(2010) 11 DEL CK 0137

In the Delhi High Court

Case No : Regular First Appeal No. 632 of 2004

Oriental Bank of Commerce — APPELLANT

Vs

Shri Ram Prakash Sehrawat — RESPONDENT

Date of Decision : 12-11-2010

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 96
Registration Act, 1908 — Section 49
Transfer of Property Act, 1882 — Section 107

Citation : (2010) 11 DEL CK 0137

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Mahesh K. Chaudhary, for the Appellant; Pawan Upadhyay, Saurab Mehra and Anish Kumar Maggo, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By this appeal filed u/s 96 of the Code of Civil Procedure, 1908 the Appellant seeks to set aside the judgment and decree dated 29.07.2004 passed by the Court of the learned ADJ, Delhi whereby the suit was decreed in favour of the Respondent and against the Appellant.

2. Brief conspectus of facts relevant for deciding the present appeal is that the Respondent had leased his property bearing Khasra No. 754(1-4:1/2), Mahipalpur, New Delhi to the Appellant bank vide lease dated 26.12.1990 for a period of five years renewable thereafter. That the lease came to an end on 26.12.2000 where after no fresh lease was executed between the parties but deliberations were going on between them to execute a fresh lease deed and through various letters exchanged between the Appellant and the Respondent various terms and conditions of the lease were being discussed. The main difference which arose was with regard to the date of execution of the fresh lease and the duration of the lease period. During these negotiations, the Appellant bank continued in occupation of the leased premises and was paying rent at the

old rate which was not acceptable to the Respondent. Hence, consequently the Respondent filed a suit for recovery which vide judgment dated 29.7.2004 was decreed in favour of the Respondent and against the Appellant. Feeling aggrieved with the same, the Appellant has preferred the present appeal.

3. Mr. Mahesk K. Chaudhary, counsel appearing for the Appellant submits that the earlier lease deed executed between the parties came to an end on 26.12.2000 and thereafter no fresh lease deed was executed between the parties. Counsel submits that the Appellant was not liable to pay the revised rent as has been claimed by the Respondent, once no fresh lease deed was executed between the parties. Counsel further submits that simply an offer was made by the Appellant vide its letter dated 15.03.2003 to revise the rate of rent @ Rs. 15/-sq. ft. for ground floor and Rs. 9/-sq. ft. for basement, but the said revision was subject to further condition that the lease would be revised for a period of nine years and the same would be effective from the date of execution of the lease deed. The contention of counsel for the Appellant is that once the lease deed was not renewed by the Respondent in terms of the said offer made by the Appellant, therefore, the Respondent could not have claimed the revised rent in terms of the said offer in the absence of execution of a fresh lease deed. Counsel for the Appellant further submits that the Respondent failed to give any break up or details of the amount claimed by him in the plaint and in the absence of any such details, the learned trial court fell in grave error in accepting the case of the Respondent/plaintiff without there being any specific details of the claim. Counsel for the Appellant further submits that the Appellant was constrained to hand over the possession of the tenanted premises on 09.03.2005 after the Appellant was put to great harassment by the Respondent as otherwise the Appellant would not have vacated the premises at least before the expiry of nine years period, had the conditions laid down by the Appellant in the letter were accepted by the Respondent. Counsel for the Appellant also submits that the Appellant in its letter dated 10.5.03 reiterated its request for extension of the lease for a period of nine years but the same was not agreed to by the Respondent and, therefore, the Appellant was under no obligation to pay the revised rate of rent merely based on the offer letter dated 15.3.2003.

