

(2007) 11 KAR CK 0020

In the Karnataka High Court

Case No : Regular First Appeal No. 1622 of 2007

V.G.K. Design and Development Engg. (Pvt.) Ltd.

APPELLANT

Vs

Sri H.N. Narayana Reddy

RESPONDENT

Date of Decision : 16-11-2007

Acts Referred:

Karnataka Rent Act, 1999 — Section 2, 2 (3) (e)
Transfer of Property Act, 1882 — Section 106

Citation : (2007) ILR (Kar) 5150 : (2008) 1 KarLJ 305 : (2008) 1 KCCR 322

Hon'ble Judges : H.N. Naga Mohan Das, J;Chidananda Ullal, J

Bench : Division Bench

Advocate : Abhinav R., for Kumar and Kumar, for the Appellant; S. Shaker Shetty, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Naga Mohan Das, J.—This appeal is filed against the Judgment and Decree dated 19.4.2007 in O.S. No. 2927/2005 passed by the XII Addl. City Civil and Sessions Judge, Bangalore City decreeing the suit of the plaintiff for ejectment, recovery of arrears of rent, damages and directing an enquiry into future mesne profits.

2. Appellant is the defendant and respondent is the plaintiff before the Trial Court. In this judgment the parties are referred to their status before the Trial Court.

3. Plaintiff is the owner of the schedule property. Defendant is the tenant in the schedule property under the plaintiff on a monthly rent of Rs. 13,500/-. Defendant committed default in payment of monthly rents. Plaintiff got issued a lawyer's notice or legal notice dated 19.3.2005 terminating the tenancy of defendant but the defendant failed to vacate and deliver the vacant possession of the schedule property to the plaintiff. Having no other alternative the plaintiff had filed O.S.No. 2927/2005 against the defendant for ejectment, recovery of rent, damages and for future mesne profits.

4. The defendants entered appearance before the Trial Court and filed written statement inter alia contending that their tenancy is governed by the provisions of the Karnataka Rent Act, 1999 and not by the provisions of Transfer of Property Act. That the defendants are statutory tenants and as such are protected under the Karnataka Rent Act and hence on this ground according to the defendants, the suit of the plaintiff is liable to be dismissed. That the defendants further contended that notice of termination was not served on them and that they have not committed any default in the matter of payment of monthly rents. On the basis of the pleadings of the contending parties, the Trial Court framed the following issues:

- i) Whether the plaintiff proves that the defendants are in arrears of rent of Rs. 7,000/-?
- ii) Whether the plaintiff proves that the tenancy of the defendant is terminated in accordance with law?
- iii) Whether the plaintiff is entitled to damages/mesne profits? If so, at what rate?
- iv) What decree or order?

5. During the course of trial the Plaintiff had examined himself as PW.1 and got marked Ex.P1 to P5. On the other side the Defendant had examined one witness as DW.1 and got marked Ex.D1 to D16. The Trial Court after hearing both the parties and on appreciation of material evidence, both oral and documentary concluded that the relationship between the plaintiff and defendant is governed by the provisions of Transfer of Property Act and the tenancy of the defendant is duly terminated. It had further held that the defendant had failed to prove and establish that he had failed to pay the rents regularly and as such had fallen into arrears of rents and consequently the Trial Court passed the impugned Judgment and Decree directing the defendant to vacate and deliver the vacant possession of the schedule property to the plaintiff and further directed the defendant to pay arrears of rent of Rs. 7000/- and to pay damages at the rate of Rs. 15,000/- per month from the date of termination of tenancy till the date of suit and further directed for an enquiry with regard to the future mesne profits. Hence this appeal by defendant.

6. By consent of learned advocates on both the sides, we heard the arguments on main appeal at the very stage of admission and also perused the appeal papers.

7. As we see before the Trial Court the defendants had contended that the schedule premises is a residential premises and therefore the provisions of Karnataka Rent Act, 1999 (for short "Rent Act") are applicable and that provisions of Transfer of Property Act (for short TP Act") are not applicable and termination of tenancy under the TP Act is bad in law. The said argument was reiterated before us as well. The learned Counsel for the defendants further contended that for exclusion of premises from the application of provisions of

Rent Act, there shall be fixation of standard rent or deemed rent to the schedule premises. He had also contended that Section 2 deals with the application of the Rent Act. Section 2(3)(e) of the Rent Act clearly specifies that provisions of the Rent Act are not applicable to any premises where deemed rent or standard rent which exceeds Rs. 3500/- per month in any area referred to in part A of the first schedule of the Rent Act. In the instant case neither the standard rent nor the deemed rent is fixed and therefore the schedule premises could not be excluded from the application of provisions of Rent Act. We decline to accept this contention of learned Counsel for the defendants for the following reasons.

8. Section 27 to 46 in Chapter VI of the Rent Act deals with the regulation of eviction of tenant by the landlords. Section 2 in Chapter I of the Rent Act deals with the application of the Rent Act to the premises in the areas specified in first and second schedule. Section 2(3)(e) and the explanation thereto reads as under:

1. x x x x x x

2. x x x x x x

3. Nothing contained in this Act shall apply,-

(a) x x x x x x

i) x x x x x

ii) x x x x x

iii) x x x x x

(b) x x x x x x

(c) x x x x x x

(d) x x x x x x

(e) to any premises, deemed rent on the date of commencement of this Act or the standard rent of which exceeds,-

i) three thousand five hundred rupees per month in any area referred to in Part A of the first schedule; and

ii) two thousand rupees per month in any other area.

