(2003) 03 J&K CK 0025

In the Jammu And Kashmir High Court

Case No : CIA No's. 42 and 48 of 1995

Punjab National Bank	APPELLANT
Vs	
Seema Gupta Seema Gupta and Another Vs Hindustan Commercial Bank Ltd. and Another	RESPONDENT

Date of Decision : 29-03-2003

Acts Referred:
Jammu and Kashmir Civil Procedure Code, 1977 — Order 20 Rule 12, 34

Citation : (2003) 2 JKJ 707

Hon'ble Judges : Sudesh Kumar Gupta, J

Bench : Single Bench

Advocate : S.C. Gupta, in CIA No. 42/1995 and D.S. Thakur, in CIA No. 48/1995, for the Appellant; S.C. Gupta, for Respondent in CIA No. 48/1995 and D.S. Thakur, for Respondent in CIA No. 42/1995, for the Respondent

Judgement

S.K. Gupta, J.—Both these appeals arising out of the same judgment dated 4.3.1995 shall be disposed of by this common judgment.

CIA No. 42/1995

2. CIA No. 42/1995, entitled Punjab National Bank v. Seema Gupta & Anr., is defendant's appeal from the judgment and decree of the Court of

District Judge, Jammu whereby the plaintiffs' suit for ejectment and recovery of Rs. 78,000 as compensation for unauthorized use and occupation

with proportionate costs, is decreed on 4.3.1995.

3. Setting in facts of the case, the plaintiffs are owners of the demised premises explicitly delineated in para No. 1 of the plaint. The aforesaid

premises particularized in the suit had been in tentantial possession of the tenants since 11.7.1975. The jurality of relationship between inter-se

parties came to be established on the foundation of the lease deed dated

11.7.1975 initially for a period of seven years. On the expiry of the said

lease period, the tenancy was further extended for a period of five years by a fresh lease deed executed on 9.8.1983 and registered on 10.8.1983.

The lease period however, expired on 31.3.1987, but the suit premises still continued to remain in occupation of the defendants. Since there was

no further extension of lease by mutual consent of the parties, the possession of the tenanted premises was required to be surrendered by

defendant-1 to the plaintiffs on the expiry of the lease period. Defendant-1, however, without the consent and permission of the plaintiffs, had

inducted defendant-2 into the premises in violation of the provisions of the lease deed, which necessitated the plaintiffs to also serve a notice calling

upon defendant-2 to vacate the premises in question as Clause 8 of the agreement prohibits sub-letting created by defendant-1 in his favour. Since

the defendant-tenant did not hand over the vacant possession of the suit premises in discharge of its obligation under the lease agreement, a suit for

ejectment of the defendants and a decree for compensation of recovery for unauthorised use and occupation of the premises on the termination of

the lease deed at the rate of Rs. 25,000 per month, came to be commenced by the plaintiffs against the defendants. The defendants resisted the

plaintiffs' claim and inter-alia pleaded that in view of the protection provided by Houses and Shops Rent Control Act, the lease shall not expire.

Upon consideration of the pleadings, the following issues struck for adjudication by the Trial Court:

1. Whether in the facts and circumstances pleaded by the parties in this suit, the occupation of the suit premises by defendant No. 2 would amount

to letting? --O.P.P.

2. Whether the annual income of defendant No. 2 is more than Rs. 60,000 and therefore, the defendant is liable to be ejected, as the provisions of

the Rent Control Act are not applicable to this case.

3. Whether the Plaintiff is entitled to recover compensation for use and occupation from the defendant. If so at what rate and for what period?--

O.P.P

4. Finally, to what relief is the Plaintiff entitled?--O.P.P

4. Parties, apart from examining the witnesses in support of their respective cases, have assembled, each for itself, testimony of various witnesses.

A graphic resume of the statements of these witnesses has been given by the Trial Court in its judgment. After any analytical evaluation of the

primary and perceptive facts deposed to by the witnesses examined at the trial by the parties and testimonial boost these provided either way, the

Trial Court has passed the decree impugned in this appeal on the dual grounds, firstly, that it has been conceded at the Bar that the annual income

of defendant-2 exceeds Rs. 60,000 and, therefore, protection of Jammu and Kashmir Houses and Shops Rent Control Act is not available to him,

and secondly, the granting of compensation for use and occupation @ Rs. 12,500 per month for a period of six months effective from 1st April

1987 to ending September 1987.

