

(2014) 02 DEL CK 0075

In the Delhi High Court

Case No : Regular Second Appeal No. 38 of 2014 and CM No. 2339 of 2014

Shri Shiv Paul Sagar

APPELLANT

Vs

Smt. Vishakha Sharma

RESPONDENT

Date of Decision : 04-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7
Transfer of Property Act, 1882 — Section 106

Citation : (2014) 02 DEL CK 0075

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sanjay Kumar and Mr. R.L. Arora, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—Certain litigations in this country are nothing but gross abuse of the process of law and the present appeal is one such litigation. I am making this strong statement before adverting to the facts because the suit premises are outside the protection of the Delhi Rent Control Act, 1958 as the rent amount is more than Rs. 3500/- per month and the appellants-defendants have continued in the obstinate possession of the suit premises in spite of termination of tenancy way back on 18.1.2008. Today we are in 2014. Further, not only the appellant/defendant/tenant did not file written statement and right to file the same was closed, that order became final as it was not challenged. Respondent-plaintiff/landlord led evidence and consequently the suit was decreed by the judgment dated 20.7.2012. The first appellate court heard and decided the appeal on merits in spite of appeal clearly being barred by time, only in the interest of justice by condoning the delay by payment of costs of Rs. 2000/-. In the city of Delhi a civil court has jurisdiction to decide the suit for possession filed by the landlord against the ex-tenant once three facts exist:-(i) there was a relationship of landlord and tenant between the parties; (ii) the rate of rent was more than Rs. 3500/- per month and (iii) monthly tenancy has been terminated

by serving notice u/s 106 of the Transfer of Property Act, 1882.

2. In the present case, relationship of landlord and tenant is not disputed. That the rate of rent was more than Rs. 3500/- p.m. i.e. being Rs. 13,000/- p.m. is also not disputed. What is only argued before me is that the notice terminating tenancy dated 18.1.2008 was not served and in any case, notice was defective because as per the lease agreement between the parties, the notice period had to be of two months and not 15 days.

3. Both the arguments urged on behalf of the appellant-defendant are misconceived and the judgment of the trial court shows that the notice dated 18.1.2008 was proved and exhibited as Ex. PW1/3. Postal receipts were proved and exhibited as Ex. PW1/4 to Ex. PW1/6. UPC receipt was proved and exhibited as Ex. PW1/7. The envelope with the AD cards were proved and exhibited as Ex. PW1/8 to Ex. PW1/11, and which were sent to two separate addresses of appellant-defendant. As already stated above, whereas the appellant-defendant led no evidence, the respondent-plaintiff stepped into the witness box and proved her case.

4. Even assuming there is any doubt about service of notice the issue is now settled in terms of the judgment of this Court in the case of v Jeevan Diesels and Electricals Ltd. Vs. Jasbir Singh Chadha (HUF) and Another, . Para 7 of this judgment is relevant and which reads as under:-

7. The second argument that the legal notice dated 15.7.2006 was not received by the appellant, and consequently the tenancy cannot be said to have been validly terminated, is also an argument without substance and there are many reasons for rejecting this argument. These reasons are as follows:-

(i) The respondents/plaintiffs appeared in the trial Court and exhibited the notice terminating tenancy dated 15.7.2006 as Ex. PW1/3 and with respect to which the registered receipt, UPC and AD card were exhibited as Ex. PW1/4 to Ex. PW1/6. The notice admittedly was sent to the correct address and which aspect was not disputed before the trial Court. Once the respondents/plaintiffs led evidence and duly proved the service of legal notice, the appellant/defendant was bound to lead rebuttal evidence to show that the notice was not served although the same was posted to the correct address. Admittedly, the appellant/defendant led no evidence in the trial Court. In fact, even leading of evidence in rebuttal by the appellant would not have ordinarily helped the appellant as the notice was sent to the correct address. In my opinion, therefore, the trial Court was justified in arriving at a finding that the legal notice dated 15.7.2006 was duly served upon the appellant resulting in termination of the tenancy.

