

(2000) 06 AP CK 0049

In the Andhra Pradesh High Court

Case No : CCCA No's. 99 and 100 of 1999

Naveenchand and another

APPELLANT

Vs

Nagarjuna Travels and Hotels (P) Ltd., Basheerbagh
Hyderabad

RESPONDENT

Date of Decision : 07-06-2000

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 26
Civil Procedure Code, 1908 (CPC) — Section 9
Transfer of Property Act, 1882 — Section 10, 106, 107, 110, 116

Citation : (2000) 4 ALD 293 : (2000) 4 ALT 56

Hon'ble Judges : N.Y. Hanumanthappa, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : Mr. Vilas V. Afzulpukar and Mr. Mahammad Ali, for the Appellant;

Judgement

A. Gopal Reddy, J.—These two appeals are directed against the common judgment and decree dated 2-4-1999 rendered in OS No.778 of 1996 and OS No.461 of 1998 on the file of learned IV Senior Civil Judge, City Civil Court, Hyderabad.

2. The defendant, who suffered eviction decree and also decree for mesne profits at the rate of Rs.20,000-00 per month for the suit schedule premises from 1-11-1995 to 30-4-1996 and also future rent at the rate of Rs.20,000-00 per month from the date of decree till delivery of vacant possession in OS No.778 of 1996, filed the appeal-CCCA No.99 of 1999.

3. The plaintiff-landlord aggrieved by the common judgment and decree in OS No.778 of 1996 filed CCCA No.99 and COCA No.100 of 1999 claiming mesne profits at the rate of Rs.40,000-00 per month from 26-4-1996 till date of present appeal and future rent at the same rate till the date of delivery of vacant possession.

4. The facts, not in dispute, are that the plaintiff landlord leased out the suit schedule premises to the father of the first defendant and husband of the second

defendant on a monthly rent of Rs. 1,300-00 under Ex.A.6 for a period of 25 years from 1-8-1970 to 31-7-1995. The plaintiff got issued a notice dated 10-10-1995 u/s 106 of Transfer of Property Act to the defendant terminating the tenancy of the defendants and to handover the vacant possession of the demised premises by 31-10-1995 and the same was duly received by the defendants. Thereafter the defendants sent two cheques towards the rent for the months of September and October, 1995 and they were returned by the landlord in view of the termination of tenancy. In spite of the same, the defendants sent cheques, and the landlord filed the above suit for eviction and for mesne profits at the rate of Rs.40,000-00 per month for use and occupation of the suit schedule premises, apart from the rents due in a sum of Rs.2,600-00 for the months of September and October, 1995.

5. The same was resisted by the defendants, but they have admitted that they are paying a sum of Rs. 1,300-00 per month as rent and defendants 1 and 2 are the partners of business carried out under the name and style of "Central Studio" which is in their occupation since 1946. Due to some mis-understandings the erstwhile landlord initiated judicial proceedings in the year 1968 and a settlement was arrived and that in pursuance of the settlement, a lease deed was executed, under which, they are not only entitled for lease of twenty five years, but renewal for a like period of 25 years at their option. Therefore, the plaintiff cannot immediately terminate the tenancy treating it as a tenancy of month to month. The notice issued is not in accordance with the provisions of Transfer of Property Act. The defendants also contended that after the expiry of lease in the month of July, 1995, the plaintiff continued to receive the rents till August, 1995. The plaintiff is under an obligation to execute the registered lease deed for a further period of twenty-five years. During the subsistence of the lease period under renewal clause, in the absence of any breach of the conditions of the lease, it is not open for the plaintiff to terminate the tenancy in respect of the suit schedule property. In view of the same, according to the defendants, the suit notice is bad in law and the defendant's sent a suitable reply to the termination notice and after issuing terminating notice, the plaintiff received the rents. In view of the same, non-encashment of cheque is of no consequence whatsoever and it is deemed that the landlord waived the notice issued terminating the tenancy. The defendants further pleaded that the total extent of the plaintiff premises was originally 2734.94 Sq. Ft. for which the rent payable was at Rs. 1,300-00 per month. The Municipal Corporation of Hyderabad, during the road widening scheme, demolished certain portion of suit schedule premises with the consent of the landlord. In the said process, the ground floor has been reduced to only 1546.94 Sq. Ft. and the total area available for occupation of the defendants is only 2008.94 Sq. Ft. If proportionate rent for the loss of 726 Sq. Ft. is reduced from the monthly rent payable, the rent will fall below Rs. 1,000-00 per month and, therefore, the civil Court has no jurisdiction to entertain the present proceedings. The plaintiff having claimed a sum of Rs. 15,000-00 towards mesne profits in the legal notice, he is not entitled to claim at

