

(2011) 03 AHC CK 0279

In the Allahabad High Court

Case No : Civil Revision No. 21 of 2001 With C.R. No. 55 of 2001

Om Prakash Agarwal

APPELLANT

Vs

Bank of Baroda, Moradabad

RESPONDENT

Date of Decision : 24-03-2011

Acts Referred:

Citation : (2011) 03 AHC CK 0279

Hon'ble Judges : Pankaj Mithal, J

Final Decision : Dismissed

Judgement

Pankaj Mithal,J.

The premises in question is ground floor of 12/2/8, Chaumukha Pul, Moradabad. The owner and landlord of the ground floor of the property is Om Prakash Agrawal. Bank of Baroda was a tenant of the property in question since 1968.

The owner and landlord instituted SCC Suit No.21 of 1995 for arrears of rent, house tax, water tax and for the eviction of the Bank with further relief for damages for use and occupation after the date of termination of tenancy. The suit was contested by the Bank and has been decreed by judgment and order dated 24.10.2000. The court below held that the tenancy had rightly been terminated by a valid notice and that the tenant is liable to pay house tax and water tax and damages at the rate of Rs.8/ per sq. ft. for use and occupation of the premises in question.

Aggrieved by the aforesaid judgment, order and decree of the court below the Bank and the owner and landlord both have preferred revisions. Since both the revisions arise from a common judgment and identical facts and issues, counsel for the parties agree for final disposal of both of them by a common order.

These revisions have come up before me by nomination.

I have heard Sri Avinash Swarup, learned counsel for the Bank of Baroda and Sri Kshitij Shailendra for the landlord.

Counsel for the parties accept that the Bank has already handed over vacant possession of the entire ground floor premises under its tenancy to the landlord on 19.5.2002 and, therefore, so far as the decree of eviction is concerned the parties have no grievance.

The only submission of Sri Avinash Swarup, learned counsel for the Bank is that the Bank is not liable to pay water tax from 1986 to 1993 and that the award of damages at the rate of Rs.8/ per sq. ft. is excessive and against the evidence on record.

On the other hand, the claim of the landlord is that the damages awarded are on the lower side and ought to be increased to Rs.10/ per sq. ft.

It is admitted on record that the rent of the premises was over Rs.2000/ per month and, as such, the provisions of the U.P. Act No.13 of 1972 were not applicable. The Bank was a tenant since 1968. There was an earlier SCC Suit No.5 of 1976 between the parties which was decided on 5.10.1971 in terms of a compromise. The compromise provided that the tenancy of the Bank would restart from 1.4.1978 for a period of ten years and thereafter again for a period of five years w.e.f. 1.4.1988. The rate of rent would be at Re.1.87 Ps. per sq. ft. and that the present and future taxes on the property would be payable by the tenant. Admittedly, water tax was imposed upon the premises in question for the first time in the year 1993 but with retrospective effect from 1.4.1986. There is also no dispute that the said water tax was duly deposited by the landlord. The court below on the basis of the compromise decree passed in the earlier suit has recorded a clear finding that the Bank was liable to pay water tax even for the period prior to 1993 as the same was imposed with retrospective effect from 1.4.1986.

It is settled legal position that in the absence of any agreement excluding payment of water tax from the liability of tenant to pay rent, the liability to pay water tax would rest upon the tenant. Sri Avinash Swarup has not been able to place any material to prove that the liability to pay water tax was not upon the tenant or that there was any agreement imposing the said liability upon the Bank.

In view of above finding recorded on the basis of the earlier compromise, I do not find that the court below has committed any jurisdictional error in holding that the bank is liable to pay water tax and that too w.e.f. 1.4.1986.

The court below has awarded pendente lite damages for use and occupation of the premises at the rate of Rs.8/ per sq. ft. The Bank itself has adduced evidence and brought on record a registered lease deed dated 9th March, 1996 which was executed between Brij Kumar Singh (landlord) and Bareilly Corporation Bank Ltd., Moradabad. Under the said lease deed the Corporation Bank was leased out 2500/ sq. ft. of area on the first floor of the building situate on Amroha Gate, Moradabad at the rate of Rs.6.90 per sq. ft. Similar, other evidences showing the rate of rent more or less in tune with the above rate were also brought on record. The court on the basis of the above evidence on record, which was

brought on record by the Bank itself, awarded damages at the rate of Rs.8/ per sq. ft. The said award may appear to be a little excessive but looking to the fact that the premises in dispute is of the ground floor which is definitely more valuable than the premises of the first floor, it cannot be said that the said finding warrants any interference in exercise of revisional jurisdiction under Section 25 of the Provisional Small Cause Court Act as this Court has no jurisdiction to reappraise the evidence and to substitute its own finding.

In view of above discussion, I have no reason to consider the claim of the landlord for any further enhancement of the damages pendente lite.

No other point was raised and pressed before me.

The revisions have no merit and, as such, are dismissed with no order as to costs.