
(2007) 03 AHC CK 0022
In the Allahabad High Court

State Bank of India

APPELLANT

Vs

Harbans Lal Dua

RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:

Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Provincial Small Cause Courts Act, 1887 — Section 25
Transfer of Property Act, 1882 — Section 106

Citation : (2007) 5 ADJ 20 : (2007) 78 AWC 2319 : (2007) 3 AWC 2319

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Both these connected Civil Revisions u/s 25 of the Provincial Small Cause Court Act, 1925, arise out of a judgment of the Additional District Judge, court No. 3, Agra dated 22.9.2006 in S.C.C. Suit No. 17 of 2000 between Harbans Lal Dua v. State Bank of India, by which the suit was decreed for arrears of rent of Rs. 4,02,348.99 and mesne profit w.e.f. 22.5.2000 at the rate of Rs. 7,369 per month, and for eviction with direction to defendant-tenant to hand over the possession of the disputed premises to the plaintiff within three months.

2. By an interim order dated 28.10.2006 the revisionist-bank was directed to deposit Rs. 7,60,000 in the account of the respondent-landlord within one month. The decree of eviction was not stayed as the trial court had granted time to the bank to vacate the premise upto 21.12.2006. By an interim order dated 15.1.2007 a direction was issued that till the next date the arrears of rent and mesne profit deposited by the bank in the account of the respondent-landlord shall not be withdrawn by the opposite party. Both the revisions were heard and the judgment was reserved.

3. Shri Navin Sinha, senior advocate assisted by Shri Vipin Sinha appear for the revisionist State Bank of India in Civil Revision No. 402 of 2006 and respondent in Civil Revision No. 420 of 2006. Shri B.D. Mandhyan, Sr. advocate assisted by

Shri Satish Mandhyan has appeared for Shri Harbans Lal Dua, the landlord.

4. According to the plaintiff's allegations Shri Harbans Lal Dua, the plaintiff-landlord let out the ground floor of the premise No. 19/10-A/22, Jaipur House, Agra to the Bank for Rs. 1,400 per month in the year 1977. On 2.1.1987 the landlord let out the first floor also for Rs. 4,125 per month with an area measuring 1392 sq. ft. The landlord contended that a formula of increase of rent was agreed between the parties according to which the rent of the entire premises including the ground floor and the first floor was quantified at Rs. 8,842 w.e.f. 1.12.1997. At that time the agreed rent was much less than the market rent of Rs. 20,000 per month. He claimed Rs. 56,48,117 as arrears of rent after adjusting the amount deposited by the bank in his account upto 30.4.2000. By a notice dated 22.5.2000 sent by registered post the tenancy was terminated and the suit was filed demanding Rs. 6,55,800 as arrears of rent and mesne profits and a higher rent as mesne profit after the filing of the suit.

5. The defendant-bank admitted that the ground floor was taken on rent in the year 1977 at Rs. 1,400. The bank entered into tenancy of first floor on 1.3.1988 at an agreed rent of Rs. 3,208.83 and that w.e.f. 1.5.1995 the agreed rent for both ground floor and first floor was Rs. 6,108.57. The rent was deposited in the saving bank Account No. 12261 of the plaintiff-landlord. The plaintiff operated this account. It was denied that the rent for the same area had increased to Rs. 20,000 per month. The bank denied that any formula was agreed between the parties to increase the rent. According to the bank it was agreed that after every five years the rent will be increased by 15% and that the rent had to increase w.e.f. 1.11.2002 by 15%. A reply was given to the notice. The bank further stated that according to the agreement the strong room and a toilet were not constructed and thus under the orders of the regional office the bank did not deposit Rs. 3,57,322.61. It is further stated that the loan amount of Rs. 1,02,600.15 is still to be paid by the plaintiff-landlord to the bank. The trial court framed following six issues:

- (1) Whether the plaintiff has terminated the tenancy of the defendant by notice?
- (2) Whether the defendant entered into possession of the first floor after its construction on 2.1.1987 or on 1.3.1988?
- (3) The arrears of rent due to be paid by the defendant to the plaintiff by way of rent ;
- (4) Whether the rent was to increase after five years at the rate of 15% or at the rate of 20%?
- (5) The rate at which the plaintiff is entitled to realise the arrears of rent from the defendant ;
- (6) The rate on which the plaintiff is entitled to realise mesne profit from the defendant.

