
(2009) 01 DEL CK 0017

In the Delhi High Court

Case No : Regular First Appeal (OS) No. 34 of 2002

South Delhi Club Ltd.

APPELLANT

Vs

Lal Chand Public Charitable Trust

RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Citation : (2009) 01 DEL CK 0017

Hon'ble Judges : Mukul Mudgal, J; Manmohan, J

Bench : Division Bench

Advocate : Rajat Aneja, for the Appellant; A.S. Chandhiok Ekta Kapil, Sweta Kakad and Abhiruchi Mengi, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—The present appeal arises out of the judgment and decree dated 22nd October, 2002 in IA No. 7085/2000 and 4681/2001 in Suit No. 518/1999 titled as Lal Chand Public Charitable Trust v. South Delhi Club Limited wherein the learned Single Judge by way of the impugned judgment passed a decree for possession of the suit property against the appellant thereby allowing the application under Order 12 Rule 6 filed by the plaintiff-respondent herein. The learned Single Judge also dismissed the application filed by the appellant u/s 114 of the Transfer of Property Act, 1882 (hereinafter referred to as "the Act") seeking relief against forfeiture.

2. The brief facts of the case are as follows:

(a) The appellant Club is a company registered u/s 25 of the Companies Act. The appellant has 1700 members and has 125 employees.

(b) The respondent is a charitable trust constituted under a deed of declaration duly registered.

(c) By a sub-lease dated 4th November 1965, the property described as Plot of land and building in Block-M, Greater Kailash, Part-I, New Delhi, was leased to

the appellant for a period of 25 years (hereinafter referred to as "the suit property").

(d) The period of lease as specified in the original as well as in the supplementary deed expired on 3rd November, 1990. On expiry of the aforesaid period, the appellant requested the respondent for a further renewal. The aforesaid request of the appellant was considered by the respondent and after negotiations and discussions, the parties to the suit executed a fresh sub-lease dated 23rd September, 1992 for a period of 25 years with effect from 4th November 1990 on the terms and conditions as stipulated in the Agreement and the said lease was also duly registered in the office of the Sub-Registrar, Delhi.

(e) One of the terms of the sub-lease was that the appellant shall pay quarterly to the respondent on account of monthly lease money by the 10th of the beginning of each quarter month, a sum equivalent to 14% of the monthly subscription paid or payable by the members of the Club to the Club on account of its monthly subscription which was calculated at Rs. 81,778/- on the date of execution of the said sub-lease. It was also agreed that in case the lease money remains unpaid for two consecutive quarters and also on account of breach of any terms of the sub-lease, the plaintiff would be entitled to terminate the said sub-lease.

(f) The respondent addressed letters dated 25th December, 1996, 14th January 1997 and 18th June 1997, calling upon the appellant to remit the lease money as payable by it to the plaintiff as per the terms of the lease.

(g) The respondent served a legal notice dated 25th July 1997. By the said notice, the respondent called upon the appellant to pay the entire arrears of lease money failing which, the respondent would be left with no other option but to terminate the sub-lease.

(h) In spite of the said letter, no steps were taken by the appellant and accordingly a lawyer's notice was issued by the respondent on 28th October, 1997, terminating the sub-lease between the parties by the end of the month, i.e., on the mid-night of 30th November, 1997 and further calling upon the defendant to hand over peaceful vacant possession of the entire property on/or before 30th November, 1997. The said notice was issued on 28th October, 1997. Subsequently, again another legal notice was issued by the respondent on 2nd December, 1997, intimating the appellant that its possession in the premises after 30th November 1997 is that of a unauthorized occupant. It was stated in the said notice that although the notice dated 28th October 1997, was served on the defendant and that although the defendant had failed to vacate the premises, a fresh notice is being served terminating the lease with effect from the mid-night of 31st December, 1997, further calling upon the appellant to hand over peaceful vacant possession of the entire property in its possession on/or before 31st December, 1997.

(i) Since the appellant failed to abide by the stipulation in the legal notice the

present suit No. 518/1999 was filed in this Court by the plaintiff, respondent herein, praying for a decree for recovery of possession in respect of the suit property and also for passing a decree for recovery of Rs. 11,60,000/- towards manse profit and also for damages.

