

* **HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA 227/2008 & CM No.15059/2008**

Date of decision : September 4, 2009

LALTECH ENGG. PROJECTS P.LTD. NOW KNOWN AS
TAURANT PROJECTS LTD. Appellant
Through : Mr. Sanjiv Bahl, Advocate with
Mr. Jai Bir Sharma, Advocate

Versus

ANUJ KUMAR JAIN Respondent
Through : Mr. Mahabir Parshad, Advocate

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? *yes*
- (3) Whether the judgment should be reported in the Digest ? *yes*

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Heard on admission and on formulation of substantial question of law. Following substantial question of law is formulated:

Whether the appellate court rightly construed the terms and conditions contained in the lease deed while passing a decree for possession under Order 12 Rule 6 CPC?

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2. Admit.
3. Final arguments heard.
4. Appellant was inducted as a tenant by the respondent in property number A/o 207, Second Floor, Guru Ram Dass Bhawan, A-3 and 4, Ranjit Nagar Community Centre, New Delhi, measuring 597 sq. ft. by virtue of a lease deed dated 10.2.2004 on monthly rent of Rs.6000/- excluding electricity and water charges for a period of three years commencing from 1.2.2004. In the lease deed there is a clause to the effect that whenever the tenant is desirous of renewing the lease period, it would give a notice in writing to the lessor at least three months in advance before the expiry of the terms of the lease with an increase of 20% in the last paid monthly rent.
5. Respondent served a notice of termination of tenancy upon the appellant and thereafter filed a suit for possession and mesne profits against it. The said suit is being contested by the appellant.
6. After the pleadings of the parties were complete, respondent filed an application under Order 12 Rule

6 CPC seeking a decree for possession on the basis of alleged undisputed facts. The trial court came to the conclusion that the tenancy stood terminated by efflux of time and it was never extended. The court refused to accept the plea of oral agreement of fresh tenancy as it was of the view that in the absence of a registered lease deed, it was a tenancy of month to month tenancy which was duly terminated vide notice dated 22.2.2007. Therefore, the trial court allowed the application and passed a decree for possession in respect of suit property in favour of the respondent vide order and decree dated 12.5.2008.

7. Aggrieved by the said order of the trial court, appellant filed an appeal before the Additional District Judge. The said appeal was dismissed. Hence, the present appeal under Section 100 of the CPC has been preferred by the appellant assailing the order of the first appellate court.
8. The appellant had raised a defence before the trial court that it had exercised the option of renewal of tenancy by giving a notice to the respondent/

landlord three months in advance before the expiry of the terms of the lease. This notice was duly served upon the respondent. However, respondent disputes receipt of this notice. The respondent thereafter served a notice under Section 106 of the Transfer of Property Act and terminated the lease of the appellant.

9. Learned counsel for the respondent has submitted that even in reply to the notice of termination of tenancy, the appellant did not state that it had sent a notice to the respondent exercising its option to extend the lease. The said reply is dated 24.3.2007. In para 2 of the reply, appellant has mentioned that it had spent Rs.2.5 lacs on the renovation as well as partition in the office and repair in the toilet etc. based upon the confirmation from the respondent for the renewal of the lease deed for a further period of three years. As per the last line of the reply, appellant requested the respondent rather, reminded the respondent to renew the lease deed for a further period of three years as per the terms of the lease deed at the

earliest.

10. Under these circumstances, when the suit for possession is being contested by the appellant disputing the termination of the tenancy and claiming renewal of the tenancy for a further period of three years, no decree under Order 12 Rule 6 CPC on the basis of alleged admissions could have been passed by the trial court and affirmed by the appellate court. It is a question of fact to be decided during the trial of the case, if appellant had exercised the option of extending the lease in terms of the lease deed and if respondent was duly informed about the same. It is again a question of fact to be decided after trial if the respondent under the circumstances and in view of the defence raised by the appellant could terminate the tenancy of the appellant.
11. Therefore, in my view since interpretation of the lease deed and terms contained therein is a mixed question of law and fact, no decree under Order 12 Rule 6 CPC could have been passed by the trial court in the manner in which it has been passed

without giving an option to the appellant to prove its defence of renewal of the lease. The question of execution of a lease deed for a further period of three years as a registered document could be ascertained only thereafter because, the respondent disputed the receipt of any such renewal notice.

12. Under these circumstances, the impugned judgment and decree of the appellate court as well as that of the trial court dated 12.5.2008 is hereby set aside. The case is remanded back to the trial court for trial of the case on merits after settling the issues in accordance with law.
13. I am told that the next date of hearing before the trial court is 4.10.2009. The parties are directed to appear before the trial court on the date fixed for further proceedings.
14. Attested copy of the order be sent to the trial court within ten days through special messenger.


(ARUNA SURESH)
JUDGE

SEPTEMBER 4, 2009
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