the rate of Rs.40,000-00 towards mesne profits in the suit. Therefore, the defendants prayed to dismiss the suit.

6. The second defendant filed a separate written statement reiterating the stand taken by the first defendant and she has further contended that as per the understanding arrived at, a specific clause was mentioned in the lease deed and as per the lease deed, the initial period of lease shall commence from 1-8-1970 and in the circumstances, the defendants have every right to continue to be in possession of the suit schedule property till the end of the renewal period of lease. The defendant has exercised the option for renewal of lease period for a further period of twenty five years and while paying the rents for the months of August and September, 1995, called upon the plaintiff to execute and register appropriate deed of lease for the said renewal period. Having accepted the rents for the month of August and September, 1995, instead of executing appropriate deed of lease for the renewal period, the plaintiff got issued notice. The defendants are entitled to not only protect their possession as lessees in respect of suit schedule property, but are also entitled to seek specific performance of the said covenant of renewal of lease as per the registered lease deed dated 3-8-1970. Therefore, they are entitled for a counterclaim.

7. The plaintiff also filed a rejoinder denying several averments made by the defendants, and the Court below briefly narrated the contents and hence it is not necessary to re-produce the same. The lower Court, basing on the pleadings of the parties, framed the following issues :

Dated 15-4-1998:

1. Whether the defendants are entitled for the relief of counter-claim as prayed for?
2. To what relief?

Dated 26-7-1997;

1. Whether the plaintiff is entitled for delivery of possession from the defendants as prayed for?
2. Whether the plaintiff is entitled for arrears of rent from the defendants as prayed for?
3. Whether the plaintiff is entitled for the relief of damages as prayed for ?
4. To what relief?

Dated 12-10-1998:

1. 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?
2. To what relief?

Dated 26-2-1999:

1. Whether this Court is having jurisdiction to try the suit in view of plea raised by the defendant vide A.P. Buildings (Lease, Rent & Eviction) Control Act?

2. To what relief?

8. The defendants, in the present suit OS No.778 of 1996, also filed OS No.461 of 1998 against the plaintiff herein for issuance of a permanent injunction against the plaintiff from proceeding to interfere in the peaceful possession and enjoyment in respect of the suit schedule property and the plan annexed thereto with costs. The plaintiff herein, who is the defendant in the said suit, contested the same. Both the suits were clubbed together and a joint trial was conducted.

9. The Director of the Plaintiff was examined as PW1 and got marked Exs.A 1 to A 11 on their behalf. The defendant No.1 examined himself as DW1 and got marked Exs.B1 to B8. The lower Court, after evaluating the oral and documentary evidence, on issue No. 1 held that the defendants are not entitled for any counter claim as sought for. On the other hand, the plaintiff is entitled for a direction directing the defendants to be evicted from the suit schedule demised premises by answering the issue in favour of the plaintiff. On issue Nos.2 and 3, the trial Court held that the plaintiff is entitled to a sum of Rs.2,600-00 towards the rent for the months of September and October, 1995; and the plaintiff is also entitled to the mesne profits at the rate of Rs.20,000-00 per month for the period from 1-11-1995 to 30-4-1996 and also entitled at the same rate from the date of suit till the date of delivery of possession subject to payment of Court-fee.

10. On additional issue No.3, the Court held that the civil Court has got jurisdiction to try the suit and it will not lose its jurisdiction, if during the pendency of the suit some area is reduced due to the road widening. While holding so, the lower Court decreed the suit of the plaintiff. Hence the present appeals. Against dismissal of defendants suit OS No.461 of 1998 no appeal is preferred.

