

(2011) 03 AHC CK 0267

In the Allahabad High Court

Case No : Criminal No. 22 of 2001 & CR. No. 56 of 2001

Sarojni Agarwal

APPELLANT

Vs

Bank of Baroda, Moradabad

RESPONDENT

Date of Decision : 24-03-2011

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (2011) 03 AHC CK 0267

Hon'ble Judges : Pankaj Mithal, J

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.

The premises in question is first floor of 12/2/8, Chaumukha Pul, Moradabad. The owner and landlady of the first floor of the property is Smt. Sarojani Agrawal. Bank of Baroda was a tenant of the property in question.

The owner and landlady instituted SCC Suit No.20 of 1995 for arrears of rent, house tax, water tax and for the eviction of the Bank with further relief for damages for use and occupation after the date of termination of tenancy. The suit was contested by the Bank and has been decreed by judgment and order dated 24.10.2000. The court below held that the tenancy had rightly been terminated by a valid notice and that the tenant is liable to pay house tax and water tax and damages at the rate of Rs.7/ per sq. ft. for use and occupation of the premises in question.

Aggrieved by the aforesaid judgment, order and decree of the court below the Bank and the owner and landlady both have preferred revisions. Since both the revisions arise from a common judgment and identical facts and issues, counsel for the parties agree for final disposal of both of them by a common order.

These revisions have come up before me by nomination.

I have heard Sri Avinash Swarup, learned counsel for the Bank of Baroda and Sri

Kshitij Shailendra for the landlady.

Counsel for the parties accept that the Bank has already handed over vacant possession of the entire ground floor premises under its tenancy to the landlady on 19.5.2002 and, therefore, so far as the decree of eviction is concerned the parties have no grievance.

The only submission of Sri Avinash Swarup, learned counsel for the Bank is that the Bank is not liable to pay water tax from 1986 to 1993 and that the award of damages at the rate of Rs.7/ per sq. ft. is excessive and against the evidence on record.

On the other hand, the claim of the landlady is that the damages awarded are on the lower side and ought to be increased to Rs.10/ per sq. ft.

It is admitted on record that the rent of the premises was over Rs.2000/ per month and, as such, the provisions of the U.P. Act No.13 of 1972 were not applicable. The Bank was a tenant of the ground portion of the aforesaid building since 1968. In the year 1981 82 the Bank entered into an understanding with the landlady to occupy the first floor portion also. The Bank vide letter dated 7.1.1981 agreed for tenancy of the first floor at the rate of Re.1.75 Ps. per sq. ft. and for payment of all present and future taxes in connection with the building. The said letter (Paper No.47Ga) is part of the record. The terms and conditions were finally agreed vide letter of acceptance dated 8.5.1981. The said letter was proved in evidence. The court below on the basis of the aforesaid letter of acceptance and the terms and conditions contained in exhibits 16 and 17 held that the Bank was liable for payment of water tax and house tax. Water Tax for the period prior to 1993 was also payable by the Bank as the same was imposed with retrospective effect from 1.4.1986.

It is settled legal position that in the absence of any agreement excluding payment of water tax from the liability of tenant to pay rent, the liability to pay water tax would rest upon the tenant. Sri Avinash Swarup has not been able to place any material to prove that the liability to pay water tax was not upon the tenant or that there was any agreement imposing the said liability upon the Bank.

In view of above finding recorded on the basis of the terms and conditions of tenancy contained in the aforesaid offer and acceptance letter (exhibits 16 and 17), I do not find that the court below has committed any jurisdictional error in holding that the bank is liable to pay water tax and that too w.e.f. 1.4.1986.

The court below has awarded pendente lite damages for use and occupation of the premises at the rate of Rs.7/ per sq. ft. The Bank itself has adduced evidence and brought on record a registered lease deed dated 9th March, 1996 which was executed between Brij Kumar Singh (landlord) and Bareilly Corporation Bank Ltd., Moradabad. Under the said lease deed the Corporation Bank was leased out 2500/ sq. ft. of area on the first floor of the building situate on Amroha Gate, Moradabad at the rate of Rs.6.90 per sq. ft. Similar, other evidences showing the

rate of rent more or less in tune with the above rate were also brought on record. The court on the basis of the above evidence on record, which was brought on record by the Bank itself, awarded damages at the rate of Rs.7/ per sq. ft. The award of the damages at the above rate is based upon the evidence on record and the finding to this effect is neither perverse nor it requires any interference in exercise of revisional jurisdiction under Section 25 of the Provisional Small Cause Court Act as this Court has no jurisdiction to reappraise the evidence and to substitute its own finding.

No case for enhancement has been made out. Therefore, the claim of the landlady for further enhancement of the damages pendente lite is not tenable.

No other point was raised and pressed before me.

The revisions have no merit and, as such, are dismissed with no order as to costs.