed a suit against the respondents, O.S. No. 461/98 for issuance of a permanent injunction against the defendants restraining them from proceeding to interfere in their peaceful

possession and enjoyment of the suit property. Therein they had reiterated the case set up by them in the written statement in the suit filed by the respondents. They claimed to be in possession of the suit property in exercise of the option of renewal of lease as stipulated in the registered document.

7. In the written statement filed by the respondents in the said suit they also reiterated the stand taken in the suit filed by them. They asserted that there was no right of renewal vested in the lessee under the lease deed, and after the expiry of the lease period they had no right to remain in possession of the property, particularly after the notice of termination of lease issued by the landlord was received by them.

8. In the said suit one of the issues framed by the Trial Court was whether the plaintiff is entitled for the relief of permanent injunction as prayed for? Both the suits were tried together with consent of the counsel appearing for the parties and disposed of by the Trial Court in a common judgment. The trial Court held *inter alia* that the suit was maintainable in Civil Court; that the defendants were not entitled for renewal of the lease for a like period on the same terms and conditions; that the defendants failed to establish the entitlement of renewal; and that the plaintiff had every right to issue termination of notice. The Trial Court summed up its findings in these words:

"Therefore, on a careful perusal of evidence adduced by the plaintiff together with the documents, I am of the opinion that defendants are not entitled for counter claim as sought for. On the other hand, the plaintiff is entitled for the direction directing the defendants to be evicted from the schedule premises....."

Regarding the stand taken by the defendants that there was a reduction of the area in their occupation, the trial Court held that from 1.11.1995 to 13.10.1998 the defendants were in occupation of 2734 sq. ft. and subsequently they were in occupation of 2008 sq. ft. On the plaintiff's claim of damages for use and occupation of the premises, the trial Court was of the opinion that a sum of Rs. 20,000/- will meet the ends of justice and accordingly awarded Rs. 20,000/- as damages for the period 1.11.1995 to 30.4.1996, i.e. the period from the date of filing the suit till the date of delivery of possession. Feeling aggrieved by the judgment of the trial Court the defendants filed CCA Nos. 99 and 100/99 before the High Court assailing the judgment. The High Court, on consideration of the case of the parties, confirmed the judgment/decreed passed by the trial Court and dismissed the suit. Hence, the appeal by the defendants.

9. The sole contention raised by Shri P.V. Kapur, learned senior counsel appearing for the appellants is that in view of the renewal clause in the lease deed, according to which the lessees is having the right of renewal, and lessees having exercised that option, is evident from their conduct and the Courts below erred in passing the decree of eviction.

10. Per Contra, Shri P.P. Rao, learned senior counsel for the respondent, contended that the renewal clause in the lease deed is vague and unspecific and,

therefore, not binding on the parties. According to Shri Rao, the Courts below rightly did not enforce the renewal clause and rightly decreed the suit for eviction of the lessees. Shri Rao contended that though it is stated in the lease deed that the period of lease shall be 25 years in the first instance with the right of renewal as hereinafter as set out. Nothing is set out in the document regarding the conditions on which the renewal will be given effect to; even the rate of rent and the period of renewal are not specified. In the circumstances, Shri Rao submitted, the renewal clause cannot be given effect to.

11. In view of rival contentions raised by the learned counsel for the parties the question that arises for consideration is whether the covenant for renewal of the lease was valid and enforceable? If the question is answered in the affirmative then the suit is liable to be dismissed; if on the other hand the question is answered in the negative then the suit is to be decreed.

12. Since determination of the question formulated turns mostly on the interpretation of the relevant clause in the lease deed, it will be convenient to quote the clause in extenso:

"1. In pursuance of the said arrangement and in consideration of the rent hereby reserved the Lessor hereby grants and demises by way of Lease the portions of the premises described in the schedule attached hereto and delineated in the plan attached hereto for a period of 25 years in the first instance with the right of renewal as hereinafter set out. The initial period of the Lease shall commence from 1-8-1970.

The Lessee shall pay the rent at the rate of Rs. 650/- per month for the first 5 years and Rs. 850/- per month for the subsequent period of 5 years; Rs. 1,050/- per month for the third period of 5 years and Rs. 1,300/- per month for the remaining period of 10 years.

The aforesaid rent and the aforesaid rates shall be paid by the Lessee on or before the 10th of every succeeding month at the office or at the premises of the Lessor or on such other place as the Lessor may appoint on his behalf from time to time."

From the above noted covenant in the lease deed it is clear that the lease was granted for a period of 25 years in the first instance with the right of renewal as hereinafter set out. Though the right of renewal is mentioned in the clause there is no mention about the terms and conditions of renewal either in the clause quoted above or elsewhere in the document. On a fair reading of the document it appears that the right of renewal stated therein is shrouded in uncertainty and vagueness. The renewal clause in a lease deed is an important term of the agreement. Ordinarily the Court should be reluctant to ignore such a term of the case unless on a fair reading and reasonable construction no meaning can be attached to it. Since the renewal clause is not clear and specific regarding the terms of renewal the Court is to ascertain the intention of the parties from the materials on record. As noted earlier, the lease deed read as a whole, does not

indicate the manner in which the right or renewal is to be exercised by the parties and the terms and conditions of such renewal. It is not even stated in the document that the renewal will be subject to terms and conditions to be decided by the parties by mutual discussion or according to any other procedure. There is no indication whether such discussion will at all be held or not. Renewal being an important condition of lease, could not have been dealt with in such careless and slip-shot manner and would not have been left in such vague and uncertain condition if the parties were serious about the renewal of the lease. On appreciation of the evidence the Courts below having not believed the case of the defendants that some verbal requests for renewal of the lease were made by them to the plaintiff after expiry of the period of lease, the Courts have found that no attempt was made by the lessees to suggest the terms and conditions for renewal of the lease particularly the rent to be paid by them except offering the rent for two months at the old rate. In such circumstances, if the Courts below have found that the lessees had no enforceable right of renewal under the document and indeed had not taken any step for execution by any document on renewal of the lease, no exception can be taken to such findings. No fixed principle or straight-jacket formula can be laid down regarding the question whether the condition of renewal in the lease which is vague and uncertain should be enforced. The question is to be judged on the facts and circumstances of each case. In the case in hand, the lease is in respect of premises which was situated in a busy commercial center of the city of Hyderabad and lease of the property had been taken and was being used for commercial purposes. In such a case it is difficult to accept that the parties had intended that the lessees can unilaterally exercise the right of renewal without the terms and conditions of renewal being settled between the parties. At the cost of repetition it may be stated here that the lessees (appellants herein) had made no attempt to get the terms and conditions of renewal of the lease fixed by mutual discussions with the lessor - respondent herein. So far as the lessor is concerned it had made its intention clear by sending the notice of termination of the lease.

13. On consideration of the entire matter, we are of the view that the judgment of the High Court confirming the findings and the decision of the trial Court decreeing the suit for eviction, does not call for interference. Accordingly, the appeal is dismissed, but in the circumstances of the case without any order for costs.