

(1998) 03 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1103 of 1994

Prince Rubber and Plastics

APPELLANT

Vs

Remington Land of India Ltd.

RESPONDENT

Date of Decision : 31-03-1998

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 111, 114

Citation : (1998) 119 PLR 721

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : M.L. Sarin and C.B. Goel, for the Appellant; Sachin Mittal, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—This is plaintiffs second appeal. The only question to be determined in this appeal is whether landlord is entitled to seek eviction of a tenant who is holding the lease hold premises as a lessee under term lease before expiry of the period of lease when there is no provision for forfeiture of lease in the lease-deed. In order to determine this question it is necessary to notice in brief the facts of this case.

2. The property in dispute is Plot No. 3, Sector 6, Main Mathura Road, Faridabad. Defendant, Remington Rand of India Limited took the factory building on the northern portion of Plot No. 5, Sector 6, Main Mathura Road, Faridabad, from the plaintiff on lease for a period of 10 years w.e.f. 1.9.1974 at the rate of Rs. 26,200/- per month on the terms and conditions mentioned in the registered lease-deed dated 7.9.1974. Plaintiff filed suit for possession of the tenanted premises by way of ejectment of the respondent and for recovery of Rs. 5,79,362/- towards arrears of rent and damages/compensation for use and occupation of the premises, with future interest at the rate of 18 per cent per annum. In his plaint, plaintiff contended that the provisions of Haryana Urban (Control of Rent and Eviction Act), 1973, are not applicable to the premises in

question as the building on rent with the defendant was completed in August 1974, i.e. within 10 years. Plaintiff averred that lease of the defendant was terminated by sending legal notice dated 8/9.7.1983 u/s 106 of the Transfer of Property Act. Plaintiff further averred that w.e.f. 1.8.1983, occupation of the defendant in the premises is of a trespasser and he has no right to continue in possession of the premises in question. Plaintiff also averred that defendant is in arrears of rent w.e.f. 1.8.1982 upto 30.4.1983 less the part payment made towards rent for that period. On these allegations, plaintiff prayed that suit for ejectment and payment of damages/compensation for use and occupation of the premises may be decreed.

3. Upon notice of the suit, defendant submitted that at the time of inception of tenancy, it paid Rs. 14 lacs, without interest to the plaintiff which was to be adjusted towards rent payable for the premises. Defendant submitted that amount of Rs. 14 lacs, has been fully adjusted and now the plaintiff wants to increase the rent. Defendant further contended that the premises in question were taken on lease from 1.9.1974 for a period of 10 years vide registered lease-deed and the same expired on 31.8.1984, whereafter it exercised its option for renewal of lease for another period of 5 years by giving a notice to the plaintiff. Defendant submitted that notice terminating the tenancy is illegal and void as the lease was for manufacturing purposes and at least six months notice was required to terminate the lease. Defendant further averred that plaintiff has waived the notice as the plaintiff had been receiving rent through cheque from August, 1983 to June, 1984. The jurisdiction of the civil Court was questioned by saying that since lease was for a period of-ten years. Civil Suit before that period was not maintainable. In regard to arrears of rent, defendant submitted that rent for the period from 1.8.1982 to 30.4.1983 was paid but a sum of Rs. 29,662/- was deducted therefrom because the said amount was spent by defendant on repairs carried out on the building which had been damaged due to the factors beyond the control of the defendant. Defendant submitted that it is not liable to pay damages/compensation for use and occupation of the premises. Trial Court on the basis of pleadings of the parties, framed material issue.

4. On consideration of evidence on record, trial Court held that even if lease was for a period of 10 years, then also it could be revoked before expiry of said period. Notice served u/s 106 of the Transfer of Property Act was found to be valid. Trial Court also held that an amount of Rs. 29,662/- deducted by the defendant out of rent for the period from 1.8.1982 to 30.4.1983 was not justified. Trial Court further determined compensation/damages for use and occupation of the premises at Rs. 1.05 Per sq. ft. Trial Court thus, decreed the suit of the plaintiff for ejectment and also for recovery of the amount. On appeal by the defendant, learned District Judge, dismissed the suit regarding ejectment and compensation/damage for use and Occupation of premises but maintained the decree only qua payment of arrears of rent @ Rs. 26,200/- per month for the period from 1.8.1983 and onwards and also for recovery of Rs. 29,662/- which had been deducted by the defendant from the amount of rent for the period from

1.8.1982 to 30.4.1983. Hence, the present second appeal by the plaintiff.

5. Mr. M.L. Sarin, Senior Advocate, counsel for the plaintiff appearing on behalf of the plaintiff has contended that the learned District Judge failed to consider provisions of Section 111(g) of Transfer of Property Act under which, on breach of terms and conditions, lease was terminated. Learned counsel contended that the lease provided that rent at the rate of Rs. 26,200/- shall be payable on or before 7th day of each and every successive month but tenant in violation of this condition wrongly deducted a sum of Rs. 29,662/- from the amount of rent payable for the period from 1.8.1982 to 30.4.1983.