11. Learned Counsel for the defendants-tenants strenuously urged that when once the area in occupation of the defendant-tenant is affected due to road widening, rent has to be proportionately reduced, the rent falls below Rs. 1,000-00 per month, hence the civil Court has no jurisdiction to try the suit. Under the covenant of the lease, it says that the lease is for a period of twenty five years in the first instance with a right of renewal. Therefore, the defendants-tenants are entitled for the renewal of lease on expiry of the lease period for another period of twenty live years from 1st August, 1995. Once the landlord accepted the rent of August. 1995, by encashing the cheque, it amounts to renewal of lease and landlord has waived the right for vacant possession on expiry of the lease. The termination notice of the lease is not in accordance with law in view of Section 110 of Transfer of Property Act, as the suit quit notice was issued on 10-10-1995 terminating the tenancy with effect from 31-10-1995. Lastly he has contended that the damages awarded at the rate of Rs.20,000-00

per month is exorbitant and that the plaintiff having claimed at the rate of Rs. 15,000-00 per month in the quit notice, it is not open to the landlord to claim at Rs.40,000-00 in the suit. Therefore, according to him, the lower Court has not properly appreciated the evidence adduced by the parties and the covenant of the renewal clause under Ex.A.6. According to him, once the renewal period started working, the termination notice after the same is invalid and the same will not amount to a valid termination of tenancy. In support of his contentions, he relied upon the following judgments:

1. Surendra Nath v. Stephen Court Ltd, AIR 1996 SC 1361.
2. Hajira Bibi Vs. Abrar Hussain, .
3. Nilkantha Pati Vs. Kshitish Chandra Satpati and Others, .
4. Apparel Trends and Another Vs. Krishna Dandona and Others, .
5. Rafiquennessa Vs. Lal Bahadur Chettri (Dead) through his Representatives and Others, .
6. Parripati Chandrasekharrao and Sons Vs. Alapati Jalaiah, .
7. B. Narayana Reddy Vs. N.R. Vasudeva Bhatta, .
8. Damodhar Tukaram Mangalmurti and Others Vs. The State of Bombay, .
9. Dattonpant Gopalvarao Devakate Vs. Vithalrao Maruthirao Janagaval, .
10. N. Venkatesam v. Jadao Bai and others, 1979 (2) ALT (SN) 17.
11. Potluri Subbareddi, P. Seshagirirao and Co. and Others Vs. Kalabai Rathi, .
12. Associated Hotels of India Ltd., Delhi Vs. S.B. Sardar Ranjit Singh, .
13. Smt. Munni Devi and Another Vs. State of U.P. and Others, .
14. H.V, Rajan v. C.N. Gopal and others, ATR 1961 Mys. 29.

12. On the other hand, learned Counsel for the plaintiff, not only supported the judgment and decree of the lower Court stating that once the tenancy came to an end. no notice of termination is required in law. The date when the quit notice was issued, the defendants were in occupation of 2.734.94 Sq. Ft. and only in the year 1998 certain portion of the demised premises was effected due to the road widening and the same will not oust the jurisdiction of the civil Court. As on the date of the suit, the civil Court has got jurisdiction to try the suit and it will continue till the finalisation. Once the lease is determined by efflux of time, the defendants-tenants' possession is neither legal nor lawful, but the defendants-tenants are at sufferance and in the present case, the landlord also terminated the tenancy by issuing quit notice to vacate the premises, by the end of August, 1995. Mere mention of August 31. 1995 will not invalidate the quit notice. Therefore, the lower Court has rightly ordered eviction of the defendants from the demised premises. As to the order of awarding mesne profits is concerned,

learned Counsel for the plaintiff submits that the suit demised premises is located in a Highly commercial area al Basheerbagh, Hyderabad, that in the adjacent area, rent is fixed at Rs.15-00 per Sq. Ft. and the plaintiff is entitled for a sum of Rs.40,000-00 per month for use and occupation of the demised premises from 1-11-1995 to 13-10-1998 in an extent of 2734 Sq. ft. and from 1-11-1998 till the date of delivering vacant possession at the rate of Rs.15-00 per Sq. Ft. for 2.008.94 Sq. Ft. Any amount received by the landlord after expiry of the lease period, can be treated as the amount received towards compensation for the use and occupation of the premises, but cannot be amounted to rent and, therefore, he prayed to allow the appeal filed by the landlord and to award mesne profits as claimed by the plaintiff. In support of his contentions he relied upon the following judgments:

1. R. K. Gupta, Managing Director, Mayo Strap Limited v. Sirtaz Karan 1989 (1)ALT 551 .
2. Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd. Vs. Khaja Midhat Noor and Others, : [1988]3SCR811 .
3. R.V. Bhupal Prasad Vs. State of Andhra Pradesh and others, .
4. Indian Oil Corporation Limited v. Kareem Zaheer Yar Jung 1997 (3) ALD 675.
5. M/s. Marshall Sons and Co. (I) Ltd. Vs. M/s. Sahi Oretans (P) Ltd. and Another, .

In view of these rival contentions, the points that arise for consideration in these appeals arc:

- (1) Whether the civil Court has got jurisdiction to entertain the suit;
- (2) Mere accepting the rent after expiry of the lease period whether amounts to renewal of the lease; and whether the defendants-tenants are entitled for renewal of the lease as claimed by them in the counter claim;
- (3) Whether the notice terminating the lease is in accordance with law or not;
- (4) Whether the plaintiff is entitled to the mesne profits as claimed by him at the rate of Rs.40,000-00 per month, and the mesne profits awarded by the Court below at Rs.20,000-00 per month is reasonable or exorbitant.

13. The contention of the learned Counsel for the defendants that during the pendency of the suit, an extent of 726 Sq. Ft. is effected due to road widening. Therefore, the area, which is in occupation of the defendants is only 2008.94 Sq. Ft. If the rent is proportionately reduced, it will fall short of Rs. 1,000-00, in which case, the civil Court has no jurisdiction to entertain the suit. In support of his contention, he relied upon the following judgments :

In Surendranath Bibra's case (supra), the Supreme Court considered the tenants entitlement to suspend rent, for the failure of landlord giving possession of one out of three bed rooms and held tenant must pay proportionate part of rent. In

Hijira Bibi "s cases (supra), the Allahabad High Court held that if landlord-dispossess tenant from a portion of house leased, the landlord is not entitled to claim any rent so long as tenant remains disposed of the portion of the leased property.

In Nitkantha Patis case (supra), the Calcutta High Court held as follows:

"...The mere fact that the area dispossessed is a small one is not of an overriding importance so as to dissuade the Court from applying the principles of justice, equity and good conscience if the Court finds that the act of the landlord was definitely a tortuous one." (para 28)

In M/s. Apparel Trends case (supra), the Delhi High Court considered the tenants right for suspension of rent for the amenities etc., and held as follows:

"The principles governing "suspension of rent" are based on justice, equity and good conscience. It will depend on the facts of each case whether a tenant is entitled to the suspension of rent. I see no equity in favour of the tenant. On balancing the facts and circumstances I hold that the tenant is not entitled to invoke the principles of suspension of rent." (Para 26)

In M/s. Rafiqunnissa"s case, the Constitution Bench of Supreme Court considered the effect of Section 5 of the Assam Non-Agricultural Urban Areas Tenancy Act, 1955 on the pending proceedings and held as follows:

"....If the Legislature had intended to this protection should operate prospectively, it would have been easy to say that the tenant shall not be sued in ejectment, such an expression would have indicated that the protection as afforded to the suits brought after the Act came into force and that might have introduced the element of prospective operation, instead, what is prohibited by Section 5(1)(a) is the eviction of the tenant, and so, inevitably, the protection must come into play for the protection of the tenant even at the appellate stage when it is clear that by the proceedings pending before the appellate Court, the landlord is seeking to evict the tenant, and that obviously indicates that the pending proceedings are governed by Section 5(1)(a), though they may have been initially instituted before the Act came into force."(Para 12)