3. The respondent inter alia prayed for the following reliefs in the suit filed:

a) Decree for possession in respect of entire property situated in Block M, Club House, Central Park, Greater Kailash-I, New Delhi and as shown red in the plan attached be passed in favor of the plaintiff and against the defendant and the plaintiff be put in possession of the entire premises.

b) Decree for Rs. 11,60,000/- (rupees eleven lakhs sixty thousand only) be passed in favor of the plaintiff and against the defendant alongwith cost, pendente lite and future interest @ 21% p.a.

c) Further damages at the market rate be also determined as provided under Order 20 Rule 12 of CPC and a decree for the said amount be also passed in favor of the plaintiff and against the defendant and the plaintiff undertakes to pay the court fees on the future damages as and when the same are determined by this Hon"ble Court.

d) Cost of the entire proceedings be awarded to the plaintiff.

4. The appellant, in his written statement, contended that the suit of the respondent is not maintainable as the very right of ownership and locus standi of the plaintiff-respondent herein was challenged by the appellant in another suit filed in this court bearing No. 1605/1997.

5. After filing of the aforesaid written statement by the appellant in this Court, the respondent filed an interim application bearing No. 7085/2000 praying for passing of a decree in favor of the plaintiff in view of the admissions made by the appellant in the written statement. An interim application was also filed by the appellant bearing No. 4681/2001 u/s 114 of the Act praying for an order for relieving the appellant against forfeiture arising out of non-payment of rent and also for a declaration that the appellant should be allowed to hold the lease property as if the forfeiture has not occurred.

6. The learned Single Judge while deciding the application passed a decree in favor of the respondent and against the appellant for possession in respect of the suit property. Since the decree was passed, prayer (a) of the plaint stood granted to the respondent and the suit only survived to the extent of prayers (b) to (d).

7. The learned Single Judge inter alia held as follows:

a. The disputes raised by the appellant with regard to the ownership and title of the respondent stood resolved and the appellant accepted that-

(i) the respondent was the rightful owner and title holder of the land

(ii) the appellant was obliged to pay rent to the plaintiff and to no other person

(iii)the entire rent payable by the appellant to the respondent in terms of the sub lease dated 23rd September, 1992 was not paid and a part of the rent payable under the aforesaid sub-lease deed due and payable by the appellant was still outstanding

b. The suit which was filed by the appellant against the respondent being suit No. 1605/1997 praying for a decree of declaration that the respondent had no right, title and interest in the said immovable property and for cancellation and revocation of the said sub lease dated 22nd September, 1992 was also dismissed in default on 8th April, 2002.

c. However, after filing of the application u/s 114 of the Act, in the present suit, particularly in view of the nature of statements made therein not much remains to be determined in the said suit.

d. The conditions required to be proved by the respondents under Order XII Rule 6 stood proved, for admittedly the monthly lease rentals for the aforesaid property is more than Rs. 3500/-. Therefore, there was unequivocal admission on part of the appellant in the pleadings filed and therefore, the provisions of Order XII Rule 6 became applicable.

e. In view of the applicability of the provisions of Section 114 of the Act it is settled law that the said provision is a discretionary and equitable provision and the said discretion could only be allowed in favour of the appellant only when his conduct was not vexatious.

f. It was evident from the records that the appellant had not paid the rentals in terms of the agreement entered into between the parties. It was also clear from the records that the appellant had violated the lease agreement by making unauthorized constructions in the suit property for which a notice was already being issued by the MCD for removal of such unauthorized constructions.

g. The appellant had not only not paid the rent but when it became due and payable but in fact went on to the extent of challenging the title of the respondent to preempt dispossession by filing a suit being Suit No. 1605/1997. Such arrears of rent were being paid/deposited under the orders of the court in the present suit and the appeal filed.

h. This clearly shows that the appellant had been a habitual defaulter and at different points of time had taken conflicting stands to avoid the liability of making payment of the dues.

i. Relying upon the judgment of Hindustan Petroleum Corporation Ltd. v. Chandra Prakash, 1995 Supp. 3 SCC 167 the appellant does not deserve to be granted discretionary relief based on equitable consideration as it disentitled itself from getting such relief u/s 114 of the Act. Therefore, the application filed u/s 114 of the Act was rejected.

8. The learned Counsel for the appellant contended that the tenancy was not

legally terminated as per the provisions of Section 111 of the Act. The tenancy can be terminated only by the end of the tenancy month and not in between as held by the Hon"ble Supreme Court of India and further the tenancy cannot be terminated in between once the tenancy month had commenced. He further contended that the tenancy cannot be terminated by the alleged notice which is apparently an illegal notice which does not terminate the tenancy as per the provisions of the Act. The lease deed between the parties contemplated a minimum six-months notice for extension of lease and as such for the purposes of termination of tenancy also six-months minimum notice was required to be served upon the appellant herein. The lease between the parties was a perpetual lease and could not be terminated during the pendency of the lease period.

