(2006) 02 UK CK 0010

In the Uttarakhand High Court

Case No : Civil Revision No. 62 of 2004

Punjab and Sind Bank — APPELLANT

Vs

Unique Hotel and Restaurant Pvt. Ltd. — RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(12)
Provincial Small Cause Courts Act, 1887 — Section 25
Transfer of Property Act, 1882 — Section 106, 111
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 2, 2(1)

Citation : (2006) 3 UC 1703

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : V.K. Kohli, assisted by, I.P. Kohli, for the Appellant; Alok Singh assisted by, S.C. Dumka, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—This revision, preferred u/s 25 of Provincial Small Cause Courts Act, 1887, is directed against judgment/order and decree dated 28-08-2004 passed by Judge Small Causes Court/Additional District Judge/F.T.C.-V, Dehradun in S.C.C. suit No. 22 of 2000 between the parties.

2. Brief facts of the case are that the Plaintiff/Respondent is the owner and landlord of the property No. 97, Rajpur Road, Dehradun. The said property was let out on 01-07-1990 for ten years to revisionist/Defendant on rent at the rate of Rs. 8,300/- per month. According to the lease deed between the parties, it was agreed to enhance 10% of the rent after every three years. On expiry of ten years i.e. on 30-06-2000, the tenancy came to and end. Where-after the Plaintiff/ Respondent asked the Defendant/revisionist to vacate the property and got served the notice dated 20-09-2000 and 11-10-2000 on the Defendant bank, asking him if the property is not vacated the Plaintiff would be entitled to mesne profits at the rate of 1.50 per sq. ft. per day.

3. Defendant bank contested the suit and filed its written statement before the trial court but it was admitted that it received the notices sent by the Plaintiff. However, it was disputed if the Plaintiff is entitled to mesne profits at the rate of Rs. 1.50 per sq. ft. per day. It was further pleaded in the written statement that the suit is not maintainable against the bank as it is protected under U.P. Act 13 of 1972.

4. Learned trial court after framing the points of determination, recorded the evidence of the parties and came to the conclusion that the tenancy has already got terminated on 30-06-2000. It further came to the conclusion that there is no illegality in the notices served on the Defendant. Otherwise also, it found there is no requirement to serve notice u/s 106 of Transfer of Property Act, 1882 to the Defendant as the tenancy was fixed period tenancy. The trial court further held that the tenant is not protected from eviction by U.P. Act 13 of 1972. Lastly, it was held by the trial court that the Defendant/bank is liable to pay Rs. 1.50 per sq. ft. per day as mesne profits to the Plaintiff. Accordingly, the suit was decreed. Aggrieved by which this revision has been preferred by the Defendant.

5. I heard learned Counsel for the parties and perused the record.

6. It is not disputed between the parties that on 01-07-1990, Plaintiff (Respondent) agreed to let out the property in question to the Defendant (revisionist) on rent at the rate of Rs. 8300/- per month for ten years. It is also not disputed that rent was to be enhanced by 10% after every three years.

7. It is pertinent to mention here that the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is not applicable to the property in question. Clause (g) of Sub-section (1) of Section 2 of said Act makes it very clear that the Act is not applicable to the building in respect of which monthly rent exceeds Rs. 2000/-. In the suit in question, rent being Rs. 8,300/- per month at the initial stage itself which is above Rs. 2000/- per month, the trial court has rightly held that the Defendant-bank is not protected under aforesaid Act.

8. The second point relates to the illegality of the notice served by the Plaintiff on the Defendant. It is an admitted fact between the parties that the property was let out on 01-07-1990 for ten years. That being so, the tenancy automatically expired on 30-06-2000, before filing of the suit. Section 111 of Transfer of Property Act, 1882, provides modes of determination of lease. Clause (a) of said Section provides that lease of immovable property gets determined by efflux of the time limited thereby. In said circumstances, there is no illegality in the notice in question whereby the Plaintiff asked the Defendant to vacate the premises after expiry of tenancy.

9. The main contention raised on behalf of the Defendant (revisionist bank) before this Court is that the mesne profits awarded by the impugned judgment and decree are arbitrary and against the evidence on record. In this connection, my attention was also drawn to the principle of law laid down by the Apex Court

in Union of India (UOI) and Others Vs. Banwari Lal and Sons (P) Ltd., . In aforesaid judgment, Hon''ble Supreme Court has explained damages as distinguished from mesne profits. Section 2(12) of Code of Civil Procedure, 1908, defines "mesne profits" as under:

"mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to the improvements made by the person in the wrongful possession.

In view of aforesaid definition read with principle of law laid down in Union of India v. Banwari Lal (Supra), it is clear that there is an intermediate class of cases in which possession though not wrongful in the beginning assumes a wrongful character when it is unauthorizedly retained and in such cases, the owner is not entitled to claim mesne profits but only fair rent. The admitted rate of rent in the year 1990 was Rs. 8,300/- per month. Since in ten years, thrice the rent got enhanced at the rate of 10% which means at the time of expiry of the tenancy, the rate of rent was Rs. 8,300+830+830+830 = Rs. 10,790/-. The suit was instituted on 18-11-2000 before the trial court. As such, in ordinary course, the fair rent to which the Plaintiff is entitled is Rs. 10,790/- per month. However, the trial court awarded Rs. 1.50 per sq. ft. per day as asked by the Plaintiff. This raises the mesne profits almost eight times of the fair rent. The reasons given by the trial court for awarding such a high rate are against the evidence on record. The trial court has observed that the Plaintiff has already given notice to the Defendant that if the premises not vacated, it would charge mesne profits at the rate of Rs. 1.50 per sq. ft. per day. The approach of the trial court in this regard is erroneous in law. Mere for asking the rate of mesne profits, it cannot be increased. The evidence of P.W. 1 Satya Pal Kochhar who was examined on behalf of the Plaintiff, has alleged that ICICI bank in a near by building is paying Rs. 52 per sq. ft. carpet area per month. But it is not disclosed what is the accommodation available with the ICICI bank as against the building in question. Not only this, in cross-examination, the witness says that he has come to know about it but he could not disclose the name of the person who told him said rate of rent, which is paid by the ICICI bank to its landlord. In the circumstances, the trial court has erred in law in calculating and awarding the mesne profits against evidence on record and as such the said finding and direction based thereon, is liable to be set aside.

10. For the reasons as discussed above, the revision is liable to be dismissed to the extent the suit is decreed for eviction of the Defendant/revisionist from the property in question but as to the awarded mesne profits, the revision deserves to be allowed and the Plaintiff is entitled to Rs. 10,970/- per month as mesne profits from the date the tenancy came to an end on 30-06-2000 till the possession is delivered to the Plaintiff. The Plaintiff is a bank and it is submitted before this Court that at least one year''s time is needed to the Plaintiff to shift

his business from the premises in question. In the interest of justice, this Court feels that the revisionist may be allowed reasonable time up to 31st December 2006 provided it pays further 10% enhanced fair rent over the mesne profits at the rate of Rs. 10,970/- per month from today. Accordingly, the revision is partly allowed and impugned order is set aside as to the amount of mesne profits awarded. However, in respect of rest of the relief granted by the trial court, the revision is dismissed. The Defendant/revisionist is allowed time up to 31st of December, 2006 for delivering the possession of the property in question to the Plaintiff failing which the Plaintiff may get the decree executed.