In Paltipali Chandra Sekhar Rao"s case (supra), the Supreme Court considered the effect of notification issued by Government of Andhra Pradesh exempting the buildings whose monthly rent exceeded Rs. 1000/-from all the provisions of A.P.Buildings (Lease, Rent and Eviction) Control Act w.e.f. 26-10-1983, on the three applications made by the tenant for relief under the Act survive or not. After scanning the entire case law on the subject, the Apex Court held as follows:

"That is not the situation in the present case where the tenant who undoubtedly had the rights and remedies under the Act to claim reliefs against the landlord, lost the same the moment the protection was taken away, the rights and remedies being not vested ones."

In B.Narayan Ruddy's case, I lis Lordship K. Jagannatha Shetty, J., (as he then was) considered the effect of tenant surrendering part of premises and fixation of rent at Rs.450/- whether attracts application of Section 21 of Karnataka Rent Control Act and held as follows:

".....The Court of General jurisdiction may be competent to make an order or decree for possession so long as Part V of the Act is not applicable to the subject matter of the suit. If during the pendency of the suit, due to act of parties or by operation of law, if Part V of the Act lis attracted to the subject matter of the suit, the Court of general jurisdiction would lose its jurisdiction to proceed with the suit and the provisions of Section 21 with all its limitations would govern the relationship of landlord and tenant.

In the present case when the rent of the non-residential building was reduced to Rs.450/- per month, the provisions of Part V of the Act were immediately attracted to the premises and the learned Judge was therefore right in holding that he has no jurisdiction to pass a decree for possession." (Para 8)

In Damodhar Tukarmn's case (supra) the Apex Court considered the renewal clause of lease rent "subject to such fair and equitable enhancement as lessor shall determine" and held that the renewal clause should be read as a whole and every effort should be made to give effect to ail the words used there in. After considering the above relevant portion it is held as follows :

".....We do not think that on a proper construction of the clause, the intention was to oust the jurisdiction of the Court and make the determination of the enhancement by the lessor final and binding on the lessee. The conclusion al which Mudholkar, J arrived on this point was cornet, though not exactly for the reason given by him. Mudholkar, J., came to the conclusion and held that the suit was maintainable and the Courts below could determine the fair rent and equitable rent."

14. It is an admitted fact that after quit notice, the suit was instituted on 26-4-1996 and it was numbered on 27-6-1996. The first defendant also admitted in his examination in chief that during November and September, 1998, due to road widening, 726 Sq. Ft. area in the front portion of the building was demolished by the Municipal Corporation of Hyderabad, after obtaining the consent of the plaintiff. In view of the categorical admission of the defendants that on the date when the suit was instituted, the civil Court has got jurisdiction to try the suit. The right to evict the tenant has to be seen on the date when the suit was instituted, but not the subsequent dates. The right accrued to the landlord to get eviction even if the alteration is not in any way effected or diminished the value of the premises. It is further held that at the time of eviction petition, law in foree bind the petition. The vested right of the landlord cannot be divested by subsequent events, and right of landlord to evict the tenant cannot be deprived as held by the Apex Court in Idul Hasan and others Vs. Rajindra Kumar Jain, and Atma Ram Mittal Vs. Ishwar Singh Punia, . liven

otherwise it is not mentioned in Ex.A.6, lease deed, that the defendants-tenants are entitled to renew the same with the same rent and in the absence of the same, it cannot be presumed that the rent, after expiry of the lease period, will be the same as that of Rs.1,300-00 per month. Once the landlord claimed the mesne profits, it is for the Court to determine the same and after determination of such mesne profits, even if the rent shall be proportionate to the proportionate area reduced, it will not be less than Rs. 1,000-00 per month.

