

(2008) 07 CAL CK 0065
In the Calcutta High Court
Case No : G.A. No. 1736 of 2006

Pannalal Sagarmal

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 16-07-2008

Acts Referred:

Transfer of Property Act, 1882 — Section 105, 106, 106(1), 106(3), 107

Citation : AIR 2008 Cal 285 : (2008) 4 CHN 208

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Manju Agarwal and Sucharita Biswas, for the Appellant; Dhruba Ghosh, for the Respondent

Judgement

Sanjib Banerjee, J.—The plaintiff seeks a decree for eviction in this application under Chapter XIII-A of the Rules on the Original Side of this Court.

2. In 1962 the defendant was inducted at premises No. 4, Synagogue Street under a registered lease for a period of 21 years commencing April 1, 1963. The lease expired by efflux of time in April, 1984 but the defendant continued in possession with the apparent consent of the landlord. By a letter of November 15, 1985 the defendant-Bank informed the plaintiff that it desired to enter into an agreement for lease of the said premises for a period of seven years with the opinion of renewal reserved unto it for two successive periods of seven years each. The defendant proposed that the rent be Rs. 68,992/- per month at the rate of Rs. 11 /-per sq. ft. for the 6272 sq. ft. area with the rate being increased by 15 per cent for either of the two extended periods. No immediate formal agreement was executed but the defendant continued in possession by paying the monthly rent of Rs. 68,992/-.

3. The plaintiff shows documents to establish that the period of seven years expired without the defendant overtly seeking to exercise its option to continue for a further period of seven years. In fact, the plaintiffs demand of April 29, 1991 on the defendant to pay rent at an enhanced rate of 15 per cent in excess

of what had been paid for the initial period of seven years after 1984 went unheeded. The defendant says that it tendered rent at the old rate which the plaintiff went on accepting. In March, 1998 the defendant evinced its desire to continue in occupation for a further period of seven years, but the plaintiff complains that the defendant did not offer the increased rent.

4. There appears to have been letter exchanged between the parties as to which of them should bear the expenses for registration of the deed of lease and it is also apparent that the defendant demanded that the plaintiff share the burden, if not buy the full complement of the stamps. The correspondence between the parties also reveals that the defendant insisted that the rent component be deemed to include the commercial surcharge and the plaintiff was adamant that it should not. The plaintiff has also relied on certain internal documents of the defendant-Bank to try and demonstrate that the terms governing the parties are as the defendant proposed in 1984, notwithstanding the same not having been reduced to writing executed on a formal paper.

5. The plaintiff issued a notice on April 12, 2005 requiring the defendant to quit and deliver up vacant possession of the suit premises. The plaintiff insists that it was under no obligation, in the circumstances, to issue any notice as by the time the notice was issued the maximum period of 21 years envisaged by the terms of the 1984 arrangement had expired. The letter contains the following three material paragraphs:

Please refer to your letter No. ESTAB No. 24/11/85/135, dated 15th November, 1985 wherein and whereby you had accepted possession on lease term basis for a period of 7 years with two option of 7 years each with 15% increase in each option with some other terms and conditions as mentioned therein.

You are further well aware that seven years with two option with effect from 1st April, 1984 had already been expired on 31st March, 2005 and you are to hand over the possession in vacant condition of the portion under your occupation along with payment of all dues inclusive of the claim already made by our client in the writ petition No. 901 of 2004 but unfortunately you have not done so.

In view you are being requested to arrange for handing over vacant possession of the portion under your occupation within 10 (Ten) days from receipt of this letter as you are well aware you are now holding possession as a trespassers and in-default necessary steps would be taken by our client as per the law for possession and also for realization of their dues including Commercial Surcharge and increment on rent, without any further reference holding you liable for all cost and consequences which please note.

6. The present suit was instituted nearly a year after the notice, in or about March, 2006. The plaintiff seeks eviction and a sum in excess of Rs. 58 lakh by way of mesne profits. The plaintiff has pointed out that the defendant has been mischievous in crediting sums on account of alleged monthly rent to the plaintiffs account maintained with the defendant-Bank and that the plaintiff has protested

such conduct.