6. The Small Cause Court assessed the evidence led by the parties and found that there, was no written agreement between the parties by which the tenancy was created. The bank was the tenant of the premises from month to month and such tenancy could be terminated and has been validly terminated u/s 106 of the Transfer of Property Act. It is agreed between the parties that ground floor was taken on rent at Rs. 1,400 per month in 1977. The plaintiff did not let out the first floor to the bank after its construction for several years and that infact the bank obtained possession of the first floor on 2.1.1987 and not on 1.3.1988. There was no written agreement about the rate of rent. The Judge, Small Cause Court inferred the rate of rent from the documentary evidence, which included letters written by parties to each other. In the letter dated 11.11.1995 sent by the bank, it was clearly stated that the landlord had to spend Rs. 2,50,000 on the construction of first floor and the rent was to be paid at 22% of this amount per year. The plaintiff tried to establish that he had spent Rs. 2,50,000 on construction of first floor from the agreement of contract with M/s. A.L.F. Vikas Sanstha Ltd. and also produced the certificate of the Architect (Approved Valuer) that he had spent Rs. 2,59,344 on the construction of first floor. The Judge, Small Cause Court assessed the expenditure at Rs. 2,25,000, according to which the rent payable by the tenant-bank was quantified at Rs. 4,025 per month.

7. The Small Cause Court further found that there was no agreement between the parties to increase the rent by 20% after every five years and that no document was executed to that effect between the parties. The evidence led by the parties established that the rent had to increase only by 15% every five years. The account maintained by the plaintiff, however, established that rent of the ground floor was increased after five years by 20% and thus the rent for both ground floor and first floor was to be increased by 20% after every five years. The defaults were as follows:

Ground floor	SI.	No.	Period	Rate of rent (Rs.)	Amount due (Rs.)	Amount deposited in the bank account of the landlord (Rs.)	Default (Rs.)
1. November, 1982	1,680	1,00,800	84,000	16,800	to October, 1987	2,016	
(with 20% increase)	1,20,960	69,400	in the 8,544	to October, 1992	increase saving	acco-	of 20%)
2. November, 1987	2,419	2,22,548	1,15,005	in 22,750	to June, 2000	saving bank account and	84,793
in loan account (Total 1,99,798)							

Toatal Default	48.094	First Floor	SI.	Period	Rate of rent (Rs.)	Amount due (Rs.)	Amount deposited in the bank account of the landlord (Rs.)	Default (Rs.)	No.
1. January, 1987	4,125	2,47,500	1,75,409.74	3,54,254.99	to December, 1991	deposited in the saving account and	40,587.27	in the loan account	

2. January. 1992 4,950 3,21,750 3,21,750 to June, 1997 Total default 3,54,254.99 Grand total--Total default for both ground floor and first floor upto June 2000 was calculated to Rs. 4,02,348.90.

8. So far as mesne profit is concerned, the Judge Small Cause Court held that

the demand of rent at Rs. 27,000 per month at Rs. 25 per sq. ft. was not supported by any evidence on record, and thus the rate of rent for mesne profit would be the rent payable by the defendant-bank In accordance with oral agreement between them supported by documentary evidence.

9. On 28.10.2006 Shri Arun Kumar holding brief of Shri Navin Sinha, senior advocate appearing for the respondent-bank stated that he is not challenging the finding on the validity of notice. According to him there was no finding with regard to increase of 20% rent. Shri Navin Sinha, senior advocate maintains the same position and further states that the respondent bank had stated in para. 5 of additional written statement affirmed by the Senior Manager, State Bank of India, Jaipur House Branch, Agra in November, 2002 as follows:

That the suit of the plaintiff for recovery of arrears of rent due upto 30.6.1997, if any, is barred by time.