15. As per the lease deed, the lease commenced from 1-8-1970 on a monthly rent of Rs.650/- for a period of five years and Rs.850/- per month for the subsequent period of 5 years; Rs.1050/- per month for the third period of 5 years and Rs. 1300/- for the remaining period of 10 years. The parties have agreed to enhance the rent for every live years at the rate of Rs.200/- but for the last 10 years they have agreed to enhance the rent at Rs.250/- per month. Even if we harmoniously construe renewal clause, the conclusion is irresistible that the parties agreed for renewal on enhancement of rent. If we apply the same analogy, the rent payable from 1-8-1995 will be at Rs.1600/- for 2734.94 Sq. feet area i.e., Rs.1300/- + Rs.300/- enhancement per month in proportion to agreed terms. If the same is proportionately reduced for the area effected by road widening, the rent payable by the tenant for 2008.94 Sq. feet will be more than Rs.1175/- but not below Rs.1000/- as contended by the learned Counsel for the appellant. This is without prejudice to the right of the plaintiff for damages.

16. Surendra Nath Bibra Vs. Stephen Court Ltd., , Hajira Bibi Vs. Abrar Hussain, , Nilkantha Pati Vs. Kshitish Chandra Satpati and Others, , Apparel Trends and Another Vs. Krishna Dandona and Others, and B. Narayana Reddy Vs. N.R. Vasudeva Bhatta, cited supra deals with the doctrine of suspension of rent by the tenant in proportion to the area which is not delivered to the tenant or the tenant was dispossessed from during the pendency of the lease period. The facts in the above cases are different and will not be applicable to the facts of the present case. Hence, it is not necessary for us to discuss the ratio laid down in the above cases.

17. Various cases cited (supra) by the learned Counsel for the appellant have no application to the facts of the present case. In view of the fact that even if we proportionately reduce the rent it will be more than Rs.1000/-.

18. In view of the above conclusion arrived at by us, the contention of the learned Counsel for the appellants/defendants that the civil Court has no jurisdiction to entertain the suit holds no water and the same is rejected. Point No. 1 is accordingly answered against the appellants/defendants.

19. It is not in dispute that the lease period is expired on 31st July, 1995. Thereafter, the landlord served a quit notice under Ex.A3 on the defendants terminating the tenancy for which a reply-Ex.A5 dated 29-12-1995 was sent by the defendants. In the said reply notice, it is nowhere mentioned about the oral request of renewal of lease by the defendants. According to the first defendant,

who examined himself as DW 1 states that when they paid the rents for the months of August and September, 1995, they demanded for renewal of lease. But the defendant No.2 in the counter-claim stated that such a demand for renewal of suit premises was made on 28-12-1995- But Ex.A5 reply to the quit notice reveals that they have nowhere stated that such a demand was made by them earlier for the renewal of the lease and in the absence of the same, the lower Court has rightly rejected the contention of the defendants that they have exercised the right of renewal. Apart from the same, in Ex.A.6 lease deed it is stated that the demised premises was leased out "for a period of 25 years in the first instance with the right of renewal as hereinafter been set out." But no such terms and conditions were set out in the lease deed dated 3-8-1970. On what conditions the renewal will be effected and what is the rent agreed has not been stated. In clause (c) of the lease deed it clearly stated that "the lessee shall deliver vacant possession of the property to the lessor at the expiration of the period fixed in the lease or on the determination of the tenancy in case of forfeiture of the lease."

20. Section 107 of the Transfer of Property Act reads as follows:

107. Lease how made :--A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of Immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of Immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee :

Provided that the State Government may, from time to time, by notification in the official Gazette, direct that leases of Immovable property, other than leases from year to year, or for any term exceeding one year or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.

Since the lease for the initial period of 25 years expired, lease period extending one year could only have been extended by a registered instrument executed by both the lessor and lessee. In the absence of a registered instrument, lease shall be deemed to be lease from month to month as held by the Apex Court in *Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd. Vs. Khaja Midhat Noor and Others*, .