7. The plaintiffs case is that since the amount of rent in respect of the commercial premises is an excess of the pecuniary limit that the West Bengal Premises Tenancy Act, 1997 has fixed for according protection to a tenant, the provisions of the general law would apply and the plaintiff is entitled to a decree for eviction in summary proceedings. The plaintiff says that it has endured this tenant for a long time, and does not wish it to occupy a part of its premises and the plaintiff is not bound to justify its conduct.

8. The plaintiff refers a decision reported at (2000) 6 SCC 344 : AIR 2000 SC 3523 (Anthony v. K.C. Ittoop & Sons) to preempt an argument that it anticipates may be made by the defendant. The plaintiff relies on paragraphs 12 to 14 of the report to say that an unregistered lease or even an oral agreement of tenancy would suffice as long as the jural relationship between the parties as landlord and tenant can be made out, for the landlord to seek eviction of the tenant:

12. But the above finding does not exhaust the scope of the issue whether the appellant is a lessee of the building. A lease of immovable property is defined in Section 105 of the T.P. Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the T.P. Act are only the different modes of how leases are created. The first para has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein. The third para can be read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein. All other leases, if created, necessarily fall within the ambit of the second para. Thus, dehors the instrument parties can create a lease as envisaged in the second para of Section 107 which reads thus:

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

13. When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the Court to determine whether there was in fact a lease otherwise than through such deed.

14. When it is admitted by both sides that the appellant was inducted into the possession of the building by the owner thereof and that the appellant was paying monthly rent or had agreed to pay rent in respect of the building, the legal character of the appellant's possession has to be attributed to a jural relationship between the parties. Such a jural relationship, on the fact-situation of this case, cannot be placed anything different from that of lessor and lessee

falling within the purview of the second para of Section 107 of the T.P. Act extracted above. From the pleadings of the parties there is no possibility for holding that the nature of possession of the appellant in respect of the building is anything other than as a lessee.

9. A judgment, reported at Jaswant Raj Soni and Jabar Lal Vs. Prakash Mal and Kan Mal, is next placed, again to anticipate another possible argument of the defendant qua the notice of April 12, 2005 issued by the plaintiff as a prelude to the suit. The plaintiff cites the judgment for the principle that even if inadequate time (in accordance with the provisions of Section 106 of the Transfer of Property Act) is afforded to a tenant by a notice, it would not invalidate the notice altogether or render useless the plaintiff's subsequent acts founded on the notice if the action is launched beyond the period that Section 106 permits a noticee tenant to enjoy. The plaintiff has also relied on Sub-section (3) of the relevant section to urge that the 10-day period that its notice granted to the defendant is irrelevant once it is appreciated that the suit was instituted nearly a year after the notice.

10. The plaintiff relies on a judgment, reported at Parwati Bai Vs. Radhika, for the proposition that a defendant-tenant would be precluded from challenging a notice to quit in course of arguments if the pleadings do not incorporate a challenge. The reference to such judgment is inapposite in the context of a challenge as to the validity of the notice appearing plain in the affidavit of the defendant.

11. An unreported judgment of this Court delivered on March 4, 2008 in G.A. No. 2550 of 2006, CS No. 166 of 2006 : AIR 2008 (NOC) 1413 (Cal) (EIC Holdings Limited v. Calcutta Dock Labour Board) is placed for the principles involved in assessing a notice to quit and the considerations in the application of the present nature for seeking eviction in summary proceedings:

Section 106 of the Act does not require any reason to be given by the lessor and the fact that the lessor gave a reason would not require the lessor to justify the reason before termination becomes effective. If the law recognises a lessor's right to determine the lease at his pleasure, that he pleases to cite a ground that he ultimately does not, or chooses not to, establish would not detract from the right conferred on him by statute. The plaintiff was not called upon, in the circumstances, to establish what would be the reasonable letting out value of the suit premises and that the plaintiff did not attempt to do so, cannot be held against it.

No other or additional material that the defendant can bring at the trial will further any of the grounds of defence urged since none of the grounds is tenable. A triable issue does not arise at the defendant's fancy and merely upon the defendant stating a defence. The triability of the issue arises if there is any likelihood of success of the issue, however thin, at the trial. If the defence taken can be dismissed on affidavit evidence without any further enquiry, the

defendant has no arguable case nor is any triable issue raised for a trial to ensue.