10. It is contended by him that Judge Small Cause Court is only required to frame points of determination. The ground of limitation was specifically taken and that the Court did not have jurisdiction to award arrears of rent beyond three years from the date of filing of the suit. The plea taken in para 7 of the grounds of revision is as follows:

Because the court below has grossly erred in ignoring the plea taken by the defendant applicant bank in its additional written statement that the suit in respect of arrears of rent of more than 5 years, i.e., Rent due upto 13th July, 1997 is barred by the time and that without giving any finding on this important aspect has decreed the suit for the recovery of arrears of rent from November, 1982 to October, 1987 illegally.

11. Shri B.D. Mandhyan making submissions in support of the revision filed on behalf of the landlord stated that total amount due upto the date of filing of the suit was Rs. 7,18,371.26. The demand of mesne profit of Rs. 27,000 per month was wrongly denied without showing any justification. The property is situate at a prime location in the city of Agra could easily fetch Rs. 27,000 in the year 2000 and that instead of 6%, 18% interest or in any case not less than 12% interest per annum should have been awarded on the arrears of rent. He has relied upon *Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd.*, *Lakshmirattan Cotton Mills Co.Ltd. and Behari Lal Ram Charan Vs. The Aluminium Corporation of India Ltd.*, *Firm Kamta Prasad Jagannath Prasad Vs. Gulzari Lal and Another*, and *Mrs. Florence Misra and Others Vs. Daulat Ram and Others*, in submitting that where the rent was to be deposited in an account, maintained between the parties, any receipt in lieu of the old debt is an acknowledgment of entire debt. Section 19 of the Limitation Act, 1963 provides for acknowledgment, which must relate to personal relationship between the parties and an intention to admit such relationship, which may be implied from the facts available on record. In *Atma Ram Properties (P) Ltd. (supra)* the Supreme Court justified the rationale of imposing terms on tenant of depositing Rs. 15,000 as rent per month for grant of

stay of decree for eviction.

12. At the outset a gentle suggestion was given to refer the matter to the "Allahabad High Court Mediation and Conciliation Center". Shri B.D. Mandhyan appearing for the plaintiff-landlord, however, stated that he was extremely confident of his case and stated that he had no chance of losing the matter at all. The rent had to be increased at 20% every five years and mesne profit must be fixed in accordance with the market rent. He further stated that where rent is deposited in an account between the parties and there have been deposits regularly but with default, the rent will convert itself into debt and every deposit will be an acknowledgment u/s 19, to extend the limitation for the entire debt. According to him the suit was within limitation on the date it was filed for the entire arrears as rent claimed by the plaintiff-landlord. Shri Mandhyan further submits that the revision was admitted only on the question whether the increase of rent was to the extent of 15% or 20%, and whether the mesne profits could be awarded from the date of issuance of notice or the period of expiry of the notice.

13. Shri Navin Sinha, senior advocate appearing for the bank on the other hand relies upon Section 3 of the Limitation Act, 1963, which creates a bar of limitation on filing of suit after the period prescribed under the Limitation Act has come to an end. He submits that in the present case the limitation was set up as defence in the additional written statement and has been taken a ground in the revision. Where the limitation has been set up as defence, and the claim is barred by limitation, the Court loses its jurisdiction to decree the suit to that extent. He submits that even if the plea of bar of limitation is not set up as defence to the claim the suit cannot be decreed to recover the time barred debt. Section 3(1) of the Limitation Act, 1963 reads:

3. Bar of limitation.--(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

14. In the present case, a notice terminating the tenancy was sent by registered post on 22.5.2000 and the suit was filed on 13.7.2000 claiming default in rent of ground floor beginning from November, 1982 and total default including default of the rent of first floor from January, 1987. In substance the defaults in the suit were pleaded as follows:

Ground Floor Sl. No. Period Default (Rs.) 1. November, 1982 to October, 1987 16,800 2. November, 1987 to October, 1992 8,544 3. November, 1992 to June, 2000 22,750

First Floor Sl No. Period Default (Rs.) 1. January, 1987 to December, 1991 2,47,500 2. January, 1992 to June, 1997 3,21,750 15. The statement of account annexed to the rejoinder-affidavit filed by the bank shows that the bank was maintaining a loan account of the landlord and was remitting rent in the account

regularly. The balance outstanding in the loan account upto 25.1.2007 was Rs. 4,12,421.21.