21. This Court in *Indian Oil Corporation Limited v. Karem Zaheer Yar Jung* 1997 (3) ALD 675 considered the automatic renewal without any further act of the parties contemplated in the renewal clause. This Court rejected the contention that in the absence of mutual agreement as to rent, the renewal agreement should be based upon the same monthly rent. This Court further held that :

".....The automatic renewal without any further act of the parties contemplated in the renewal clause to become effective for a further term of ten years after the expiry of the first term is subject to the condition of mutual agreement of the parties concerning the monthly rent. If there was no mutuality concerning the monthly rent, the lessee has no right to insist upon a fresh agreement to be executed for the period subsequent to 31-7-1976 when the first term of ten years expired. The contention of Sri Raghava Rao that in the absence of mutual agreement should be based upon the same monthly rent is not supported by the language employed in the renewal clause. (Para 13)

22. In the absence of the terms and conditions incorporated for the renewal of the lease, the tenants-defendants exercising the option for the renewal and renewal already commenced cannot be accepted, the lower Court has rightly answered the issue in favour of the plaintiff, which do not warrant any interference by us. The point No.2 is accordingly answered.

23. As seen from the record the lease period was expired on 31-7-1995. Thereafter, the lease was not renewed. The Supreme Court in *Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd. Vs. Khaja Midhat Noor and Others*, , after considering the provisions of Sections 106 and 116 of the Transfer of Property Act, held that if the lease was for a period exceeding one year, it could only have been extended by a registered instrument executed by both the lessor and the lessee. In the absence of registered instrument, the lease shall be deemed to be "lease from month to month". In such cases the lessee continued to remain in possession of the property on payment of rent as a tenant from month to month. In Para 7 of the judgment it was further held that the tenancy was automatically determined on the expiry of ten years which was stipulated in Ex.A.4. Thereafter, the lessee continued to hold the property and the lessor accepted the rent. The lease was, therefore, renewed from month to month because it was not the case of any party that it was for agricultural purposes. In view of the same, the contention of the learned Counsel for the defendants-tenants that after expiry of lease, immediately they exercised the option and the lease is further extended for a period of 25 years and continuing as such cannot be accepted. In Para 7 of the judgment the Apex Court, has also considered the provisions of Section 107 read with Section 116 of TP Act. and held that the lease was renewed from month to month. While considering notice the Apex Court held that notice must be read in the context of facts of each particular case having regard to the situation of the parties to whom it is addressed and whether fifteen days clear notice is given or not and the notice terminating the tenancy at the end of the month or not and considering the same, their Lordships held that there was a valid notice terminating the lease though it was terminated a day earlier starting to the notice. Though the defendants have not questioned the validity of the notice nor any issue is framed, the same is raised first time now. As these are appeals, we deem it appropriate to consider the same also. In the present case also, in the notice at Para 5, it is clearly mentioned that the landlord determined the lease by giving

fifteen days notice, the period of notice requiring by the end of month of tenancy 31-10-1995 as contemplated u/s 106 of the Transfer of Property Act and asking the tenants-defendants to handover the vacant possession of the suit premises at the end of expiry of notice period, failing which, appropriate proceedings will be initiated for claiming damages for use and occupation from 1st November, 1995.

24. The contention of the learned Counsel for the defendant-appellant that notice is not in accordance with the provisions of Section 110 of the T.P. Act cannot be accepted for the reason that by quit notice, the landlord informed the tenant that his occupation on and after 1-11-1995 shall be regarded as unauthorised and liable to pay damages at the rate of Rs. 15,000/-per month. The respondent was called upon to vacate the premises and handover the vacant possession by the end of tenancy month of August.

25. The Apex Court in *M. Vijayalaxmi v. G. Goverdhan Reddy* 1996 (3) ALT 32 held that once the tenancy for the fixed period expired which came to an end by efflux of time, no notice for terminating the tenancy u/s 106 of the TP Act was required for the purpose of filing the suit after expiry of the lease. The respondent cannot be treated as tenant holding over in view of the issuance of notice. Even if the notice was not a valid notice, it could be regarded as a notice indicating that the tenancy would not be continued after the term of the tenancy comes to an end.

26. The judgment cited by the learned Counsel for the defendants i.e., *Dattopant Gopal Rao Devakate v. Vithalrao Maruthi Rao* (supra) was a case which was dealt with whether the tenant who is holding over is entitled to protection under the Rent Act is validly terminated or not. While holding so, the Apex Court held that the quit notice issued is not in accordance with Section 110 of the TP Act.

