

R-139A

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 23.12.2010*

+ **RSA No.193/2003**

SHRI HANS RAJ Appellant
Through: Mr.P.S.Vats & Mr.Manish Vats,
Advocates.

Versus

SHRI BHAJAN SINGH Respondent
Through: Mr.S.C.Vats, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers 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

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 09.5.2003 which had reversed the finding of the trial judge. The trial judge vide judgment and decree dated 04.1.2003 had decreed the suit of the plaintiff Hans Raj for possession and damages. The impugned judgment had dismissed this suit.

2. The plaintiff is stated to be owner of property bearing

No.C-33, Punjabi Basti, Sultan Pur Road, Nangloi Jat, Delhi. The defendant was a tenant in respect of one shop at monthly rental of Rs.250/- exclusive of electricity and other charges. Tenancy of the defendant was terminated by efflux of time as also in terms of the notice of termination of tenancy duly served upon the defendant. Defendant was also in arrears of rent and he had not paid the same in spite of repeated requests. Damages @Rs.250/- per month till delivery of the suit property and thereafter @ Rs.500/- per month were claimed.

3. The defendant contested the suit. Preliminary objection was that the suit was barred under Section 50 of the Delhi Rent Control Act (hereinafter referred to as 'the DRCA'). Notice of termination was invalid as tenancy was for a manufacturing purpose for which the notice period was six months; further the defendant was not in default of payment of rent; he had paid up to date rent.

4. From the pleadings of the parties, the following five issues were framed:

- "1. Whether the suit is barred u/sec.50 of DRC Act in view of preliminary objection No.1 of W.S.? (O.P.D.)
2. Whether the notice of termination of tenancy is void ab initio in view of preliminary objection No.2 of W.S.? (O.P.D.)
3. Whether the plaintiff is entitled to claim relief of possession of suit property as prayed for? (O.P.P.)

4. Whether the plaintiff is entitled to the arrears of rent and damages as prayed for? (O.P.P.)”

5. Trial judge decided all the issues in favour of the plaintiff and decreed his suit for possession as also for damages @ Rs.250/- per month.

6. In appeal the judgment of the appellate court was reversed. The finding on issue nos.1 and 2 remained undisturbed. Finding in the impugned judgment was to the effect that the notice was primarily a notice terminating the tenancy of the defendant for non-payment of rent; in this view of the matter the provisions of Section 114 of Transfer of Property Act (hereinafter referred to as ‘the TPA’) protecting the tenant against forfeiture were invoked and the tenant being entitled to this protective cover the suit of the plaintiff was dismissed.

7. On behalf of the appellant, it has been urged that this was a monthly tenancy. The notice Ex.PW-1/2 dated 21.5.1996 has fulfilled the twin requirements of the notice under Section 106 of the TPA. The tenancy stood determined on the last day of the tenancy month; a clear 15 days period had been granted to the defendant to vacate the suit property. The Courts below had both categorically held that there was no bar under Section 50 of the DRCA; lease was not for manufacturing purposes. It is pointed

out that provisions of Section 114 of the TPA have been wrongly invoked in the impugned judgment; this provision would be applicable if there is a written document between the parties and there is a breach of any term or clause of such an agreement which is admittedly not so in the instant case. There was no written agreement under which the defendant was occupying the property of the defendant @Rs.250/- per month. Learned counsel for the appellant has placed reliance upon I (1996) CLT 447 Solapur Zilla Parishad Vs. C.S.Rao Kshirsagar AIR 1966 Allahabad 165 Riyasat Ali Khan Vs. Mirza Wahid Beg & Anr. AIR 1999 Allahabad 77 Ram Bali Pandey Vs. II Addl. Judge, Kanpur. Reliance has been placed upon 1995 RLR (Note) 28 Joginder Lal Vs. Bank of India to support his submission that where the notice has terminated the tenancy validly, the landlord is entitled to mesne profit at a higher rate than the contractual rate of rent.

8. Arguments have been countered. It is pointed out that the impugned judgment suffers from no fault; it had correctly appreciated the objective and intention of the legislature in enacting the provision contained in Section 114 which was supplemented by an amendment and Section 114A was added w.e.f. the year 1929. It is pointed out that these protective measures are for such a tenants who are facing the wrath of

greedy landlords who without any apparent reason wish to throw out the poor tenants on the street. It is pointed out that in this case an application had been preferred by the tenant under Section 114 of the TPA Act wherein it has been categorically averred that up to date rent had been paid by the tenant; no reply had been filed by the plaintiff to the application. Attention has been drawn to Ex.PW-1/9; it is pointed out that this document had given notice to the tenant only for non-payment of arrears of rent which was a wrong and incorrect statement as there was no evidence before the Courts below that the respondent/defendant had not paid up to date rent. It is pointed out that in such an eventuality such a termination is impermissible being a whim and caprice of the landlord. The provisions of Section 114 of the Transfer of Property Act were rightly invoked and relied upon by the first Appellate Court. To support his arguments reliance has been placed upon AIR 1925 Bombay 404 Krishnarao Pandurang Barve Vs. Balvant Keshav Patil , AIR 1928 Madras 250 Varanasi Ramabrahmam Vs. Kota Rami Reddi & Ors , AIR (34) 1947 Bombay 86 Ladhuram Manormal Vs. Chinniram Dongardas , AIR 1958 Madras 232 Janab Vellathi & Ors. Vs. Smt. K.Kadervel Thayammal, AIR 1968 Madras 96 Palaniswamy Gurukkal Vs. Kandappa Goundar [1969] 3 SCR 950 Praduman Kumar Vs.

