
(2007) 07 MP CK 0010
In the Madhya Pradesh High Court
Case No : Civil Revision No. 171 of 2007

Union Bank of India

APPELLANT

Vs

Ravindra Phanse and others

RESPONDENT

Date of Decision : 02-07-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2007) 4 MPLJ 492

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Advocate : V.K. Jain with Atul Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Seth, J.

Shri V.K. Jain with Shri Atul Gupta, Counsel for applicant. He is heard on the question of admission.

This civil revision is directed against the order dated 11-5-2007 passed by the 16th Additional District Judge (Fast Track), Indore in, Civil Suit No. 36-A/05. By the order impugned the application preferred by the applicant herein, under 0.7, R. 11 of the CPC was rejected.

The respondents herein have filed a suit for eviction against the applicant under the provisions of M.P. Accommodation Control Act, 1961. The applicant filed an application under 0.7, R.11 for rejection of the plaint on the ground that during lease, suit filed by the respondents herein is premature. Trial Court did not agree with contention and rejected the application by the order impugned.

I have heard learned counsel for the applicant at length on the question of admission.

From perusal of the order impugned it is clear that initially the suit accommodation was let out to the applicant on a lease for a period of five years

vide registered lease deed dated 6-11-2000. Though there was a clause for extension/renewal for lease, for a period of further five years, but according to the plaint averments, as noticed by the trial Court in the order impugned, the plaintiff did not extend or renew the lease after its expiry. The plaintiff served the notice after expiry of the initial lease period and when applicant failed to hand over the vacant possession of the suit premises, respondents have filed the eviction suit which is now pending before the trial Court. The trial Court in the order impugned has observed that for deciding the controversial fact in issue evidence would be required therefore, at the initial stage, the plaint cannot be rejected as prayed by the applicant. Learned counsel for the applicant placed strong reliance on the decision, of the *Laxmidas Bapudas Darbar and Another Vs. Smt. Rudravva and Others*, in support of his contention that no eviction suit is maintainable during the currency of the contractual, lease. He has particularly invited attention to the paragraph 17 of the decision, which reads as under:

17. It may have to be scrutinized as to what extent the provisions of section 21 of the Karnataka Rent Act shall have an overriding effect over any other law or a contract. The Rent Acts have primarily been made, if not wholly, to protect the interest of tenants, to restrict charging of excessive rent and their rampant eviction, at will. In that view of the matter, section 21 of the Karnataka Rent Act provides that notwithstanding anything to the contrary contained in any contract, no order for eviction of a tenant shall be made by the Court or any other authority. Undoubtedly, it is provision providing statutory protection to the tenants as it is also evident from the heading of section 21 of the Act. This prohibition is however relaxed under the proviso saying that an order for recovery of possession of the premises can be made on an application made on that behalf only on the grounds as enumerated in clauses (a) to (p) to the proviso. The non obstante clause contained u/s 21 of the Act, will override any condition in any contract which may provide a ground for eviction other than those enumerated in clauses (a) to (p) of sub-section (1) of section 21. Such an additional ground in a contract shall be rendered ineffective. The use of the word "only" in the proviso is significant to emphasize that it relates to grounds alone which cannot be added over and above as provided. The whole contract or other conditions not related to eviction or grounds of eviction not be effected. So far as fixed-term lease is concerned, it shall be affected only to the extent that even after expiry of period of the lease the possession cannot be obtained by the lessor unless one or more of the grounds contained in section 21 of the Act are available for eviction of the tenant. There is nothing to indicate nor has it been held in any case that in view of section 21 of the Karnataka Rent Act a contract of fixed-term tenancy stands obliterated in totality. As indicated in the earlier part of the Judgment in the case of *Dhanapal Chettiar* it has been observed in para 5 that none of the State Rent Acts have abrogated or affected, the provisions of section 107 of the Transfer of Property Act which provides for lease of immovable property from year to year or for a term more than a year or reserving a yearly rent. As indicated earlier, the proviso to sub-section (1) of

section 21 of the Karnataka Rent Act limits the grounds on which a landlord can seek eviction of a tenant. Nothing has been indicated by reasons of which it can be concluded that a contract of tenancy loses significance on coming into force of the Karnataka Rent Act. The effect of the non-obstante clause, in our view has been rightly explained in the Full Bench decision in the cases of Sri Ramakrishna Theaters Ltd. vs. General Investments and Commercial Corpn. Ltd. In one of the decisions of this Court reported in *Modern Hotel vs. K. Radhkrishnaiah* it has been held that period of subsisting lease for fixed term could not be curtailed in the absence of a forfeiture clause in the lease.

After going through the foresaid decision of the Supreme Court it is clear that in that case a non-agriculture land was leased out for a period of 99 years and during the currency of said lease, an eviction suit was filed u/s 21 of the Karnataka Rent Control Act. The High Court held that the eviction, suit was maintainable even before the expiry of the fixed term of 99 years. According to High Court, provisions of Karnataka Rent Control Act were applicable de hors the contract of lease and the lessor was entitled to move a petition for eviction of the lessee u/s 21 of the Rent Control Act before the expiry of the fixed term of 99 years. Reversing the decision of the Karnataka High Court, the Supreme Court held that there was nothing to indicate that section 21 of the Karnataka Control Rent Act to show that a fixed-term lease stands obliterated in all respect. This was so held by interpreting section 21 read with the proviso of the Karnataka Control Rent Act and it is in this context it was held that in absence of forfeiture clause in the lease deed, lease, for a fixed term could not be curtailed by resorting to section 21 of the Karnataka Rent Control Act.

Thus, it is clear that facts of the case pending before the 16th Additional District Judge (Fast Track) Indore are clearly distinguishable from the factual aspect of the *Laxmidas Bapudas Darbar* (supra).

In view of the foregoing discussion, in the opinion of this Court, trial Court rightly held that the question could, be decided only after evidence is recorded. Thus, there is no merit and substance in the revision against the interlocutory order. Same is dismissed summarily.