(2006) 10 P&H CK 0099

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No''s. 2227 and 3577 of 2004

Punjab National Bank, Phase-I, Mohali APPELLANT

Vs

R.R. Bhardwaj RESPONDENT

Date of Decision : 11-10-2006

Acts Referred:

Citation : (2008) 2 CivCC 396

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : H.R. Bansal, for the Appellant; Chetan Mittal, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Bindal, J.—This judgment will dispose of above-mentioned two appeals arising out of common judgment and decree dated 13.05.2004 passed by District Judge, Ropar.

2. Before the commencement of arguments, following substantial question of law has been framed by the appellant for consideration by this Court:

Where the lease deed is executed between the parties containing a covenant, for extension of lease deed for further period of plus live years, after the expiry of the initial period of lease, whether in that case after the expiry of initial period of lease, a fresh lease deed is mandatory to be executed and got registered or the period of lease deed will automatically be extended ?

3. Briefly, the facts, as found by the courts below, are that the respondent is owner of SCO 16, Phase-1, Mohali. The demised premises was given on lease to the appellant (hereinafter described as ''the bank'') vide registered lease deed dated 09.04.1996, effective from June, 1992. The lease was initially for a period of five years but extendable at the option of the lessee for other two terms of live years each on fulfillment of certain conditions. (It is not in dispute that the conditions laid down in the lease deed for extension thereof were duly fulfilled by

the bank). The bank is in possession of the premises after expiry of initial period of five years and is continuously paying the lease rental agreed upon between the parties as payable during extended period of lease. The respondent filed two suits - one for possession after ejecting the bank from the demised premises, live years period of lease having expired and there being no renewal thereafter and second for recover)'' of damages at the rate of Rs. 50,000/- per month from the date of termination of lease till the delivery of possession to the respondent along with interest at the rate of 12% per annum. It is not in dispute between the parties that after the expiry of the initial period of five years, no fresh lease deed was executed between the parties as the claim of the bank is that no fresh lease deed is required to be executed whereas the same is being disputed by the respondent.

4. The core issue on which both the parties have narrowed down and addressed the arguments is as to whether a fresh lease deed was required to be executed after the expiry of initial period of lease in spite of the fact that the lease deed contained a clause for extension of the lease at the option of the lessee in accordance with the covenant contained in the principal lease deed or no fresh lease deed was required to be executed. The relevant clause of the lease deed is extracted below:

That the period fixed for lease is 5 years commencing from June 92 with only two options for continuing the lease for a further period of 5 years each on the same terms and conditions as herein contained subject to increase in rent by 15% after 5 years and the lessor shall not be entitled to refuse the extension of 5+5 years if the lessee exercising that option within one month before the expiry of the original terms of 5 years,

Provided that in the absence of notice for the exercise of option, the lessee will be deemed to have exercised the same.

5. Learned counsel for the bank vehemently argued that in case of extension of lease in terms of the conditions laid down in the principal lease deed, no fresh document is required to be executed, whereas in case of renewal thereof, position is different. To support his argument, he relied upon State of U.P. and Others Vs. Lalji Tandon (Dead),

6. On the other hand, learned counsel for the respondent, controverting the contention raised on behalf of the bank, submitted that in the absence of fresh lease deed having been executed between the parties after the expiry of initial period of lease, unless a fresh lease deed is executed and registered, the lessee shall be deemed to be in possession on month-to-month basis. He referred to and relied upon Uptron Powertronics Ltd. v. G.L. Rawal, 2001 (1) RCR (Rent) 442 (Del) ; Bharat Petroleum Corporation Ltd. v. Khaja Midhat Noor and Others, 1988 (1) RCR (Rent) 613 (SC) ; Solum Singh Anand and Others v. State Bank of Patiala, 2003 (1) RCR (Rent) 324 (Del); Bank of Baroda v. Sardar Arvinder Singh and Another. 2002 (1) RCR (Rent) 652 (Allahabad) and Modern Food Industries

(India) Limited v. I.K. Malik. 2002 (2) RCR (Rent) 689 (Del).

7. An issue, similar to what is under consideration before this Court in the present appeals, came up for consideration before Hon''ble the Supreme Court in Lalji Tandon''s case (supra), where their Lordships of Hon''ble the Apex Court, with reference to the purpose of execution of fresh lease deed, marked out distinction between the ''extension of lease'' in accordance with the covenant and the ''renewal of lease'' in the following terms:

In India, a lease may be in perpetuity. Neither the Transfer of Property Act nor the general law abhors a lease in perpetuity. (Mulla on the Transfer of Property Act, Ninth Edition. 1999, p. 1011). Where a covenant for renewal exists, its exercise is, of course, a unilateral act of the lessee, and the consent of the lessor is unnecessary. (Baker v. Mercket (1960) 1 Alt ER 668, also Mulla, ibid, p. 1204). Where the principal lease executed between the parties containing a covenant for renewal, is renewed in accordance with the said covenant, whether the renewed lease shall also contain similar clause for renewal depends on the facts and circumstances of each case regard being had to the intention of the parties as displayed in the original covenant for renewal and the surrounding circumstances. There is a difference between an extension of lease in accordance with the covenant in that regard contained in the principal lease and renewal of lease, again in accordance with the Covenant for renewal contained in the original lease. In the case of extension, it is not necessary to have a fresh deed of lease executed; as the extension of lease for the term agreed upon shall be a necessary consequence of the clause for extension. However, option for renewal consistently with the covenant for renewal has to be exercised consistently with the terms thereof and if exercised, a fresh deed of lease shall have to be executed between the parties. Failing the execution of a fresh deed of lease, another lease for a fixed term shall not come into existence though the principal lease in spite of the expiry of the term thereof may continue by holding over for year by year or month by month, as the case may be.

8. As far as the judgments, referred to and relied upon by learned counsel for the respondent are concerned, barring one in Bharat Petroleum Corporation Ltd. ''s case (supra), the rest being of High Courts, will, not stand in terms of the law laid down in Lalji Tandon''s case (supra) even if taking a view contrary thereto. Accordingly, in my view, the same do not carry any weight.

9. As far as the judgment in Bharat Petroleum Corporation Ltd. ''s case (supra) is concerned, as the facts in that case suggest, it was a case of renewal of lease for a further period of five years and not a case of simpliciter extension of lease as is the case in hand and the distinction as pointed out by Hon''ble the Apex Court in Lalji Tandon''s case (supra) squarely applies and the same would certainly require registration.

10. Following the dictum of law laid down by Hon''ble the Supreme Court in Lalji Tandon''s case (supra), both the appeals are accepted with costs. Judgments and

decrees of the court below are set aside while holding that there was no requirement of getting a fresh lease deed executed in the case in hand which was simpliciter a case of extension of the period as per the terms of the principal lease deed. As the bank is in possession of the property in continuation of lease, there would be no question of payment of any damages to the respondent.

Both the appeals are accepted in the manner indicated above.