16. According to the plaint allegation the plaintiff-landlord claimed that ground floor was taken on rent in 1977 at the rate of Rs. 1,400 per month and the first floor was on 2.1.1987 at the rate of Rs. 4,125 per month. A formula was settled between the parties to calculate the rent payable w.e.f. 1.12.1997 for both the portions at Rs. 8,842 per month, and that according to the formula the amount due upto 30.4.2000 came to Rs. 6,48,117. A notice was given with the same allegations. There was no allegation about the fact that the rent was not remitted by the bank and credited to the account of the plaintiff-landlord. The allegations were with respect to short payment of rent w.e.f. 1.12.1997, which according to the plaintiff-landlord was Rs. 8,842 per month and that this calculated rent due upto 30.4.2000 came to Rs. 6,48,117, after adjusting the amount deposited by the defendant in plaintiffs account.

17. In the absence of any agreement in writing with regard to increase of rent by 20%, the finding that the rent of the first floor was increased every five years by 20% cannot be sustained. The Small Causes Court has not referred to or discussed the correspondence between the parties and has simply stated that there are number of documents from which it is found that rent was increased by 20%. In the judgment it was clearly recorded by the Small Causes Court that after October, 1997 there is no evidence of increase of rent. Further there was no evidence of demand of increased rent after October, 1997.

18. A receipt may be an acknowledgment of previous debt within the meaning of Section 19 of the Limitation Act, 1963. The acknowledgment, however, is subject to condition that it must have been made before expiration of the period prescribed for the suit. It must be clear and unambiguous admitting the liability in respect of debt, and it must be signed by the party or his authorised agent. In the present case the deposit of admitted rent every month cannot be said to be acknowledgment of past liability. There was no crystallised debt between the parties to treat the admitted remittance of rent in the saving and loan account of the plaintiff-landlord as acknowledgment. Further it cannot be said that the account between the parties were mutual, open and current and that the parties did enter into any fresh transaction, which could be entered in the accounts and became part of same old, mutual, open and current account.

19. The limitation of debt for recovery of rent is three years from the date when the rent falls due. In the present case the suit was not a suit simplicitor for recovery of unpaid rent. It was a suit after termination of tenancy for non-payment of the increased rent beginning from the year 1993. The limitation for such balance of increased rent claimed by the plaintiff-landlord was three years. The suit as such for rent for more than three years was clearly barred by time. The default in rent claimed to be increased rent was clearly barred by Limitation Act for which defence could be taken by the tenant-bank at any time and even in this revision. Such a suit had to be dismissed u/s 3 of the Limitation Act, 1963 to

the extent of the rent, which was barred by limitation.

20. Coming to Civil Revision No. 420 of 2006 filed by plaintiff-landlord challenging the judgment on the ground that the mesne profit should have been decreed at the rate of Rs. 20,000 per month, I find that no evidence whatsoever was led for fixing the mesne profit at such a rate. There is clear finding recorded by the trial court that no evidence was led by the plaintiff-landlord to prove the rent in locality and thus the decree of mesne profit at the rate of agreed rent with increase of 20% does not call for interference.

21. The Civil Revision No. 402 of 2006 filed by the State Bank of India is, consequently, allowed and the matter is remitted to the trial court to re-calculate the arrears of rent within the period of limitation in accordance with the finding recorded in the judgment and which can be recorded from the tenant-bank in accordance with law. The Civil Revision No. 420 of 2006 filed by the plaintiff-landlord is dismissed.