6. Against this, learned counsel appearing on behalf of the defendant referred to Clauses 8 and 9 of the lease deed for contending that there is no forfeiture clause in the lease deed providing for termination by forfeiture in the event of non-payment of rent. Learned counsel further contended that there had not been any breach in the terms and conditions by the defendant as the defendant had been sending rent regularly in accordance with terms and conditions of the lease agreement. Counsel submitted that a sum of Rs. 29,662/- was deducted to carry out repairs on damage caused by cyclonic storm.

7. In the instant case, plaintiff issued notice to quit u/s 106 of the Transfer of Property Act and filed suit for ejectment on the ground that the defendant failed to pay the stipulated rent w.e.f. 1.8.1982 to 30.4.1983 and illegally and wrongly deducted a sum of Rs. 29,662/- i.e. Rs. 5,000/- per month from the rent payable for the months of September, October and November, 1982 and at the rate of Rs. 2,500/- per month payable for the months of December 1982, January, February, March, April and May, 1983. Against this, defendant submitted that deduction of an amount of Rs. 29,662/- from the rent for the period from 1.5.1982 to 30.4.1983 was for carrying out repairs as the building had been damaged owing to cyclonic storm. Defendant submitted that as per the terms and conditions of lease, all major repairs on damage caused by any factor beyond the control of the defendant or due to the act of God, were to be borne by the plaintiff. To examine these submissions, reference is required to be made to Section 111(g) of the Transfer of Property Act and clauses 8 and 9 of the lease deed which read as Under:

"Section 111(g) of the Transfer of Property Act -

A lease of immovable property determines by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof, the lessor may re-enter, or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease.

Clause 8 :

The Company shall be entitled to renew this lease on its expiration for two successive period of five years each on the same terms and conditions as herein contained on giving at least six calendar months" prior written notice in this behalf to the lessor at any time before the expiration of the term hereby created and the lessors shall on receipt of such notice grant to the Company such renewed leases of the demised premises and the said articles for a further term of five years on the same terms and conditions as herein contained with an option to the Company for another successive renewal of five years of such renewed lease on its expiration. PROVIDED THAT if the Company fails to exercise such option as aforesaid then the same will not preclude or prevent the Company from obtaining the renewed lease from the lessors who shall have no objection to the same.

Clause 9:

That the Company shall be at liberty to terminate the lease after the expiration of the first 109 months of the term hereby created upon giving six calendar months" previous notice in writing to the lessors. "

8. From conjoint reading of the above, it clear that lessor in this case was not entitled to maintain suit for eviction of the lessee before the expiry of period of lease. The reason is obvious. There is no forfeiture clause in the lease deed providing for termination by forfeiture. For entitling the lessor to treat the lease as forfeited, it is necessary that the lease should contain an express provision that on breach of such and such condition, the lessor would be entitled to re-enter. Unless there is an express provision for re-entry because of non-performance or non-observance by the tenant of the terms and conditions of the lease, the lessor will not be entitled to treat the lease as forfeited. In *Modern Hotel, Gudur, Represented by M.N. Narayanan Vs. K. Radhakrishnaiah and Others*, , their Lordships of the Supreme Court have held that in absence of forfeiture clause, eviction during subsistence of tenancy is not permissible. In *Modern Hotel (supra)* lease was for a period of 30 years and was to expire in September 1999. Action for eviction was initiated on the plea that tenant has failed to pay rent for certain period. On reading of the lease-deed, their Lordships observed that "the lease did not stipulate a forfeiture clause and in the absence of a forfeiture clause in the lease leading to terminating by forfeiture, the contractual tenancy was subsisting under the provisions of the Transfer of Property Act and there would not be any eviction from such a tenancy." In the present case, as observed earlier, there is no express condition providing for termination of lease on account of breach of conditions of the lease. Faced with this, counsel for plaintiff contended that what is meant by an "express condition" is not that the wording of it should be in any particular form, but that condition can be gathered from the words of the instrument giving to them their ordinary meaning. Counsel contended that rent in this case was payable at the rate of Rs. 26,200/- per month, but while paying rent for the period from 1.8.1982 to 30.4.1983, defendant wrongly deducted a sum of Rs.29,662/- and so, committed

