

(1998) 04 DEL CK 0058

In the Delhi High Court

Case No : Regular First Appeal No. 107 of 1997

Shri Ram Pistons and Rings Ltd.

APPELLANT

Vs

Dr. Banwari Lal and Another

RESPONDENT

Date of Decision : 01-04-1998

Acts Referred:

Transfer of Property Act, 1882 — Section 113

Citation : (1998) 73 DLT 34 : (1998) 119 PLR 19 : (1998) RLR 380

Hon'ble Judges : M.S.A. Siddiqui, J;Arun Kumar, J

Bench : Division Bench

Advocate : R.S. Endlaw, for the Appellant; J.M. Sabharwal, for the Respondent

Final Decision : Dismissed

Judgement

M.S.A. Siddiqui, J.—This is the defendant's appeal, who is aggrieved by the decree directing his ejection from the Flat No. E-35, 3rd Floor, Himalaya House, 23, Kasturba Gandhi Marg, New Delhi (hereinafter referred to as the "suit accommodation") as also for recovery of mesne profits passed by the Additional District Judge in Regular Civil Suit No. 125/89

The suit out of which this appeal arises was filed by the respondents/plaintiff's on the allegation that the appellant/defendant was inducted in the suit accommodation as a tenant at the rate of Rs. 4,475/- per month under the respondents and that the defendant's tenancy was duly terminated by the notice to quit dated 28.12.1988.

2. The suit was resisted on the ground that the defendant's tenancy has not been duly terminated and the eviction suit was barred under the provisions of the Delhi Rent Control Act. A plea was also raised in defense that the notice to quit stood, waived and the plaintiff was not entitled to a decree for ejection of the defendant from the suit accommodation.

3. The Trial Court found in favor of the plaintiffs of all the issues. It held that the suit is not barred u/s 50 of the Delhi Rent Control Act and mere acceptance of

rent by the plaintiffs for periods subsequent to the notice to quit does not amount to waiver. It also held that the defendant's tenancy was validly determined by the notice to quit dated 28.12.1988.

4. Learned Counsel appearing for the appellant submitted that the learned Trial Court took an erroneous view in holding that the appellant's tenancy had been duly determined by the notice to quit dated 28.12.1988. It is significant that in para No. 6 of the written statement, the appellant has unequivocally admitted service of the notice to quit dated 28.12.1988 but controverted the plaintiffs' averments in the plaint that its tenancy had been terminated by the said notice.

5. The question is whether there was a valid notice. The Trial Court held that in the facts of this case, there was a valid notice of termination. It needs to be highlighted that the written statement is conspicuous by the absence of any specific ground of challenge to the validity of the notice to quit dated 28.12.1988. However, in the memo of appeal, validity of the said notice has been challenged on the following grounds :

(a) Since the respondent No. 1, Dr. Banwari Lal (P.W.1) has admitted in his evidence that there was an agreement between the parties to the effect that the defendant could be evicted from the suit accommodation by giving three months' notice, the notice dated 28.12.1988 is invalid

(b) that the notice dated 28.12.1988 is also violative of Section 45 of the Contract Act inasmuch as instructions to serve the said notice was not given by the respondent No. 2, who is also a co-owner of the suit accommodation.

6. Suffice it to say that the aforesaid pleas were not raised before the Trial Court, and as such the appellant cannot be permitted to raise these pleas for the first time before this Court. Moreover, it is undisputed that there is no registered instrument evidencing the transaction in question. Section 107 of the Transfer of Property Act postulates that lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent can be made only by registered instrument. In the absence of registered instrument, the lease shall be deemed to be "lease from month to month." *Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd. Vs. Khaja Midhat Noor and Others*, . In that view of the matter, the termination of the lease could be by giving a valid notice u/s 106 of the Transfer of Property Act. In *RFA Nos. 357 & 359/95 (Smt. Chander Kanta Singhal and Anr. v. Kapadia Exports and Anr., decided on 11.10.96)*, it was held that it is necessary that a tenant objecting to the validity of the notice to quit u/s 106 of the Transfer of Property Act must plead which of the requirements of Section 106 of the Transfer of Property Act had not been complied with. The mere fact that the defendant in the written statement disputed the legality and validity of the notice dated 28.12.1988 without specifying which of the requirement of Section 106 had not been complied with, does not tantamount to making the requisite pleas. Consequently, averments made in para No. 6 and No. 7 of the written statement cannot be construed as

an allegation that all requirements of Section 106 of the Transfer of Property Act were not complied with. Admittedly, the notice to quit dated 28.12.1988 was received by the appellant and by that notice the appellant's tenancy was terminated with the end of the month of tenancy i.e. 31.1.1989. In our opinion, the learned Trial Court has rightly held that the appellant's tenancy was duly terminated by the said notice.

7. The next question is whether the notice to quit was waived by the respondents by accepting rent for periods subsequent to the said notice. Learned Counsel for the appellant has attempted to develop the said plea on the basis of the following statement made by Dr. Banwari Lal (P.W.1):

"I have continued to receive rent of the premises till date. Volunteered. I have been receiving rent without prejudice to the rights of the parties."

8. In Firm Sardarilal Vishwanath and Others Vs. Pritam Singh, , it was held that mere acceptance of rent from a lessee would not manifest the intention of the Lesser to renew the lease. Something more than mere payment and acceptance of rent would be necessary to assert that the Lesser has assented to the lessee continuing in possession and the Lesser intended renewal of the lease. Thus, the real question to be determined in each case is one of the intention of the parties. Let us examine the attending circumstances for establishing the plea of waiver u/s 11 of the Transfer of Property Act. The notice to quit (Ex. P.1/7) had been given on 28.12.1988 and it was to expire on 31.1.1989 and the suit was filed on 20.4.1989. If these were the only two acts, it would show that the intention of the respondents was to terminate the appellant's tenancy. Respondent No. 2 (P.W.I) has stated in his evidence that he had accepted the rent without prejudice to the rights of the parties. There is nothing on the record to show or suggest that by accepting rent for periods subsequent to the notice to quit (Ex. P.1/7), respondents and the appellant minded to continue the relationship of landlord and tenant. Consequently, the plea of waiver raised by the appellant falls to the ground.

Accordingly, this appeal fails and it is dismissed but in the circumstances of the case there will be no order as to costs.