
(2002) 11 DEL CK 0073
In the Delhi High Court
Case No : Suit No. 1624 of 1995

W.H. Deeth (Ballabhgarh) and Co.

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2003) 2 CivCC 701 : (2003) 102 DLT 787 : (2003) 66 DRJ 609 :
(2003) 2 RCR(Civil) 292 : (2003) 1 RCR(Rent) 466

Hon'ble Judges : Ramesh Chandra Chopra, J

Bench : Single Bench

Advocate : Amit S. Chadha, for the Appellant; Y.P. Chandna, for the Respondent

Judgement

R.C. Chopra, J.—The plaintiff had instituted this suit against the defendant for a decree of ejectment and damages for use and occupation/mesne profits in respect of the flat No. GF-1, Ground Floor, Manisha Building, 75-76, Nehru Place, New Delhi admeasuring about 1067 sq. ft. As far as the prayer for a decree of ejectment is concerned, the same has become infructuous for the reason that on 29.9.2001, the possession of the suit premises has already been handed over to the plaintiff by the defendant. The controversy, Therefore, now stands confined to the plaintiff's claim for damages for the use and occupation of the suit premises.

2. The plaintiff's case briefly stated is that vide a registered Lease Deed dated 1.5.1991, the defendant was inducted as a tenant in the suit premises for a period of five years w.e.f. 1.8.1989 on a monthly rent of Rs. 6455.35p. @ Rs. 6.05 per sq.ft. per month. The Lease Deed expired by efflux of time on the midnight of 31.7.1994. Vide letters dated 6.6.1994 and 5.7.1994, the plaintiff requested the defendant to hand over the possession of the suit premises to him. It was stated that although there was a Clause in the Lease Deed for the renewal of the Lease on terms mutually agreed between the Lesser and lessee but the negotiations failed and as such, the Lease was not extended. The plaintiff alleged

that since the defendant had failed to vacate and hand over the possession of the suit premises to the plaintiff on the expiry of the Lease, its occupation was not legal and as such, defendant was liable to pay damages/mesne profits @ Rs. 50/- per sq.ft. per month w.e.f. 1.8.1994. The said rate was stated to be the market rate of rent in the area. In these premises, the plaintiff claimed preliminary decree ordering an enquiring into the quantum of mesne profits payable by defendant to the plaintiff from 1.8.1994. Interest @ 24% per annum was also claimed on the amount found due.

3. The defendant filed a written statement controverting the plaintiff's claim in the suit and raised preliminary objections to say that the suit for possession and damages was not maintainable as the real intention of the plaintiff was to lease out the premises for indefinite period and as such, it had continued to extend and renew the Lease w.e.f. 1979 from time to time on the same terms and conditions except that the rent was raised. It was also pleaded that the plaintiff-landlord had accepted Banking Services Recruitment Board, Delhi as a tenant in suit premises and had been accepting even rent from it. It was also pleaded that the defendant being a nationalized/public sector undertaking, the premises in question were deemed to be public premises and, Therefore, the suit was barred by the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It was denied that the defendant was under an obligation to vacate the suit premises on 31.7.1994. It was also stated that no legal or valid notice was issued terminating the Lease. The plaintiff's claim for damages @ Rs. 50/- per sq.ft. per month was controverted and it was stated that since the defendant had been under lawful occupation of the premises and had been tendering rent every month, which was not accepted by the plaintiff, no damages could be awarded in favor of the plaintiff as prayed. The claim of interest was also disputed.

4. The plaintiff filed a replication to the written statement of the defendant controverting the pleas raised by the defendant. It was stated that Banking Services Recruitment Board was only an assignee and part of the defendant and, the defendant alone was plaintiff's tenant. It was denied that there was any identified tenancy in favor of the defendant Bank.

On the pleading of the parties, following issues were framed:

1. Whether the lease is for an indefinite period as stated in para 1 of the preliminary objections of the written statement?
2. Whether the suit is not maintainable against the defendant bank as the B.S.R.B. (Delhi) has been accepted as the tenant by the plaintiff?
3. Whether the suit is barred by the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971?
4. Whether the lease deed dated 1.5.1991 expired by efflux of time on the midnight of 31.7.1994?
5. Whether any legal and valid notice had been issued and served on the

defendant? If so, its effect?

6. Whether the defendant or any person claiming through the defendant is liable to be ejected from the suit premises?

7. Whether the plaintiff is entitled for damages/mesne profits for use and occupation of the premises by the defendant? If so, at what rate and for what period?