Virendra Goyal , AIR 1977 Calcutta 178 Gobinda Lal Shaw & Anr. Vs. Tarak Nath Paul & Ors. as also judgment of the Apex Court reported in AIR 2010 SC 2077 Karam Kapahi & Ors. Vs. M/s Lal Chand Public Charitable Trust & Anr.

9. This is a second appeal. It was admitted and substantial question of law was formulated on 01.11.2010; it reads as follows:

“Whether the impugned judgment dated 9.5.2003 had misapplied the principle of Section 114 of the Transfer of Property Act, 1882 in favour of the respondent/defendant in case of termination of a month to month tenancy under Section 106 of the Transfer of Property Act, 1882? If so, its effect?”

10. Under Section 111 of the TPA there are eight modes for the determination of a lease. Section 111(g) and (h) are relevant; they inter alia read as follows:

“111. Determination of Lease.- A lease of immoveable property determines-

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease:

Under clause (g) a lease is determined by forfeiture i.e. if

the lessee breaks an express condition or he renounces his own character by setting up a title on a third person or he has been adjudicated as an insolvent; it is then for the lessee to re-enter the property on the happening of such an event; notice has to be given to the lessee of the intention to determine the lease.

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.”

Under Clause (h) the lease is determined on the expiry of the notice determining the lease i.e. the intention of the lessor to bring the lease to an end.

11. Section 114 provides for relief against forfeiture for non-payment of rent. It reads as follows:

“114.Relief against forfeiture for non-payment of rent- Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.”

This is a protection granted to the tenant but before he is entitled to such a protection he has to show that the forfeiture has been incurred as required under Section 111(g). If there is no

forfeiture under Section 111(g) no relief can be granted under Section 114 of the TPA.

12. Section 114A (added by the Amendment Act of 1929) of the TPA reads as follows:

“114A. Relief against forfeiture in certain other cases.- Where a lease of immoveable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing-

- (a) specifying the particular breach complained of; and
- (b) if the breach is capable of remedy, requiring the lessee to remedy the breach, and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent.”

Under this section relief can be provided to the tenant against forfeiture where a suit has been instituted on other grounds except those mentioned in its last part including non payment of rent. This provision is wholly inapplicable to the present case.

13. In this case there was admittedly no agreement in writing between the parties. It was by way of an oral understanding that

the defendant/respondent was occupying the suit property of the appellant/plaintiff. The notice dated 21.5.1996 is not a disputed document. It was proved as Ex.PW-1/9. It reads as follows:

"To

21.4.1996

Shri Bhajan Singh

s/o Late Shri Gulab singh.

R/o WZ-249, Sant Garh, Tilak Nagar, New Delhi.

IIND ADDRESS

Shop in House No.C-33, (tailoring shop)

Punjabi Basti, Sultanpur Road, situated in Village Nangloi Jat, Delhi-110041.

Dear sir,

Under instructions from and on behalf of my client Shri Hans Raj Malik s/o late Rattan Chand, resident of House No.C-33, Punjabi Bagh, Sultanpur Road, situated in village Nangloi Jat, Delhi-41, I have to serve you with this notice to the following effect:-

1. That you had been a tenant under my client in a shop in house No.C-33, Punjabi Basti, Sultanpur Road, situated in village Nangloi Jat, Delhi-41 @ Rs.250.00 p.m. as rent inclusive of all other charges at present, which stood paid only up to January, 1996. Your tenancy started on 10th of every English Calendar month and ended with 9th of the following month.
2. That my client do not want to keep you tenant in the said tailoring shop any more and terminates your tenancy u/s 106 Transfer of property Act, and require you to hand over possession of the said shop by 30th day of June, 1996 to my client alongwith rent w.e.f. February upto date of delivering possession to my client upto 30.6.1996 and thereafter damages for use and occupation of the said shop, being double of the rate of rent, which is prevailing market rate, if the shop is not vacated by the stipulated time.

Please note that if you do not vacate the shop within

stipulated time and pay the rent from Jan., up to 30th day of June, 1996, my client shall be constrained to file a suit for possession, recovery of rent and for damages at the double of rent rate of rent after June, 1996, holding you responsible for all costs and consequences and expenses. You are also liable to pay Rs.550.00 as notice charges. A copy is kept in my office for prompt and immediate action in case of your failure.

Yours faithfully,

P.S.Vats, Advocate."