(ii) The Supreme Court in the case of Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF), has held that the tenancy would stand terminated under general law on filing of a suit for eviction. Accordingly, in view of the decision in the case of Nopany (supra) I hold that even assuming the notice terminating tenancy was not served upon the appellant (though it has been served and as held by me

above) the tenancy would stand terminated on filing of the subject suit against the appellant/defendant.

(iii) In the suits for rendition of accounts of a dissolved partnership at will and partition of HUF property, ordinarily it is required that a notice be given of dissolving the partnership at will or for severing the joint status before the filing of such suits because such suits proceed on the basis that the partnership is already dissolved or the joint status of an HUF stands severed by service of notices prior to the filing of such suits. However, it has been held in various judicial pronouncements that the service of summons in the suit will be taken as the receipt of notice of the dissolution of the partnership or severing of the joint status in case of non service of appropriate notices and therefore the suits for dissolution of partnership and partition of HUF property cannot be dismissed on the technical ground that the partnership was not dissolved before filing of the suit or the joint status was not severed before filing a suit for partition of the HUF property by serving of appropriate notices. In my opinion, similar logic can be applied in suits for possession filed by landlords against the tenants where the tenancy is a monthly tenancy and which tenancy can be terminated by means of a notice u/s 106 of the Transfer of Property Act. Once we take the service of plaint in the suit to the appellant/defendant as a notice terminating tenancy, the provision of Order 7 Rule 7 CPC can then be applied to take notice of subsequent facts and hold that the tenancy will stand terminated after 15 days of receipt of service of summons and the suit plaint. This rationale ought to apply because after all the only object of giving a notice u/s 106 is to give 15 days to the tenant to make alternative arrangements. In my opinion, therefore, the argument that the tenancy has not been validly terminated, and the suit could not have been filed, fails for this reason also. In this regard, I am keeping in view the amendment brought about to Section 106 of the Transfer of Property Act by Act 3 of 2003 and as per which Amendment no objection with regard to termination of tenancy is permitted on the ground that the legal notice did not validly terminate the tenancy by a notice ending with the expiry of the tenancy month, as long as a period of 15 days was otherwise given to the tenant to vacate the property. The intention of Legislature is therefore clear that technical objections should not be permitted to defeat substantial justice and the suit for possession of tenanted premises once the tenant has a period of 15 days for vacating the tenanted premises.

(iv) Another reason for rejecting the argument that the tenancy would not be terminated by the legal notice Ex. PW1/3 is that the respondents/plaintiffs admittedly filed a copy of this notice alongwith the suit way back in the year 2007. Once the summons in the suit alongwith documents were served upon the appellant/tenant, the appellant/tenant would obviously have received such notice. Even if we take this date when the appellant/tenant received a copy of the notice when served with the documents in the suit, once again, the period of 15 days has expired thereafter and keeping the legislative intendment of amended Section 106 in view, the appellant therefore cannot argue that the

tenancy is not terminated and he did not get a period of 15 days to vacate the premises. I am in view of this position consequently entitled to take notice of subsequent events under Order 7 Rule 7 CPC, and taking notice of the subsequent events of the expiry of 15 days after receipt of a copy of the notice alongwith documents in the suit, I hold that the tenancy has been validly terminated, and as on date, the appellant/tenant has no right to stay in the premises and consequently the decree for possession was rightly passed by the trial Court.

An SLP against the said judgment being SLP No. 15740/2011 has been dismissed by the Supreme Court on 7.7.2011.

5. Therefore, the issue of frivolous defences with respect to alleged invalidity of service of notice has been set at rest by treating the service of summons of suits as notice terminating tenancy.

6. So far as the issue of giving two months' notice is concerned, counsel for the appellant-defendant admits that the period of two months' was contained in the original lease deed which has long since expired by efflux of time. Therefore, a clause in such a lease cannot bind the parties after expiry of period.

The appeal being without any merit is dismissed with costs of Rs. 15,000/-. Costs will be deposited with the Delhi High Court Legal Aid Services Committee within a period of one month from today.

List before the Registrar General on 7th March, 2014 for ensuring compliance of the order of depositing of the costs and if costs are not deposited then the Registrar General will be entitled to recover the same as arrears of the land revenue for being deposited with the Delhi High Court Legal Aid Services Committee.