breach of the conditions in not paying rent at the stipulated rate. This contention is devoid of any merit. A condition exists when lessor grants a lease for a specified period but includes a provision making it terminable upon happening of specific events, such as, non-payment of rent; assignment of lease without the lessor's consent etc. The condition must be an express condition so that the Court may conclude with certainty that it is part of the stipulation between the parties. In *Baj Saraswati Jeshankar and Another Vs. Agent, Bharatkhand Textile Manufacturing Co. Ltd. and Others*, a Division Bench of the Gujarat High Court in the context of Section 111(g) held that "a right to re-entry cannot be implied in other terms of the lease and hence from the fact that one of the conditions of the lease provided that the lessor had no right to get the land vacated so long as the lessee paid the amount of rent every year in advance, it cannot be implied that the lessor had a right of re-entry on breach contemplated. Such a provision in the lease is a mere covenant and not a condition of the lease and does not confer a right of reentry on the lessor. In such a case the emphasis is on the right of the rent and the subsequent clause the tenant to remain in possession subject to payment giving him the option to terminate the lease is, merely incidental and subsidiary. Further such a right cannot also be implied on the doctrine of mutuality, from the fact that the lease gave a right to the lessee to surrender the lease on payment of two years' rent. Such a clause did not confer any corresponding right on the lessor and the right conferred on the lessee thereby cannot be converted into a disability of an obligation which would detract from the grant of a permanent lease." The Court thus, held that not only the condition the breach of which would determine the lease must be express, but that it must also provide that, on breach thereof, the lessor has a right of re-entry. Right to re-enter possession cannot be held to vest in the lessor during the period of lease unless there is an express condition in the lease-deed providing for determination of lease. Many of the commercial and industrial premises are obtained by the entrepreneurs on term-lease and huge investments are made on building and machinery on the assurance that such a lessee is secured in possession of the leasehold during the lease period. If lessor is permitted to evict such a lessee before expiry of lease, the exercise of the lessee in developing the land and building for commercial or industrial purposes would render futile and the resultant mischief will be irreparable. A law cannot be interpreted in such a way as to cause mischief and hardship.

9. It is next contended by the counsel for the plaintiff that since lease deed did not provide as to when lease could be terminated before the expiry of 10 years, the same was terminable at any time in accordance with law. Counsel contended that there is a specific condition provided in Clause (i) at page 7 of the lease-deed that lease could be terminated earlier. Counsel further contended that in this case, lease was terminated by serving notice u/s 106 of the Transfer of Property Act. This contention of the counsel for the plaintiff too is devoid of any substance. Reading of Clause 9 of the lease-deed, indicates that the lease was made terminable before the expiry of period of 10 years only at the option of the

lessee. The term of lease is explicit and clear and terminable only at the option of the lessee and no other person has the option. As regards serving of notice u/s 106 of the Transfer of Property Act, it is only to be stated that Section 106 of the Act applies only when there is no contract as to notice but where there is a contract regulating the duration of the lease, lease is not terminable by notice to quit u/s 106 of the Act. In this context, reference be made to judgment in *Geetabai Namdeo Daf v. B.D. Manjrekar*, AIR 1984 Bombay 400, wherein in reference to Sections 106, 111 and 114 of the Transfer of Property Act, it was held that " if the tenancy is to come to an end by virtue of the principle of forfeiture, what is required under the law is that the tenancy should be for a particular period and the lease-deed must contain a clause of forfeiture on the ground of certain conditions of the tenancy. If the breach is committed, the tenancy becomes liable for forfeiture even before the expiry of the agreed period of the tenancy. If the landlord exercises the right of forfeiture, then the tenancy comes to an end even before the agreed period of tenancy. In such a case, no question of notice of termination of tenancy as provided by Section 106 of the T.P. Act arises, although, in certain cases, some kind of notice indicating exercise of the right of forfeiture by the landlord may be advisable. On the other hand, when the lease is not for a particular fixed period but is only a periodical lease like a yearly lease or a monthly lease and if the agreement of tenancy provides that the lease can be terminated by notice of termination as contemplated by Sec. 106 of the Transfer of Property Act, no question of forfeiture as such arises. Termination of tenancy on account of forfeiture is an entirely different concept, and the Court must bear in mind that the concept of termination of tenancy on account of forfeiture and the concept of termination of tenancy by a notice to quit u/s 106 of the Transfer of Property Act are two distinct and independent concepts. Merely because there exists Section 114 in the Transfer of Property Act, the Court cannot give the benefit of the same to the tenant, forgetting that Section 114 does not come into play unless the forfeiture is incurred by the tenant in pursuance of a forfeiture clause contained in the agreement of lease.

10. Before concluding I may add that the only allegation against the defendant had been that it did not pay the stipulated rent and deducted a sum of Rs. 29,662/-from the rent payable for the period from 1.8.1982 to 30.4.1983. Against this, defendant's case had been that the said amount was deducted because it was spent on repairs carried out to the building which had been damaged due to the factors beyond the control of the defendant. Although the defendant has failed to prove that the said amount was spent on repairs, but nevertheless deduction of the amount was a bona fide contention between the parties to the lease and there seems to be no mala fide intention on the part of the defendant to withhold the rent. In fact, plaintiff while appearing as his own witness as PW-1 conceded that defendant had sent cheques towards rent for the period from August, 1983 to June, 1984 but the same were not got encashed because meanwhile plaintiff had served a notice to quit u/s 106 of the Transfer of Property Act. Plaintiff also conceded that he had received rent for the period from

1.8.1982 to 30.4.1983 less the amount deducted by the defendant. This statement of the plaintiff leaves no manner of doubt that rent was never withheld by the tenant either prior to the serving of notice u/s 106 of the Transfer of Property Act or after the same was served.

11. In these circumstances, I am of the view that suit of the plaintiff for ejectment has rightly been dismissed by the first Appellate Court and no interference in this regard is called for. Resultantly, the appeal fails and it is accordingly dismissed. No costs.