4. Refuting the said submissions of the counsel for the Appellant, counsel for the Respondent submits that the Respondent never claimed eviction of the Appellant from the tenanted premises and the Respondent was forced to file a recovery suit against the Appellant when despite various requests made by the Respondent, the Appellant failed to pay the enhanced rent. Counsel further submits that the earlier lease came to an end on 26.12.2000 and thereafter the Appellant was required to pay the rent at the revised rate and the said revision in rent was agreed to by the Appellant itself through its letters dated 15.03.2003 and 10.05.2003. Counsel thus submits that the Appellant cannot take a somersault and resile from the stand as taken by it through its letters dated 15.03.2003 and 10.05.2003. Counsel also submits that the Respondent has been insisting the Appellant to execute a fresh lease deed but the Appellant

deliberately did not come forward to execute the same and, therefore, it was the Appellant alone who was responsible for not coming forward to execute a fresh lease deed and now it cannot take advantage of the same for denying payment of rent at the revised rate. Counsel thus states that no fault can be found with the findings of the learned trial court which are based on the admissions of the Appellant itself, so far the revision in rent is concerned.

5. I have heard learned Counsel for the parties at considerable length and gone through the records.

6. It is quite intriguing and distressing to find that the Scheduled Bank, like the Appellant is engaging itself in fighting a legal battle on the trivial ground of disputing its liability to pay the rent at the revised rate. It is not expected of the State instrumentalities, Govt. Undertakings or any Govt. Corporation or the Scheduled Banks to take a stand in a court of law like an unscrupulous litigant. The Appellant bank has not denied the fact that in principle they had taken a decision to revise the rent from Rs. 4/-to Rs. 15/-sq.ft. for ground floor and from Rs. 3/-to Rs. 9/-sq. ft. for the basement floor forming part of the tenanted premises falling in Khasra No. 754 (1-4:1/2) situated in Mahipalpur, New Delhi and once having agreed to the same, where the question not to pay the said revised rent could arise. The Appellant was inducted as a tenant by the Respondent-plaintiff under an unregistered lease agreement dated 07.02.1991 initially for a period of five years effective from 26.12.1990 with an option for renewal of the same for a further period of five years with 15% increase in the rent. The lease with further renewal of five years came to an end on 26.12.2000 and thereafter no fresh lease deed was executed between the parties. The Respondent-landlord vide letter dated 27.12.2000 (Ex. PW 1/C1) and thereafter letter dated 30.5.2003 (Ex. PW 1/F), time and again reminded the Appellant/ bank for the renewal of the lease deed on the increased rent as per the market price. Through the letter dated 1.1.2001 (proved on record as Ex. PW 1/G-2), the Respondent also informed the Appellant that he shall not accept the rent at a lesser rate and not to deposit the rent amount in his account at the old rate. This letter clearly shows that deliberations between the parties were in progress for the renewal of the lease. The letters dated 15.03.2003 and 10.5.2003 were in response to and in furtherance of such deliberations and requests made by the Respondent for the renewal of the lease. In the letter dated 15.3.2003 and in the subsequent letter dated 10.5.2003, the Appellant/bank has clearly agreed to enhance the rent from Rs. 4/-sq. ft. to Rs. 15/-sq.ft. for ground floor and from Rs. 3/-sq. ft. to Rs. 9/-sq. ft for the basement floor. The Appellant/bank in the said letter has also agreed to clear the arrears of the revised rent from 26.12.2000. The Appellant/bank thus had clearly shown its willingness to extend the lease on the terms and conditions contained in the said letters. However, the Respondent on the other hand was agreeable to extend the lease not from the date of the execution of fresh lease deed but from the date of expiry of the previous lease agreement. The Respondent vide its letter dated 30.5.2003 was also not agreeable to extend the lease for a period of nine years, but for two

renewals of three years each. This disagreement between the Appellant and the Respondent was therefore with regard to the duration of the lease period and also date of commencement of fresh lease deed. So far other terms and conditions proposed by the Appellant/bank are concerned, they were duly accepted by the Respondent without any demur. The Respondent has also proved on record various letters written by him so as to call upon the Appellant/bank to execute the lease deed but without any response from the side of the Appellant/bank.

7. It is not in dispute that the Appellant/bank kept on occupying the tenanted premises as a tenant even in the absence of execution of a fresh lease deed and had vacated the premises only on 09.03.2005, much after the filing of the said suit by the Respondent and even after the passing of the impugned judgment and decree. It is also not in dispute that the Respondent did not seek eviction of the Appellant/bank from the tenanted premises and was only concerned with the payment of rent at the revised rate. It is also not in dispute that the earlier lease period came to an end on 26.12.2000 and no further lease deed was executed between the parties. The learned trial court has rightly observed that the tenancy of the Appellant/bank was a monthly tenancy as the earlier lease deed was not registered as per the requirement of Section 49 of the Indian Registration Act, 1908 read with Section 107 of the Transfer of Property Act, 1882.