5. Assailing the correctness of the decree, the learned counsel for the appellant-defendant has stressed and confined his arguments only with

regards to the findings of the Trial Court allowing compensation for use and occupation @ Rs. 12,500 per month not based upon any evidence on

the file. It is further stated that even the plaintiffs' own witnesses do not support their case and the Trial Court had concluded by fixing Rs. 12,500

as monthly compensation without following any criteria or procedure but of its own assumption and presumption. CIA No. 48/1995

6. Another CIA No. 48/1995, entitled Seema Gupta and Ors. v. Hindustan Commercial Bank Limited and Anr., is plaintiffs' appeal from the said

judgment and decree of the District Judge, Jammu, whereby their suit for eviction and compensation for unauthorized use and occupation after the

termination of the lease with the efflux of time, was decreed with costs. The sole grievance in this appeal is that after the termination of the lease

deed, its terms become inconsequential and the Trial Court has denied the compensation @ Rs. 25,000 per month without any basis and illegally,

besides interest to which the plaintiffs were also entitled after holding the plaintiffs entitled to the compensation.

7. Heard Mr. S.C. Gupta and Mr. D.S. Thakur, learned counsel appearing for the respective parties, in extenso. I have also perused the judgment

impugned in appeal, meticulously.

8. The lease as mentioned above was for a period of five years commencing from 1st of April, 1982, which, in other words, was to expire on 31st

March, 1987. The lease had to expire by efflux of time. Although no notice to quit in this case was necessary, yet plaintiffs served a notice dated

20.3.1987 on the defendants requesting them to vacate the premises on the expiry of the tenancy. The receipt of the notice has been admitted by

the defendants in Para No. 6 of their written statement. There is no doubt that the defendants' lease being for a fixed term and the protection of

Jammu and Kashmir Houses and Shops Rent Control Act found by the Trial Court was not available to the defendants in returning a finding on

issue No. 2 though assailed in memo of appeal, but no serious attempt was made by the learned counsel to attack the finding of the Trial Court

and, therefore, I do not feel inclined to differ from the conclusion reached in this behalf. The defendants had no right to remain in possession of the

demised premises after 31.3.1987. More so, when the plaintiffs had served them with a notice dated 20.3.1987 calling upon them to vacate the

premises failing which to pay Rs. 25,000 per month on account of damages for use and occupation for such period as the possession is not

surrendered to the plaintiffs. The demised premises have been taken on lease by the Punjab National Bank. That the counsel for the appellants-

plaintiffs had to concede that the above Act was not applicable to this case.

9. It was vehemently argued by Mr. S.C. Gupta, learned counsel appearing for the defendants-appellants, that the plaintiffs were not entitled to Rs.

12,500 per month as compensation for use and occupation of the building, which was rented out on Rs. 6,300 per month. The learned counsel

further submitted that the amount of Rs. 12,500 allowed by the learned District Judge was penal. He, however, could not point out any provision

of law or cite a judgment for the proposition that if the tenant remains in occupation of premises after termination of the lease and without replying

to the notice to vacate served by the plaintiffs/land-ladies, he is not liable to pay damages more than the amount of rent fixed in the lease. Whereas,

on the other hand, there are catena of judgments handed down by various High Courts, wherein it has been laid down that if the tenant remains in

occupation of the premises after the expiry of the lease in spite of the fact that the land-ladies had served a notice upon them to vacate and

cautioned that if they remain in continuous occupation, they will have to pay a specified sum as damages for wrongful use and occupation of the

premises. The defendants will be liable to pay that amount provided it is not penal and unconscionable.

10. Monthly rent of Rs. 25,000 has been claimed by the plaintiffs for unauthorized use and occupation of their premises beyond the period of

lease. What was the market rate of rent of the similar accommodation in the area in April 1987 when the lease expired is a question of fact to be

determined on evidence. In sustenance of this claim the plaintiffs placed reliance on the testimony of Baldev Raj, Mir Nazir Hussain, Abdul

Qayoom and Baldev Singh, examined in the case According to Baldev Raj, who happens to be attorney holder of the plaintiff market rate of rent

in the Raghunath Bazar market is not less than Rs. 10 to Rs. 12 per square feet area. It is also in his evidence that the amount of Rs. 25,000 per

month claimed by the plaintiffs is according to the market rate. Whereas the statement of PW Mir Nazir Hussain is to the effect that he is in

occupation of a room about 75 sft. in the said building and paying Rs. 800 per month as rent. So is stated by PW Abdul Qayoom. Similarly PW

