
(2011) 03 CAL CK 0004
In the Calcutta High Court

Case No : G.A. No. 3580 of 2010, A.P.O.T. 620 of 2010 and C.S. No. 208 of 2008

Steelco Syndicate and Another

APPELLANT

Vs

Sashi Prasad Goenka and Others

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Citation : (2011) 2 CHN 687

Hon'ble Judges : Sambuddha Chakrabarti, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Manju Agarwal and Bajrang Manot, for the Appellant; Pratap Chatterjee, Ashis Chakraborty, A. Dutt and M. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—This appeal is at the instance of a Defendant in a suit for eviction and mesne profit and is directed against an order dated 4th October, 2010 passed by a learned Single Judge of this Court by which His Lordship dismissed an application filed by the Defendant for returning the plaint to be presented in the Court of competent pecuniary jurisdiction on the allegation that on the face of the averments made in the plaint the suit was overvalued.

2. Being dissatisfied, the Defendant has come up with the present appeal.

3. There is no dispute that the Appellant before us was a tenant under the Plaintiff in respect of the suit property at a monthly rental of Rs. 60,000/- and such tenancy is governed by the provisions of Transfer of Property Act.

4. The Plaintiff filed a suit for recovery of possession and mesne profit against the Defendants. According to the Plaintiff, the tenancy of the Defendant No. 1 expired on efflux of time on 31st May, 2008 and although the Plaintiff was not obliged to give any notice to quit, by its three letters dated 29th May, 2008, 8th July, 2008 and 1st August, 2008, respectively, the Plaintiff called upon the Defendants to vacate the said flat and demanded mesne profit of Rs. 3 lac a month. The Plaintiff alleged that from 1st June, 2008 the Defendants were in

wrongful and unauthorized occupation of the suit flat without paying any occupation charges. It was further asserted that from 1st June, 2008 the Defendant was liable to pay a sum of Rs. 3 lac a month as mesne profit.

5. In Paragraph 14 of the plaint, the Plaintiff gave particulars of the valuation of the suit which is quoted below:

14. For the purpose of jurisdiction the suit is valued at Rs. 16,56,972/-as per particulars set out below:

(i) For recovery of possession of the said flat. Rs. 7,20,000.00 (ii) For mesne profits and monthly maintenance charges mentioned in paragraph 10 above.

Rs.	9,36,972.00	-----	Rs.	16,56,972.00
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Ad-valorem court fees of Rs. 31,100/- has been paid with the plaint. The Plaintiffs undertake to pay such further court fee as may be directed by this Hon"ble Court.

6. According to the Defendant, the suit on the basis of the averments made in the plaint could not be valued at Rs. 16,56,972/- in accordance with the law and the Plaintiff with mala fide intention has claimed mesne profit and monthly maintenance charges at an absurd rate for the purpose of bringing suit within the jurisdiction of this Court.

7. As indicated earlier, the learned Single Judge has overruled the aforesaid contention of the Appellant.

8. Mrs. Agarwal, the learned advocate appearing on behalf of the Appellant, has laboriously contended before us that the monthly rent payable by her client being Rs. 60,000/-, the suit should be valued on the basis of yearly rental i.e. Rs. 7,20,000/- for the purpose of the relief of eviction. Mrs. Agarwal further contends that as her client did not pay any rent for the months of June, July and August, 2008, a further sum of Rs. 1,80,000/- being the rents for those three months should be added and thus, the proper valuation of the suit should be Rs. 9,00,000/-as the suit has been filed on 24th September, 2008.

9. Mr. Chatterjee, the learned senior advocate appearing on behalf of the Respondents, on the other hand, has opposed the aforesaid contention advanced by Mrs. Agarwal and has contended that in the first letter of the demand of possession dated 29th May, 2008 written by his client, it was pointed out that the lease would expire on 31st May, 2008 and that the rate of mesne profit should be Rs. 3 lac a month after the expiry of the lease. Mr. Chatterjee submits that there is no substance in the contention of Mrs. Agarwal that by subsequent notice, the earlier notices were revoked. Mr. Chatterjee contends that even if its assumed that the suit was filed on the basis of the last notice dated 1st August, 2008 asking the tenant to vacate with the expiry of 31st August, 2008, then the suit should be valued at Rs. 7,20,000/- for eviction on the basis of the annual rent and for the arrears of rent for the months of June, July and August, 2008 a

further amount to Rs. 1,80,000/- should be added as arrears of rent and mesne profits @ Rs. 3 lac a month for 23 days would come to more than Rs. 2 lac and thus the total amount of valuations of the suit would exceed Rs. 10 lac.

