

THE HIGH COURT OF DELHI AT NEW DELHI

RFA 21/2008

Date of Decision: 4th July, 2008

CEMENT CORPORATION OF INDIA LTD. ...Appellant
Through : Mr. Rakesh Tikku, Adv.

Versus

ASHOK KUMAR ANAND ...Respondent
Through: Mr. Ramesh Babu, Adv. with
Mr. Vikas Chopra, Adv.

RFA 23/2008

CEMENT CORPORATION OF INDIA LTD. ...Appellant
Through : Mr. Rakesh Tikku, Adv.

Versus

GIAN VATI ANAND ...Respondent
Through: Mr. Ramesh Babu, Adv. with
Mr. Vikas Chopra, Adv.

CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

not necessary

Per Thakur, J :

A common question of law falls for consideration in these two appeals which shall stand disposed of by this common order. The appeals arise out of two different judgments and decrees passed in suits No. 36/2007 and 183/2007 for recovery of possession from the appellant Cement Corporation of India Limited of two different flats situate on the 3rd Floor of what is known as "CCI House" 87, Nehru Place, New Delhi.

The court below has, while allowing applications under Order 12 Rule 6 the CPC made in the said suits, recorded a clear finding to the effect that since the relationship of landlord and tenant between the parties is

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admitted and the rent for the premises is more than Rs.3,500/- per month, the tenant-appellant is not protected under the Rent Control Act. The Court has also held that the tenancy in favour of the appellant being a month-to-month tenancy and the same having been terminated qua both the flats in its occupation, the defendant-appellant had no justification to stay in possession thereof. It has also repelled the contention urged on behalf of the appellant that the contractual tenancy between the parties stood extended up to 14th October, 2009 and accordingly decreed the suits on admission of the defendant-appellant. The present appeal assails the correctness of the said findings.

2. We have heard Mr. Tikku, learned counsel for the Corporation and Mr. Ramesh Babu, appearing for the respondent. We have also perused the record. The jural relationship of landlord/landlady and tenant between the parties is not disputed. Nor is it disputed that the initial period of tenancy fixed in terms of lease deed dated 22nd September, 1979 followed by Rent Deed dated 1st March, 1980 has since expired. It is also common ground that Clause III(1) of the Rent deed dated 1st March, 1980 relevant to RFA No. 23/2008 and Clause III(1) of Rent Deed dated 1st March, 1980 relevant to RFA No. 21/2008 provided for renewal of the lease for a further period of three years upon payment of rent increased by 10% of the last paid rent; the appellant's case appears to be that upon expiry of the contractual period, the lease period stood extended by reason of payment of higher rent within the contemplation of the clauses mentioned above. Its further case appears to be that upon expiry of the extended period, the lease stood extended by reason of enhancement of rent by 10% over the last paid rent in terms of Clause III(1) of the lease deed which reads as under:

**"III. PROVIDED ALWAYS AND IT IS HEREBY
MUTUALLY AGREED AS FOLLOWS:**

(8)

1. The lease is for a period of three years w.e.f. from the date of possession. It is hereby explicitly agreed between both the parties that on every successive renewal of lease for a period of three years, the rent will be increased by 10% of the last rent paid. However, lease can vacate the premises before the expiry of the lease of renewal thereof after giving three months notice in writing to the lessor."

3. The appellant, on the basis of the above stipulation, claims to have renewed the lease successfully upon payment of 10% rent over the last paid rent even without any separate lease deed for the extended period having been executed and registered in accordance with law. The last of the said renewals is said to have expired on 14th October, 2006 upon payment of rent @ Rs.4850.91 per month. The appellant's case in the above backdrop is that it had exercised its option of renewing the lease for a further period of three years commencing from 15th October, 2006 upon increase of the rent from Rs.4850.91 to Rs.5336/- per month which amount appears to have been deposited by the appellant in the bank designated by the respondent in the appeal. The respondents does not, however, recognise the said extension and had sent a legal notice dated 28th July, 2006 by which the tenancy described as a month-to-month tenancy was terminated w.e.f. 14th October, 2006. The respondents had also issued another notice dated 14th November, 2006 in terms whereof it had taken objection to the deposit of the enhanced amount in their accounts and chosen to take a stand that the said payment of enhanced rent would be adjusted by them towards part payment of the mesne profits/damages recoverable by them. Failure on the part of the appellant Corporation to surrender possession despite the notices led to the filing of the two suits mentioned earlier which, as already seen above, have been decreed by the court below holding that the tenancies were indeed month-to-month tenancies which stood terminated by service of proper notice upon the appellant corporation.