8. Whether the plaintiff is entitled to interest? If so, at what rate and for what period?

9. Relief.

5. In support of its case, the plaintiff examined PW-1 Shri P.L. Sahni and PW-2 Shri Pritam Singh. Defendant examined DW-1 Shri Narender Kumar, DW-2 Shri Madan Lal Bedi and DW-3 Shri Shanker Bhaumik. I have heard learned counsel for the plaintiff and learned counsel for the defendant. I have gone through the records. My findings on the issues are as under:-

ISSUE NO. 1

6. The plea of the defendant that Lease in its favor was for an indefinite period in as much as since 1979 it was in possession of the suit premises and the Lease was being extended from time to time on the same terms and conditions except increasing the rent cannot be sustained for the reason that in the last Lease Deed dated 1.5.1991 itself which was to take effect w.e.f. 1.8.1989, it was specifically stipulated that the Lease was for a period of five years only. It is true that the Lease Deed contained a renewal clause but it was with the object of providing an opportunity to the parties to renegotiate and resettle terms and conditions for renewal of the Lease Deed so that the Lease may be extended but in case the parties did not agree, the tenant had to vacate upon the expiry of the period of the Lease. The Lease Deed Exhibit P-1 was a registered Lease Deed. Its execution has not been disputed. This lease in favor of defendant was to expire on 31.7.1994. On the basis of the earlier Lease Deeds in favor of the defendant, which were renewed from time to time by execution of fresh Lease Deeds, it cannot be assumed that the tenancy in favor of the defendant was indefinite and as such, the suit filed by the plaintiff against the defendant was not maintainable. In P.S. Bedi Vs. The Project and Equipment Corporation of India Ltd., a learned Single Judge of this Court had clearly held that such lease deeds did not create a tenancy for indefinite period. The issue stands decided by holding that the Lease in favor of the defendant was not for indefinite period and it was for a period of five years only w.e.f. 1.8.1989 in terms of the registered Lease Deed dated 1.5.1991.

ISSUE NO. 2

7. The defendant had raised a plea that the suit filed by the plaintiff against it was not maintainable as the plaintiff had accepted Banking Services Recruitment

Board, Delhi as its tenant. This plea is based on Exhibits PW-1/1 and PW-1/10 which show that the plaintiff had been directly corresponding with Banking Services Recruitment Board and even rent was being accepted from Banking Services Recruitment Board. After considering the submissions made by learned counsel for the parties, this Court is of the considered view that the plaintiff had no privity of contract with Banking Services Recruitment Board in regard to the Lease of the premises in question. Admittedly, the plaintiff had let out the suit premises to defendant only and even the last Lease Deed Exhibit P-1 which was a registered document was between the plaintiff and defendant. Banking Services Recruitment Board is not shown to be a legal entity even and it appears to be only a Department of the defendant, which was using the suit premises only with the permission and consent of the defendant. There is no document on record to show that the plaintiff had ever agreed to let out the suit premises to Banking Services Recruitment Board or had ever acknowledged Banking Services Recruitment Board as a lessee in place of the defendant. The mere acceptance of rent sent by Banking Services Recruitment Board, which was for and on behalf of the defendant, or correspondence between the plaintiff and Banking Services Recruitment Board did not alter the relationship of Lesser and lessee between the plaintiff and defendant and as such, it cannot be held that the defendant had ceased to be a lessee of the suit premises and Banking Services Recruitment Board had become a tenant of the plaintiff. It is note worthy that the possession of the suit premises was handed over to the plaintiff by defendant only and not by B.S.R.B. It shows that defendant only remained a lessee in respect of suit premises till the possession was handed back to the plaintiff. Clause A(3) of Exhibit P-1 had also stipulated that defendant will be entitled to use the suit property for B.S.R.B., which means that defendant as a lessee had allowed B.S.R.B., to use the premises. The plea raised by the defendant Therefore is absolutely frivolous and as such, liable to be rejected. The issue stands disposed of accordingly.

ISSUE NO. 3

8. This plea is liable to be rejected for the reason that the suit premises do not belong to Central Government, State Government or any public sector undertaking and as such, are not covered within the ambit of Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The defendant had taken these premises on rent from the plaintiff and continued to be so all along. The plaintiff being a private owner and the suit premises being private property, it cannot be held that the suit is barred as pleaded. The issued stands disposed of accordingly.

ISSUES NO. 4, 5 & 6

9. These issues are being taken up together as these are interlinked and based on same evidence. The pleadings as made in the plaint and the written statement establish on record that the last Lease Deed executed by the plaintiff in favor of the defendant was dated 1.5.1991 and through it, a Lease in favor of the defendant was created for a period of five years w.e.f. 1.8.1989. Although

