
(2012) 02 AHC CK 0204
In the Allahabad High Court
Case No : Civil Revision No.54 of 2007

Santosh Kumari Anand

APPELLANT

Vs

U.P.Power Corpn.Vidyut Transmission Khand

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Transfer of Property Act, 1882 — Section 116

Citation : (2012) 02 AHC CK 0204

Hon'ble Judges : Prakash Krishna, J

Final Decision : Allowed

Judgement

Prakash Krishna, J.—This is plaintifflandlady's revision under Section 25 of the Provincial Small Causes Courts Act. It arises out of SCC Suit No. 31 of 2001 which has been dismissed by the trial court vide judgment and decree dated 6th January, 2007.

2. The dispute relates to 79, Tagore Town, Allahabad of which the plaintiff is admittedly owner and landlady. She let it out on monthly rent of Rs.2100/ under rent agreement to the defendanttenant opposite party herein, for a period offive years i.e. 01.06.1985 to 31.05.1990. It appears that the defendanttenant continued to pay the rent at the rate of Rs.2100/ per month, even after expiry of the aforesaid period. Thereafter, the plaintiff terminated the tenancy of the defendanttenant and filed suit giving rise to the present revision. Eviction was sought for on the groun that the provisions of U.P. Act No. 13 of 1972 are not applicable as there is above Rs.2000/ per month and secondly, the defendanttenant ha disfigured the building by raising constructions.

3. The trial court has found that the provisions of U.P. Act No. 13 of 1972 are not applicable but since there was renewal clause in the agreement between the parties and there being no renewed lease, it would be presumed that the defendanttenant continues to be tenant on the old terms and conditions. This being so, the tenant being not a defaulter in terms of lease agreement, is not liable for eviction. It was further found that the defendanttenant has not

disfigured the building.

4. Learned counsel for the applicant does not dispute the finding recorded by the court below on the question of disfigurement of the building.] The applicant has challenged the finding in the present revision, recorded] by the trial court on issue no. 1 only.

5. Heard the learned counsel for the parties and perused the record.

6. Certain facts are not in dispute. It is in dispute that the building was let out to the defendanttenant under rent agreement for a period of five years commencing 01.06.1985 to 31.05.1990. It is also not in dispute that after expiry of the aforesaid period, lease or rent agreement has not been renewed nor any other lease document has been executed between the parties.

7. In the aforesaid agreement, there was a clause to the effect that the defendanttenant would not be liable to be evicted, if it is in arrears of rent not more than for three months. The trial court has held that since the defendant tenant is not in arrears of more than three months and there is no other agreement between the parties, the relief for eviction cannot be granted.

8. Section 116 of the Transfer of Property Act provides effect of holding over. It provides for the situation under which, despite determination of lease, if the lessee continues in possession a new lease may come into existence. For application of this section, two things are necessary:

(1) The lessee should be in possession after the termination of the lease.

(2) Lessor or his representative should accept the rent or otherwise assents, to his continuing in possession.

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9. It has been held that after expiry of original lease, a new lease by operation of law comes into existence as per Section 116 of the Transfer of Property Act. The rights of the parties are governed under Section 116 of the Transfer of Property Act. It has been held that after expiry of the lease where the landlord, after the expiry of the lease, accepted rent at the old rate for a number of years, he cannot be allowed to charge rent at the enhanced rent provided in the penal clause of the earlier lease vide *Usto Ahmedoo v. Abdul Rehman Darzi*. AIR 1977 J&K 79. The tenant paying the rent after expiry of the lease period and remaining in operation is called tenant by holding over. A new tenancy by way of holding over is created by implication under law. In other words, the old terms of tenancy survive (sicceases) after expiry of the lease.

10. On a careful consideration of the matter, I find that the view taken by the court below is legally not justified. It is not in dispute that the lease/ rent agreement was only for a fixed period of five years and the same was not renewed or extended any further. The lease has come to end by the efflux of time. It follows that after expiry of the aforesaid period, the defendanttenant

became month to month tenant. Tenancy would be governed by the provisions of Transfer of Property Act. The provisions of U.P. Act No. 13 of 1972 are not applicable to the building in question. It was not disputed that the tenancy of the defendanttenant has been determined by giving a valid notice. The terms of old lease deed including the default clause will not be operative for post expiry period of lease. The lease agreement has lost its efficacy as also its clauses.

11. In view of the above, discussions, the trial court has committed illegality in not granting the decree for recovery of possession and dismissing the suit in its entirety.

12. At the end, learned counsel for the defendanttenant seeks time to vacate the premises in question.

13. The defendanttenant is granted time upto 31st August, 2012 to vacate the disputed accommodation subject to the following conditions:

(1) The defendanttenant shall deposit the entire arrears of rents and damages for its use and occupation, after adjusting the amount, if any, already deposited for the period upto 31st August, 2012 within a period of one month from today before trial court.

(2) Within one month, a responsible officer the defendanttenant shall file an undertaking on affidavit before the trial court that it will vacate the disputed accommodation on or before 31st August, 2012 and will hand over its peaceful vacant possession to plaintiff landlady without creating any third party interest.

14. In case of default in compliance of any of the conditions stipulated above, the time granted shall stand vacated automatically.

15. In the result, the revision succeeds and is allowed.

16. The judgment and decree of the trial court dated 6th January, 2001 is hereby, reversed and set aside and the suit for eviction of the defendanttenant is decreed with cost, in terms of the relief as claimed in the plaint.