4. On behalf of the appellant, it was contended by Mr. Tikku that the option available to the Corporation to extend the lease stood exercised by reason of deposit of the enhanced amount of rent in the accounts of the respondents. As a consequence of the said renewal, the corporation would be protected against eviction unless the tenancy was terminated for one of the reasons envisaged by Section 111 of the Transfer of Property Act. No such reason having been set up by the respondents, the suit filed by the appellants-respondents was premature and liable to be dismissed. There is, in our opinion, no merit in that contention. The lease deeds executed between the parties purported to create leases for a period exceeding 11 months and were therefore compulsorily registerable. Neither of the deeds is however registered in accordance with law. Consequently, even when the leases came into existence by reason of the documents executed between the parties, the protection of a contractual period of tenancy was not available to the lessee. One of the effects of non-registration of the document would be that the tenancy created by the same would remain a month-to-month tenancy. There was, in such a situation, no question of the tenancy being renewed for a period of three years as is contended on behalf of the appellant. Such a renewal does not come about even if the lessee pays enhanced rent to the lessor. Payment of a higher rate of rent does not by itself constitute a valid and enforceable renewal of the lease for a period of three years as contended on behalf of the appellant. So also the deposit of the enhanced rent for the period commencing from 15th October, 2006 could not confer upon the lessee the status of a contractual tenant. The deposit of enhanced rent was, in any case, without the consent of the appellant-respondent who had immediately after coming to know about the same, protested and made it clear that the amount deposited would be adjusted against the claim for mesne profit/damages payable to them. Suffice it to say that in the absence of a registered instrument fixing the

contractual period of lease beyond 14th October, 2006, the tenancy was a month-to-month tenancy which could have been validly terminated by service of a notice upon the appellant. There is no invalidity attached to the notice either which more than sufficiently conveyed to the Corporation the termination of the tenancy and called upon it to surrender possession of the same by the 14th October, 2006. The following passage from the notice makes the position abundantly clear:

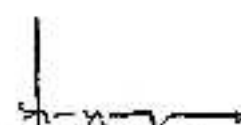
- "6. My client has informed me that she is no longer interested in keeping you as a tenant/lessee of the premises, and has accordingly instructed me to terminate your month to month tenancy in accordance with law.
7. I therefore on behalf of my client, the owner of the premises do hereby notify you that your month to month tenancy of the premises shall stand terminated on the expiry of 14th October, 2006, thereby giving you 15 days clear notice ending with your month to month tenancy. If you think that the monthly tenancy terminates on some other date, the tenancy shall stand terminated on that date after 15 days notice.
8. I therefore call upon you to vacate the premises and hand over vacant and peaceful possession of the same to my client on or before the midnight of 14th October, 2006 or any other day according to you the tenancy stands terminated with 15 days clear notice. In the event of your failure to comply with this demand, my client will be constrained to file a suit for your eviction and damages against you, holding you responsible for all costs and expenses therefor."

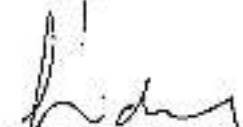
5. The trial court was in the light of what has been stated above, perfectly justified in holding that all material facts relevant to the ultimate decision of the suit being admitted, there was no impediment in decreeing the suits filed by the respondents.

6. It was next contended by Mr. Tikku that if the court were to eventually come to the conclusion that the decree passed by the trial

(11)

court was validly passed, the appellant corporation would require reasonable time to vacate the premises in their occupation. He argued that the Corporation is under a process of rehabilitation before the BIFR and being a Public Sector Corporation, required a more sympathetic view in the matter. Mr. Ramesh Babu, counsel for the respondent had no objection to the grant of reasonable time to the appellant corporation to vacate the premises provided the Corporation pay to the respondents the compensation for use and occupation at the rate at which it had made the deposits for the period beyond October, 2006. The appellant in RFA 23/2008 had deposited a sum of Rs.5336/- per month and in RFA 21/2008, the appellant had, it is common ground, deposited rent @ Rs.5336/- for the period w.e.f. 15th October, 2006. In the circumstances, therefore, and for the reasons stated by us above, we dismiss these appeals and uphold the judgment and decrees impugned in the same. The appellant shall have six months time to vacate both the premises in their occupation subject to the condition that it continues to deposit the amount of Rs.5336/- for each one of the two premises towards compensation for use and occupation of the premises. This deposit would be without prejudice to the right of the respondents to claim any further or enhanced amount in proper suits which they may chose to file, if so advised. Parties to bear their own costs.


T.S. THAKUR, J.


SIDDHARTH MRIDUL, J.

JULY 04, 2008
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