10. After hearing the learned Counsel for the parties and after going through the materials on record, we are conscious that at this stage, we cannot enter into the merit of the submission as to whether the tenancy was really terminated in the month of May or from 31st August, 2008. If all the averments made in the plaint are now treated to be true, there is no dispute that for the purpose of eviction and for recovery of the arrears of rent up to the month of August, 2008 even at the contractual rate at which the rent was last paid, the valuation will be Rs. 9 lac. It appears that it is all along the case of the Plaintiff that the mesne profit should be Rs. 3 lac a month and on that basis 23 days' mesne profit will definitely exceed Rs. 2 lac. The question whether such a claim is correct or not can only be adjudicated at the time of trial on taking evidence and thus, at this stage, on the basis of averments made in the plaint, the plaint should not be returned.

11. In this connection, we may profitably refer to the decision of the Supreme Court in the case of Smt. Nandita Bose Vs. Ratanlal Nahata, where the Apex Court while dealing with a plea of this nature where the contractual rate of rent was Rs. 1400/- a month whereas the landlord claimed mesne profits at the rate of Rs. 7800/- a month, made the following observations:

The question whether the Appellant would be entitled to a decree for mesne profits/damages at the rate of Rs. 7,800/- per month or at any other rate after the termination of the tenancy is a matter which has to be decided in the suit. If ultimately it is found that the Appellant is not entitled to get mesne profits or damages for the period subsequent to 1st February, 1985 and that she is only entitled to receive Rs. 1,400/- per month, the suit in respect of the claim over and above Rs. 1,400/- per month, will have to be dismissed. But the question whether she was entitled to claim mesne profits or damages in respect of the period subsequent to 1st February, 1985 could not have been disposed of at a preliminary stage even before the trial had commenced. That question has to be decided at the conclusion of the trial along with other issues arising in the suit. Having regard to some of the decisions on which reliance is placed by the Appellant in the course of the appeal, we are of the view that the matter is not free from doubt. The claim for mesne profits/damages is neither palpably absurd nor imaginary. It needs judicial consideration. The acceptance of the view put forward by the Respondent may lead to encouraging a tenant who has forfeited his right to the tenancy to carry on a dilatory litigation without compensating the landlady suitably for the loss suffered by him on account of the unreasonable deprivation of the possession of his premises over a long period until he is able to get possession of the premises through the Court. We cannot, therefore, state at this stage that the claim for mesne profits/damages had been made without good faith and with the sole object of instituting the said suit before the High

Court of Calcutta even though it had no jurisdiction to try it. We do not agree with the submission made on behalf of the Respondent that the Appellant had "dishonestly and intentionally inflated the value of the suit in order to invite the jurisdiction of a particular court which has no jurisdiction otherwise." If mesne profits/damages are found to be payable then the claim made at the rate of Rs. 7,800/- per month for a premises of the nature in question which is situated in Calcutta does not appear to be fanciful having regard to the prevailing situation. We however express no opinion on the actual amount that may be awarded as mesne profits/damages in the event of the liability to pay it being established.

5. We are of the view that on the facts and in the circumstances of the case the High Court was in error in prejudging the issue relating to the right of the Appellant to claim mesne profits/damages and in directing that the plaint should be returned for presentation to the proper court. We, therefore, set aside the order passed by the High Court and direct the High Court to proceed with the hearing of the suit. We also direct that the observations made by the learned Judge in the course of the order against which this appeal is filed regarding the right of the Appellant to claim the mesne profits/damages at the rate of Rs. 7,800/- per month shall not be binding on the parties and that the said question shall be decided afresh by the High Court in the course of the trial. We, however, express no opinion on the correctness or otherwise of the observations made by the learned Judge on the above question.

12. We, thus, find that the assertion of the Defendant that the Plaintiff has deliberately undervalued the claim should not be adjudicated as a preliminary issue and should be dealt with at the time of trial. We, therefore, find that the learned Single Judge did not commit any illegality in overruling the objection taken by the Defendant.

13. The appeal is thus devoid of any substance and is consequently dismissed.

In the facts and circumstances, there will be, however, no order as to costs in this appeal.