8. The precise question to be answered by this Court, keeping in view the grievance raised by the Appellant/bank, is:

Whether in the absence of execution of a fresh lease deed the Appellant bank can still be held liable to pay the rent at the revised rate?

So far the rate of rent is concerned, the Appellant has not disputed the fact that it has accepted the revised rate of rent i.e. Rs. 15/-sq. ft. for ground floor and Rs. 9/-sq. ft for basement floor. The case put forth by the Appellant bank is that the said revision is inter linked with the duration of the lease deed and also lease period to become effective from the date of its execution. It is quite clear from the letter dated 30.5.2003 sent by the Respondent that he never agreed for the duration of nine years lease effective from the date of execution of the fresh lease deed and was insisting for the duration of the lease for six years to become effective from the date of expiry of the previous lease. The Appellant bank has failed to prove on record any document to show that the Appellant bank volunteered to hand over the possession of the tenanted premises once they were not prepared to agree to the terms and conditions proposed by the Respondent. Hence it is clear that the Appellant bank was as reluctant to execute the lease deed as it was to pay the revised rate of rent.

9. In the background of these facts, the trial court has rightly based its findings on the admission of the Appellant in the said letter dated 15.3.2003 wherein it had clearly admitted its liability to pay the revised rate of rent w.e.f 26.12.2000. It would be useful to reproduce the said findings of the trial court here:

Now the question which arises for consideration is at what rate the plaintiff is entitled to recover the rent. As discussed above, I have already held that vide letter mark B the Chief Manager of the Defendant bank had himself unequivocally admitted in this letter that with reference to the discussions held with the plaintiff, the bank was willing to extend the lease on the terms and conditions that rent for the ground floor would be @ 15 per sq. ft. and Rs. 9 per sq. ft. of the basement. Thus, the admission of the rate of rent comes out from the horse''s mouth and it is well settled principle of law that admission is the best proof and this rate of rent is also claimed by the plaintiff in the present suit. Under these circumstances, I have no hesitation in coming to the conclusion that the plaintiff is entitled to recover the rent at the rate mentioned above. Accordingly, this issue is decided in favour of the plaintiff and against the Defendant.

10. It is manifest from the letters proved on record that there was a divergence of opinion of the parties on the duration of the fresh lease deed and its date of operation. It cannot be lost sight of the fact that the lease expired on 26.12.2000 and the bank vacated the leased property only on 9.3.2005. If the terms and conditions set forth by the Respondent were not agreeable to the Appellant bank, it should have vacated the said premises immediately after the deliberations between the parties came to be a no-go. The contention of the Appellant that the Respondent did not file an eviction suit but only a recovery suit ironically leans in favour of the Respondent to demonstrate that he had no problem in further leasing out the premises to the Bank had it agreed to his terms and conditions. When an ordinary citizen leases out his property to a Bank or a Company as opposed to a private individual, it is with the view that these organized institutions are hassle free to deal with. It is a common perception that the Banks are reliable establishments which do not harass the lessor for trivial and inconsequential issues. But in the event of the circumstances like that of the case at hand, this Court is constrained to observe that the Scheduled Bank like the Appellant has embroiled itself in frivolous litigation on trivial issues leading to vexatious and galling litigation resulting in waste of judicial time. It is rather expected of a Bank, like the Appellant, not to compel the lessor to chase it for payment of his dues and then hassle him to approach the court of law. This attitude of the bank is certainly deprecated by the court and it is expected of the bank to conduct its dealings more responsibly in future.

11. In the light of the above, I do not find any perversity and illegality in the findings arrived at by the learned trial court. There is no merit in the present appeal and the same is hereby dismissed. The judgment and decree dated 29.07.2004 passed by the learned trial court is accordingly upheld.