27. The Constitutional Bench of the Apex Court later considered the above judgment in *V. Dhanapal Chettiar Vs. Yesodai Ammal*, and held that a notice to quit u/s 106 of the TP Act is not necessary for an eviction petition under the Rent Act and in Para 16 of its judgment while considering the above judgment has not approved the view expressed in the above decision. It further held that a notice u/s 106 of the Transfer of Property Act is essential for bringing to an end the relationship of landlord and tenant as held by another Constitutional Bench in *Mangilal Vs. Suganchand Rathi*, was not correctly decided.

28. This Court in *Polluri Subba Reddy's* case (supra) held as follows:

".....There can be no doubt that the quit notice to be effective must put an end to the monthly tenancy by the last day of the tenancy month....."

29. Admittedly, once the lease is not renewed in favour of the defendant, and the lease expired on 31-7-1995, the monthly tenancy commenced from 1-8-1995. If that being so, the termination of the lease by the end of the month i.e.,

31-10-1995 is perfectly valid and point No.3 is also answered against the appellant.

30. Then coming to the mesne profits, what is the amount the landlord is entitled to. It is not in dispute that the lease premises is situated in most valuable and commercial area of Basheerbagh, Hyderabad. Since the premises was in occupation of the defendants-tenants and due to certain disputes between the landlord and the tenant, an understanding was reached and entered into between the parties and the same was culminated into lease deed dated 3-7-1970 in which the lessor agreed to lease the premises for a period of 25 years. On expiry of the lease, the defendants-tenants have to vacate and handover the possession of the suit schedule premises. The landlord who issued quit notice, it is specifically stated that he is entitled to mesne profits at the rate of Rs. 15,000-00 per month for the use and occupation of the demised premises from 1-11-1995. Having issued notice specifying the damages at a particular rate, the landlord claimed the damages at the rate of Rs.40,000-00 per month for use and occupation of the demised premises and the lower Court awarded a sum of Rs.20,000-00 per month. Learned Counsel for the defendants-tenants strenuously urged that the agreed rent was Rs.1300-00 per month and it has been enhanced exorbitantly and at any rate the landlord cannot claim more than the rent specified in the suit notice. As the plaintiff has not claimed at square feet basis, but he claimed the rent at Rs.15,000-00 per month.

31. On the other hand, learned Counsel for the plaintiff-landlord submitted that mere fact that he specified a sum of Rs. 15,000-00 in the quit notice, it does not disentitle the plaintiff to claim Rs.40,000-00 per month as damages for use and occupation of the demised premises. If the defendants-tenants vacate, as directed in the quit notice, within three months or six months, there will be some justification in the argument of the learned Counsel for the tenants. But due to prolonging the matter in the Courts, it is open for the Courts to award mesne profits, which is reasonable and equivalent to the market value prevailing in the locality as on the date of quit notice. In support of his case, he relied upon the judgment of the Supreme Court in M/s. Marshall Sons and Co. (I) Ltd. Vs. M/s. Sahi Oretans (P) Ltd. and Another, wherein the lower Court was directed to dispose of the suit instituted in the year 1962 as expeditiously as possible and also awarded the mesne profits/ compensation at the rate of Rs. 10-00 per square feet from 1984 till the date of judgment and Rs.20-00 per Sq. Ft. from the date of passing of the judgment till the disposal of the suit in view of the long pendency. The Supreme Court exercising the power under Article 136 of the Constitution of India, granted the relief. The same principle will not be applicable to the facts of this case. The suit was instituted as early as in the year 1996 and the same was disposed of within three years and the area in occupation of the defendants-tenant is also reduced in its extent to 1/4th due to road widening and in view of the same, the ends of justice will be met if the mesne profits will be awarded at the rate of Rs.12,000-00 per month from the date of termination of tenancy till the date of vacating the demised premises. However, the defendants-

tenants are granted eight (8) months time for vacating and handing over the vacant possession of the demised premises from today.

32. Accordingly the appeal filed by the defendants-tenants is allowed in part to the extent of mesne profits granting at the rate of Rs. 12,000-00 per month from the date of termination of tenancy till the date of vacating the demised premises. However, the appeal filed by the plaintiff is dismissed. No costs.