9. He further submitted that there was no unequivocal admission on the part of the Appellant on the basis of which the discretion under Order XII Rule 6 CPC could be invoked. There was no admission in the written statement on the basis of which the learned Single Judge passed a decree of possession against the appellant herein. The appellant club was meant for the welfare of the public at large for the residents of Greater Kailash as well as other members and was being run on no profit basis. The MCD was admittedly the owner of the property in question which fact was not disclosed to the Appellant. It is also to be noticed that despite its financial burden"s/constraints the Appellant Club had managed to clear all the dues of lease money and there were no arrears of lease money. The Respondent had surreptitiously with a view to avoid its obligation whereby certain land earmarked for public utilities were agreed to be vested in the authorities namely MCD and DLF entered into a lease Deed with the Appellant Club, thereby surreptitiously making profits out of the same even though having divested itself of ownership/Proprietor Ship Rights in the said land which had earmarked for public utility.

10. The learned Senior Counsel for the respondent contended that the appellant was using the court machinery to defeat the bona fide rights of the respondent and was abusing the process of the Hon"ble Court. The conduct of the appellant, demonstrates that the appellant was not interested in pursuing the appeal and for more than three years had got the appeal adjourned on one pretext or the other. The appeal was listed as early as on 7th March 2003 for final disposal. However, till 18th October, 2005, the appellant failed and neglected to conclude its arguments and sought adjournments, inter alia, on 21.07.2003, 11.12.2003, 12.04.2004, 13.10.2004, 23.11.2004, 11.01.2005, 07.02.2005, 02.08.2005, 16.09.2005 and on 18.10.2005 when the appeal was dismissed for non-prosecution. The appellant by its dilatory tactics was depriving the respondent of the possession of the property for which the respondent had a decree in its favor, and was deliberately delaying handing over possession of the property to the respondent since 2003.

11. The Counsel for the respondent further submitted that as the original sub-lease and supplementary lease deed expired on 03rd November, 1990 parties

executed fresh sub-lease dated 23rd September, 1992 for a period of 25 years w.e.f. 04th November, 1990. The relevant Clause 3 and Clause 13 of the said sub lease reads as follows:

Clause 3 That the club hereby undertakes to pay quarterly to the trust on account of monthly lease money by the 10th of the beginning of each quarter a sum equivalent to 14% of the monthly subscription paid or payable by the members of the club to the Club on account of its monthly subscription which presently calculates to Rs. 81,778/- (approx.). On the basis the annual lease money for the purpose of stamp duty works out to Rs. 1,37,387/- (Rupees one lac thirty seven thousand three hundred eight seven) approx.

13. That the Trust shall not in any case terminate the sub-lease before the expiry of the stipulated period except on the ground that the lease money remains unpaid for two consecutive quarters and on account of breach of any terms of this, sub-lease and/or breach of rules of Govt. or any public authority.

12. The Counsel of the respondent submitted that the appellant had committed breach of Clause 13 of the sub-lease as it failed and neglected to pay the lease money for 8 quarters between 1996 and 1998. The appellant had been a habitual defaulter and had at many times avoided the liability of making the payment of dues. Thus, the conduct of the appellant had been governed by malafide intentions and in view of the above mentioned fact that the appellant does not deserve equitable relief u/s 114 of the Act.

13. We are of the view that the learned Single Judge based on a systematic and rational approach had allowed the application Order XII Rule 6 CPC. The constructive admission by the appellant of the jural relationship of lessor and lessee between the parties, the rent being above Rs. 3500/- per month and a notice u/s 106 of the Act on being duly served on the appellants, had led the learned Single Judge to the conclusion that there was an unequivocal admission on the part of the appellant, in the pleadings filed in the suit and therefore, the provisions under Order XII Rule 6 became applicable. In our view also the above conclusions arrived at by the learned Single Judge cannot be assailed in any respect. It is an admitted position that the monthly lease rental of the suit property is more than Rs. 3500/- per month. It is also admitted that the parties have entered into a sub lease which is dated 23rd September, 1992. The said deed is a registered document and one of the condition of the said sub lease is that in case the lease money remains unpaid for two consecutive quarters and on account of breach of any terms of the lease deed the respondent would be entitled to terminate the said lease deed. On 28th October, 1997 when the legal notice was issued by the respondent to the appellant, terminating the sublease between the parties, there was a clear default of payment of lease rentals for more than two consecutive quarters, therefore, action was rightly taken by the respondent for terminating the said sub lease in accordance with the provisions of the law and conditions of the lease deed.