14. This document recites that the tenancy had started from 10th of the english calendar month and ended on the 9th of the following month. Para 2 recites the intention of the lessor not to continue the lessee in the suit premises. It states that notice under Section 106 of the TPA is being served upon the defendant terminating his tenancy with a request to hand over the suit premises by 30.6.1996 along with rent w.e.f. February 1996 which had not been paid. Damages have also been claimed. It further states that in case the suit property is not vacated within the stipulated time and rent is not paid, the plaintiff will be constrained to file a suit for possession, recovery of rent and damages.

15. The intention on the part of the lessor to determine the lease of the lessee is clear and evident. The twin requirements of a notice under Section 106 of the TPA i.e. tenancy terminating on

the last day of the calendar month and a 15 days eviction period has been mentioned. It was a valid notice to quit. The plaintiff/lessor has not invoked the doctrine of forfeiture. Admittedly there is no document in writing between the parties qua this tenancy; in the absence of which it is clear that there could not have been any clause by virtue of which the plaintiff could have relied upon the same and invoked it to forfeit the tenancy. This document cannot in any manner be read as a determination of a lease under Section 111(g). Forfeiture necessarily implies the loss of a legal right by reason of breach of a legal obligation. The Supreme Court in AIR 1953 SC 228 Namdeo Lokman Lodhi Vs. Narmadabai & Ors. had in fact held that the courts almost “abhor a forfeiture”; the Courts lean strongly against forfeiture. There should be an express covenant or a clause the breach of which entails a forfeiture. Section 111(g) of the TPA had not been resorted to by the lessor in Ex.PW-1/9.

16. The concept of the termination of tenancy on account of forfeiture and concept of termination of tenancy to quit under Section 106 of the TPA are two distinct and different concepts. Section 114 of the TPA does not come into play unless a forfeiture is incurred by a tenant in pursuance of a forfeiture clause

contained in the agreement of lease. In the instant case, the question of resorting to a forfeiture clause did not arise as there was no agreement in writing between the parties. The tenancy between the parties was a monthly tenancy. Tenancy was not for any fixed period. Relief under Section 114 can be granted to a tenant only when the landlord invokes his right under a forfeiture clause and determines the lease by forfeiture, which may be for a fixed period. For example if the tenancy is for a fixed period of three years and it contains a forfeiture clause that if rent is not paid for one whole year the landlord can forfeit the tenancy; the landlord may determine the tenancy if the tenant does not pay rent for the whole year; for such a purpose the landlord has no right to eject the tenant before the expiry of the said period; if however thereafter the tenant fails to pay rent for the one year the forfeiture clause will enable the landlord to determine the lease before the full period is expired. In such a case the tenant may seek relief against forfeiture. However, in a tenancy which is month to month no question of forfeiture arises if the landlord determines it with a valid notice to quit.

17. The judgments relied upon by the learned counsel for the defendant as noted hereinabove are all distinct on their facts. In Gobinda Lal Shaw (supra) the lease was for a fixed period of 21

years. In Ladhuram Manormal (supra) the question that arose for decision was whether the privilege of a lessee in respect of a right to claim relief against forfeiture can be extended to his assignee or not. In Janab Vellathi (supra) the Court had gone into the question as to whether relief against the forfeiture can be given to a tenant notwithstanding the fact that he has not made any application to the said effect in the Courts below. In Varanasi Ramabrahmam (supra) there was a distinct covenant in the lease containing the forfeiture clause. The judgment of Palaniswamy Gurukkal (supra) related to the applicability of Section 114 to agricultural holdings. The judgment of Karam Kapahi & Ors. (supra) was on the proposition whether the averment made in an application under Section 114 of the TPA can be considered as “pleadings” to pronounce judgment under Order 12 Rule 6 of the Code of Civil Procedure or not. None of these judgments are applicable to the discussion in hand.

18. The ratio of the law as discussed supra clearly recites that for the tenant to invoke and to seek the discretionary protection under Section 114 of the TPA, his lease must have been determined under Section 111(g) of the TPA. This was not so in the instant case. Ex.PW-1/9 had not invoked the forfeiture clause.

19. The impugned judgment had illegally invoked the provisions

of Section 114. This finding which is contained in para 19 to 24 is perverse. The Court had visualized the plight of a poor tenant but at the same time had overlooked the equitable right available to a landlord. In the instant case, the tenant is living in this property since 1978 at a monthly rental of Rs.250/-. If the reasoning of the appellate Court is accepted no landlord would be able to evict his tenant if the tenant continues to pay regular rent. Provisions of Section 114 (h) would become almost redundant. Finding in the impugned judgment being perverse is liable to be set aside.

20. Appellant at this stage states that he is not pressing his claim for higher damages than those awarded by the trial court i.e. of Rs.250/- per month. The appellant is, however, permitted to withdraw the rent which has been deposited in Court @ Rs.250/- per month up to January, 2011. Appeal is accordingly allowed. Suit of the plaintiff stands decreed.

INDERMEET KAUR, J.

DECEMBER 23, 2010
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