Explanation.- "Deemed rent on the date of commencement of this Act" shall be the rent calculated in the manner provided in Section 7, together with revision, if any, as provided in Section 9 and decreased in the case of premises constructed after the commencement of this Act at the same rate as the rate of enhancement stipulated in the third schedule to reflect the position on the date of commencement of this Act;

(f) xxx xxx xxx

(g) xxx xxx xxx

(h) xxx xxx xxx

4) xxx xxx xxx

5) xxx xxx xxx

9. Section 6 of the Rent Act, specifies the rent payable in relation to a premises and the same reads as under:

6. Rent payable.- (I) The rent payable in relation to a premises shall be,-

(a) the rent agreed to between the landlord and the tenant as enhanced in the manner provided in the Third schedule; or

(b) the standard rent specified u/s 7, as revised u/s 9.

(2) In the case of a tenancy entered into before the commencement of this Act, the landlord may, by notice in writing to the tenant within three months from the date of such commencement, enhance the rent as specified u/s 7, and the rent so enhanced, shall be payable from the date of such commencement.

10. Section 3(m) of the Rent Act defines the word "Standard Rent" as under:

Standard rent means the standard rent as referred to in Section 7 or such increased rent u/s 9 of the Act.

11. Section 3(n) defines the word "Tenant" as under:

Tenant means any person by whom or on whose account or behalf the rent of any premises, is or but for a special contract would be, payable, and includes,-

(i) a sub-tenant;

(ii) any person continuing in possession after the termination of his tenancy, but does not include any person to whom a licence as defined in Section 52 of the Indian Easements Act, 1882 (Central Act 5 of 1882) has been granted;"

12. A combined reading of applicability of provisions of Rent Act in Section 2(3) (e), the definition of Tenant in Section 3(n) and the rent payable u/s 6 of the Rent Act, manifestly makes it clear that it includes-

(i) the contractual rate of rent

(ii) the rent as enhanced in the manner provided in the third schedule

(iii) the standard rent as specified in Section 7

(iv) the revised standard rent as defined u/s 9

(v) the deemed rent calculated in the manner provided in Section 7 together with revision if any, as provided in Section 9.

13. The object of the Rent Act is to protect one class of tenants who are residing

in residential premises whose monthly rent is not more than Rs. 3500/- in Part A of first schedule and Rs. 2000/- to the residential, premises in second schedule and the commercial or shop premises the measurement of which is not more than 14 sq. meters. Therefore the non fixation of standard rent or deemed rent in respect of the premises alone is not the criteria to exclude the premises from the application of provisions of Rent Act. Even in the absence of fixation of standard rent or deemed rent to a premises and if the contractual rate of rent exceeds Rs. 3500/- per month for a premises in any area referred in Para A of first schedule the provisions of Rent Act are not applicable. In the instant case, it is not in dispute that the schedule premises falls under Part A of first schedule and the contractual rent per month is more than Rs. 3500/- and therefore the provisions of Karnataka Rent Act, are not applicable. Therefore the termination of tenancy of the defendants by issuing notice u/s 106 of Transfer of Property Act is in accordance with law and the Trial Court is perfectly justified in holding that the termination of tenancy of defendant as valid.

14. Learned Counsel for the defendants secondly contend that the defendant - company is the tenant under the plaintiff in respect of schedule premises. Notice of termination dated 19.3.2005 was issued to the Director of the defendant company. The notice of termination was not issued to the registered office of the defendant-company and therefore the same is bad in law. The notice in question terminating the tenancy of the defendant was issued under Transfer of Property Act and not under Companies Act. It is not the case of the defendants that defendants Director is not residing in the schedule premises. The Director of the defendant-company has not claimed the notice sent by the plaintiff under the register post acknowledgment due. Therefore, the Trial Court is right in holding that the service of notice of termination as sufficient. Merely because the notice of termination is not addressed to the registered office of the defendant-company, it cannot be said that the termination notice as bad in law. The Director of the defendant-company who is competent to represent the defendant-company ought to have accepted the notice sent by registered post acknowledgment due and ought to have replied taking that contention at the earliest point of time, but he failed to do so. On the other hand, the postal share indicates that the defendants have refused to accept the notice sent under register post and as such the same is returned with the postal share as "not claimed". Further the suit summons issued to the defendants by the Trial Court is to the address of the schedule premises and the same is accepted by the defendants and entered appearance before the trial court and contested the proceedings. Therefore there is no substance and merit in the contention of the defendants that notice terminating the tenancy of the defendants was not issued to the registered office of defendants-company and therefore the same is bad in law.

15. Lastly it is contended that the defendants have spent huge sum of money to the tune of Rs. 3,50,000/- towards repairs and up keeping of the schedule premises and the same is liable for adjustment towards arrears of rent if any. In

support of this claim, the defendants produced Ex.D15 & D16 the receipts issued by the contractor for having received the payment from the defendants for carrying out certain repair works in the schedule premises. Admittedly, there is no written consent of the plaintiff for carrying out the repair work to the schedule premises. Except the oral interested testimony of DW.1, there is no other evidence on record to prove and establish that defendants had the prior consent of plaintiff for carrying out the repair works. The contractors who have issued the receipts Ex. D15 and D16 are also not examined. In our considered view, the Trial Court was right in concluding that the defendants have failed to prove and establish that the defendants have spent a sum of Rs. 3,50,000/-towards repairs and up keeping of the schedule premises. This finding of the Trial Court is supported by pleadings and evidence on record. We find no justifiable grounds to interfere with the impugned Judgment and Decree of the Trial Court.

For the reasons stated above, the appeal is dismissed with no order as to costs.