14. The appellant had deliberately committed breach of Clause 13 of the sub lease dated 23.09.1992 and neglected to pay the lease money for eight quarters ending September 1996, December 1996, March 1997, June 1997, September 1997, December 1997, March 1998 and June 1998. In our view the sub lease was, thus, rightly terminated in accordance with the amended provisions of Section 106 of the Act which was also not contested by the respondent. There was an unequivocal admission on the part of the appellant with regard to the observations as above and the above finding of the learned Single Judge qua the compliance of Section 106 is thus upheld.

15. Another question to be ascertained in the present appeal is whether the appellant could be protected from being evicted from the suit premises and the decree for eviction could be refused in view of the applicability of the provisions of the Section 114 of the Act read as follows:

Section 114. Relief against forfeiture for non-payment of rent- Where a lease of immovable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the court thinks sufficient for making such payment within fifteen days, the court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

The Hon"ble Supreme Court in Hindustan Petroleum"s case (supra) laid down the following law:

As regards the application u/s 114 of the Transfer of Property Act it is one of the settled principles that "law abhors forfeiture". However, Section 114 is a discretionary relief based on equitable consideration. Having regards to the above conduct of the tenant, the courts below had justified in its conclusion. In other words, the tenant by its conduct has disentitled itself in seeking the discretionary relief of Section 114 of the Act.

It is to be seen that the above mentioned provision is a beneficial provision giving protection to the tenant that in case the tenant deposits the rent during the pendency of the proceedings, no eviction decree could be passed against the tenant. However, the said provision is a discretionary and equitable provision and the said discretion could only be allowed by the Court in favor of a party only when his conduct is not vexatious. The conduct of the appellant is to be seen in the present proceedings as per the facts and circumstances of the case to grant him the benefit of Section 114 of the Act. As rightly noticed by the learned Single Judge also, it is an admitted position that the entire amount towards monthly lease rental was still due and payable by the appellant to the respondent. The appellant as noticed above failed to pay the monthly rental for eight quarters which led to the present proceedings. It is also to be noticed that the said dues

according to the appellant was payable on the basis of computation of monthly subscription payable by the members of the club to the appellant club. Therefore, in our view the dues to be paid by the appellant to the respondent could be much higher than what is stated to be due by the appellant in the present proceedings.

16. The appellant entered into a lease on 4th November, 1965 with the respondent in respect of the same property and also a supplementary lease on 25th July, 1979 and again entered into a fresh sub lease dated 23rd September 1992 for a period of 25 years and also paid a part of the rental all along to the respondent and thereby recognized the respondent as lessor. Yet when the respondent sought to proceed against the appellant with the threat of termination of the sub lease the appellant immediately rushed to the court by filing civil Suit No. 1605/1997 and taking up a plea that the respondent does not have right, title and ownership over the suit property. This conduct itself would make the appellant's conduct to be such as to dis-entitle the appellant to be granted equitable relief against forfeiture as stipulated by Section 114 and as per the position of law laid down in Hindustan Petroleum's case (supra). The appellant has also not paid the rental amount in terms of the sub-lease agreement entered into between the parties. It was also clear from the records that the appellant had violated the lease agreement by making unauthorized constructions in the suit property for which a notice was already being issued by the MCD for removal of such unauthorized constructions. The appellant had not only not paid the rent but when it became due and payable went on to the extent of challenging the title of the Respondent to preempt disposition by filing a suit being Suit No. 1605/1997. Such arrears of rent were being paid/deposited under the orders of the court in the present suit and the present appeal. This clearly shows that the appellant had been a consistent defaulter and at different points of time had taken conflicting stands to avoid the liability of making payment of the dues.

17. Apart from the above the conduct of the appellant has been such as to prolong the proceedings further as also observed by the order dated 05.11.2008, even the orders of this court dated 03.10.2008 and 15.10.2008 had not been complied with. The appellant has just been trying to escape the liability incurred by the decree granted by the learned Single Judge of this Court by its conduct.

18. Thus, the learned Single Judge in our view relying upon the judgment of Hindustan Petroleum's case (supra), had rightly come to the conclusion that the appellant does not deserve to be granted discretionary relief based on equitable consideration, as its conduct disentitled it from getting such relief u/s 114 of the Act. In our view, and as explained herein above also, the present case is one where the appellant does not deserve to be granted discretionary relief u/s 114 of the Act, due to its conduct.

19. In view of the above findings and as per the law laid down by the Hon'ble Supreme Court, the appeal is liable to be dismissed and the appellant is directed to hand over the vacant possession in respect of the suit property to the

respondent not later than 31st March, 2009.

20. Accordingly, the appeal along with all the pending applications stand disposed of.