there was a renewal Clause in the Lease Deed but the parties could not mutually agree for its renewal and as such, by efflux of time, the Lease in favor of the defendant expired on the midnight of 31.7.1994. The Lease Deed has been proved on record as Exhibit P-1. DW-2 Shri M.K. Jain who had signed the Lease Deed on behalf of the defendant admitted that Exhibit P-1 was executed during his tenure as Secretary of the Banking Services Recruitment Board. DW-2 also admitted the execution of this Lease Deed. Clauses 1 and 6 of Exhibit P-1 make it abundantly clear that this Lease was for a period of five years only commencing from 1.8.1989. Since it was a Lease for a period of more than 11 months, it was got registered also. In the absence of any fresh Lease after its expiry, the Lease stood expired by efflux of time. There is nothing on record to show that the parties ever intended to create an indefinite Lease Deed. Had it been so, there was no purpose in fixing any period of Lease in Exhibit P-1. Section 11(a) of the Transfer of Property Act clearly says that the Lease of an immovable property shall get determined by efflux of time limited thereby. In view of the expiry of the Lease by efflux of time, the issues stand disposed of by holding that the Lease Deed dated 1.5.1991 expired by efflux of time on the midnight of 31.7.1994. Issue No. 6 has already become redundant for the reason that the possession of the premises in question has been handed over by the defendant to the plaintiff on 29.9.2001. The issues stand disposed of accordingly.

ISSUE NO. 7

10. The plaintiff had claimed damages for use and occupation of the suit premises from the defendant w.e.f. 1.8.1994 on the ground that after the expiry of the lease by efflux of time the defendant had not vacated and handed over the possession of the suit premises to the plaintiff. The plaintiff had prayed for a preliminary decree ordering an inquiry into the quantum of mesne profits payable by the defendant to the plaintiff in respect of the suit premises but the parties have led evidence on the question of quantum of mesne profits and damages. This Court Therefore, is of the considered view that no preliminary decree need be passed as this controversy between the parties can be determined on the basis of the pleadings of the parties and the evidence on record. At the time of the framing of this issue also, the Court had made it clear that instead of passing a preliminary decree the Court would inquire into the claim of the plaintiff regarding mesne profits and damages for the use and occupation of the premises by the defendant and that is why the issue was framed as to at what rate and for what period the mesne profits/damages should be awarded in favor of the plaintiff. It may also be mentioned that in the plaint in the valuation clause No. 15, the plaintiff had valued the suit and the affixed Court fee thereon claiming damages @ 50 sq.ft. Per month till the date of the filing of the suit.

11. In support of its claim of damages/mesne profits the plaintiff primarily relies upon the lease deed Ex.PW2/1 by which the family of PW2 had leased out their flat No. 818 on the 8th floor of Hemkunt Tower in the year 1996 @ Rs. 32 per sq.ft. per month. However PW2 in his cross examination admitted that he had no

personal knowledge regarding the rate of letting in respect of the buildings in Nehru Place and he knew nothing about the rent in respect of any flat in Maneesha Building during 1994-1995 or thereafter. PW1 a partner" of the plaintiff when examined in the Court did not say anything about the market rate of rent and as such the plaintiff has not placed satisfactory evidence on record to establish as to what was the market rate of rent in the area on or about 1.8.1994. The defense evidence led by the defendant by way of proving Ex.DW2/1, DW2/2 and DW3/1 shows that after 1990 the market rate of rent in the area in respect of first floor flats was about Rs. 15 per sq.ft. per month. However the suit premises were on the ground floor and as such the rent thereto had to be more. The rent at the rate of Rs. 32/- per square feet cannot be fixed for suit premises as Ex.PW2/1 does not relate to a similarly situated property. The evidence led by the defendant also cannot be acted upon for determining the mesne profits or damages in respect of suit premises as defendant has not established market rate of rent for the similarly situated properties during the period in question. This Court, Therefore, has no option except to determine the market rent of rent in respect of the suit premises w.e.f. 1.8.1994 to 29.9.2001 on an estimated basis. Keeping in view the evidence led by both the parties, this Court is of the considered view that the rate of rent for awarding mesne profit/damages to the plaintiff can be safely taken @ Rs. 20 per sq.ft. per month. Issue stands answered by holding that the plaintiff is entitled to recover damages/mesne profits @ Rs. 21340 per month w.e.f. 1.8.1994 to 29.9.2001.

ISSUE NO. 8

12. The plaintiff has claimed interest also on the amount of mesne profits and damages @ 24 per cent per annum. The Apex Court in Mahant Narayana Dasjee Varu and Others Vs. Board of Trustees, The Tirumalai Tirupathi, Devasthanam, had allowed interest on the claim of mesne profits by invoking Section 34 of the Code of Civil Procedure. Considering the market conditions during the last decade and the facts and circumstances of the case, the plaintiff is held entitled to interest @ 12 per cent per annum on the suit amount of damages/mesne profit due up to the date of the filing of suit and @ 9% per annum on the amount of mesne profits/damages that become due to plaintiff for the period between the filing of suit and 29.9.2001.

RELIEF

13. In view of the decision of the foregoing issues a decree in the sum of Rs. 18,35,240/- with costs is passed in favor of the plaintiff and against the defendant with interest as awarded in issue No. 8.

14. Decree sheet be prepared upon payment of the balance of Court fee on the amount decreed in the suit.