Baldev Singh is stated to have offered monthly rent at the rate of Rs. 11 per sft. to the plaintiffs in 1987. There is nothing in his evidence to show

the purpose for which he needed the demised premises. This witness claims to be timber merchant, but did not state anything about his office

accommodation already in his possession. A monthly rent of Rs. 25,000 could be affordable only on the monthly income and other assets of the

witness regarding which nothing is stated in the evidence. His statement therefore, manifestly appears to be exaggerated and when taken as a

whole, has been wholly traversed in his credibility and legitimacy. It is significant to point out that there is not a shred of evidence to show as to

how much was the floor area of the demised premises. In such an event, the offer made by Baldev Singh, PW to pay monthly rent at the rate of

Rs. 11 per sft. Floor area is rendered meaningless and purposeless. Even the lease deed does not record the measurement of the floor area sft.

and the plaintiffs, therefore, could not succeed in proving the market rate of similar accommodation in the area at Rs. 25,000 in April 1987, when

the lease expired and the defendants continued in unauthorized use and occupation thereafter. Apart from that, though the plaintiffs had cautioned

and warned the defendants by issuing a notice that in case the tenanted premises are not vacated after the expiry of the period of lease deed.

Monthly rent at the rate of Rs. 25,000 would be chargeable, but the amount claimed is subject to the condition that the defendants would be liable

to pay that amount provided the rent claimed is not penal and unconscionable. In view of the nature and quality of evidence adduced by the

plaintiffs, their claim of Rs. 25,000 as monthly rent for wrongful use and occupation of the building cannot be said to be justified.

11. At the same time, it cannot be said that the tenant would continue in occupation of the said premises even after the expiry of the lease period

on the same rent fixed in the lease. What is required to be estimated is the amount of compensation in respect of unauthorized occupation of the

demised premises payable to the plaintiffs from 1st April, 1987. It is not in dispute that the premises were given on rent to the defendant on the

basis of original lease deed dated 11.7.1975 at a monthly rental of Rs. 3,150. The initial lease was for a period of seven years. It was further

renewed for five years by executing a fresh lease deed from April 1982 with an increased rent to Rs. 6,300 per month. This shows that the rent

had doubled within a space of seven years. Since the plaintiffs have failed to prove the market rate of the demised premises in April, 1987, when

the lease expired, to be Rs. 25,000 by cogent, positive and acceptable evidence, the plaintiffs, in the absence of any evidence for further increase

of the rent, would be entitled to a double rent of the agreed amount, viz., Rs. 6,300. As against this, the evidence provided by the defendant-

appellant is that their Shalimar Road Branch had obtained the premises on lease having 5,500 sft. floor area on the monthly rental of Rs. 6,500 and

after 15 years, the rent enhanced from Rs. 6,500 to Rs. 35,000 with an added area of 1,500 sft. in accommodation. It is also in the defendant's

evidence that premises for the Bank were taken on lease at Purani Mandi in 1987 with a floor area of 4,500 sft. at Rs. 18,000 per month with a

provision of 20% increase in the rent after five years. Looking to the entire gamut of evidence adduced on either side, one thing is not disputed that

the rent of premises was doubled after seven years. If that be the position, the awarding of double amount of the rent within five years to which the

Trial Court found entitled to the plaintiffs after the expiry of lease period and on account of holding over the building wilfully and contumaciously

despite a notice for eviction after the expiry of lease by way of abundant caution to the defendant, neither appears to be penal nor unconscionable, but reasonable and justified. This has been held by the trial court of course, in taking note of whole circumstances of the tenancy and the sufficiency

in point of time of the notice properly taken into consideration. I do not find any infirmity, legal or factual, in the view taken by the Trial Court while

deciding issue No. 3 that warrants interference by this Court in appeal. This is one aspect of the matter. The other aspect of the matter is that the

Trial Court, while deciding the suit, remained unmindful of the fact that the plaintiffs/land-ladies had been deprived of the amount of compensation

for unauthorized use and occupation of the premises for such a long time on account of the willful and contumacious holding of the premises by the

defendant and did not grant interest on the amount of compensation. The plaintiffs/appellants are, therefore, also entitled to interest @ 9% per

annum on the amount of Rs. 78,000 awarded as monthly compensation for wrongful use and occupation of premises after the expiry of the lease,

pendente lite till realization, of course, with proportionate costs of the suit. It is not out of place to mention that the defendant-Bank even did not

reply to the notice and retained the possession of the premises after the expiry of the lease.

12. Under these circumstances, the defendant-Bank's appeal is dismissed. The appeal of the plaintiffs is, however, allowed to the extent of

awarding interest on the amount of Rs. 78,000 as compensation for use and occupation decreed in their favour.

13. Both the appeals stand disposed of accordingly.