12. The plaintiff also brings the judgment reported at Pooran Chand Vs. Motilal and Others, in support of its further contention that when a lease expires by efflux of time, the lessor is not obliged to issue a notice to quit and may proceed to demand eviction in an action upon the defendant not surrendering possession at the end of the tenure.

13. The defendant relies on the judgment, reported at Biswabani Pvt. Ltd. Vs. Santosh Kumar Dutta and Others, and places paragraphs 10 and 11 of the report to urge that when a tenant under a lease which is found to be void is already in possession of the premises under a previous arrangement, the terms of the inchoate, stillborn lease which is found to be void for want of registration cannot be imposed on it. The defendant's argument is that the plaintiff cannot rely on the terms of the second lease (of 1984) as it was to be for a period in excess of a year and required the terms to be reduced to a more formal writing and the document to be compulsorily registered u/s 107 of the Transfer of Property Act.

14. The thrust of the defendant's contention is that if it is possible to contend that there is no second lease agreement, the plaintiff's argument that the tenure ran out by efflux of time would be fallacious. The defendant particularly relies on the notice of April 12, 2005 to suggest that even if it is otherwise accepted as a notice u/s 106 of the Transfer of Property Act despite there being no reference to such provision therein; it has to meet the requirements of a notice to quit as envisaged in that section.

15. The defendant points out that the EIC Holdings Limited judgment has been set aside in appeal though it concedes that it has no quarrel with either proposition laid down in the passage relied upon by the plaintiff from the judgment. Indeed, the defendant claims that it has been able to indicate a triable issue of the quality that such decision recognised would deny the plaintiff the immediate right to sign judgment in its favour.

16. Section 106 of the Act allows the lessor to determine a lease of the kind that is the subject-matter of the present suit by a notice of 15 days' duration. A mistake in the period of the notice will not be fatal where a suit or proceedings is filed after the expiry of the period mentioned in Section 106(1) of the Act. But for a writing to be regarded as a notice within the meaning of Section 106, irrespective of whether the writing refers to such section, the party issuing it has to indicate that the lease would stand determined. Only upon the writing evidencing the author's decision to determine the lease will the writing pass as a notice u/s 106. The determination of the lease takes effect upon the period of 15 days (unless the duration of the period is otherwise agreed between the parties) expiring from the date of receipt of the notice.

17. The notice that the plaintiff relies on does not communicate an obvious decision to determine the lease. The notice proceeds on the basis that the lease stood determined and requires the defendant to deliver up possession. The act of

termination of the lease on the part of the lessor, that should be apparent in a notice u/s 106, is missing in this case. Even if the notice is generously construed in the plaintiff's favour it would leave such room for doubt as would allow a defendant to squeeze through in a summary application for eviction.

18. On the strength of the Biswabani judgment, the facts as brought by the plaintiff and the notice that the plaintiff says is superfluous, the defendant has established a right to carry the defence to trial and leave the plaintiff to argue that the notice has all the ingredients that Section 106 of the Transfer of Property Act asks of it. It is possible that the plaintiff may yet succeed on these facts and these documents at the trial, but it cannot be said that the defendant has no arguable case or its defence in the face of the case that the plaintiff has run, is moonshine or sham or so hopeless that it is bound to fail.

19. The plaintiff has been able to demonstrate the jural relationship between the parties. As to this, there is no doubt.

20. But it still begs the question as to what terms would govern the parties. If it cannot be said with certainty at this stage that the terms that the defendant offered in 1984 became binding, then it is possible for the defendant to argue that a notice was called for in which a more definitive assertion of the determination of the tenancy ought to have been conveyed before the demand for delivery of possession could be made by the plaintiff.

21. This will not, however, preclude the plaintiff from issuing a fresh notice to determine the lease and to proceed upon such fresh notice in such manner that the plaintiff may, in law, be entitled.

22. The application for summary eviction fails, but there will be no order as to costs.

23. Urgent certified photostat copies of this judgment, if applied for, be issued to the parties upon compliance with all requisite formalities.