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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on : July 09, 2012*
Judgment Pronounced on: July 11, 2012

+ RFA(OS) 49/2012

STATE TRADING CORPORATION OF INDIA LTD... Appellant
Represented by: Mr. Rakesh Tiku, Senior Advocate
instructed by Ms. Manjusha
Wadhwa, Mr. Amit Panigrahi
and Mr. Vivek Ojha, Advocates.

versus

NIRMAL GUPTA & ORS. Respondents
Represented by: Mr. R.P. Sharma, Advocate for R-1.
Mr. C. Mukund, Advocate with
Mr. Ashok Jain and Mr. Pankaj Jain,
Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MANMOHAN SINGH

PRADEEP NANDRAJOG, J.

1. Vide impugned judgment and decree dated February 22, 2012 application under Order 12 Rule 6 CPC filed by the respondents/plaintiffs has been allowed and suit filed by them has been decreed insofar it was prayed therein that a decree for possession be passed in favour of the respondents against the appellant with respect to the suit property bearing Municipal No.22, Rajpur Road, Delhi. The suit has been retained with respect to the issues relating to mesne profits.
2. The suit was filed in the year 1992, stating that the respondents were the co-owners of the suit property having

purchased the same vide sale deed dated May 31, 1973 and that the appellant was an existing tenant in the premises and attorned to the respondents. The agreed rent to be paid each month to the previous owner of the property M/s.Diwan & Sons Investment Pvt. Ltd. was paid to the respondents, which was in sum of ₹10,995/- per month. It was pleaded in para 7 of the plaint that the tenancy month was with effect from the 14th of each month. In para 9 of the plaint it was averred that the appellant has effected unauthorized constructions and when requested to vacate the tenanted premises, the respondent stated that it would consider doing so upon finding suitable alternative accommodation. In para 11 of the plaint it was pleaded:-

“(11) The tenancy of the defendant was terminated by a legal notice dated 1.4.1991 sent under Registered Acknowledgments Due and Certificate of Posting.”

3. In the written statement filed, averments made in the plaint were admitted and with respect to the pleadings in para 11 of the plaint it was pleaded as under:-

“That para 11 of the plaint as stated is not admitted to be correct. The receipt of the notice dated 1.4.1991 is, however, not denied. The notice dated 1.4.1991 was not in accordance with law and could not in any event at the material time have terminated the tenancy of the defendant. Without prejudice to the above statement, the plaintiffs gave up their rights allegedly accruing due to the service of the said notice on the defendant even accepted the rent thereafter till November 1992.”

4. It needs to be highlighted that in the written statement filed the appellant did not deny the jural relationship of landlord-tenant between the parties and that

the monthly rent was ₹10,995/- i.e. more than ₹3,500/- per month; and suffice would it be to state that in the city of Delhi the Rent Control Legislation as per the Delhi Rent Control Act 1957 is not applicable to tenancies where monthly rent payable is ₹3,500/- per month and above.

5. In a suit for ejectment of a tenant the plea by the plaintiff is that it is the landlord that the tenancy stands determined; in Delhi, only three issues would arise for consideration: (i) Whether there exists a landlord-tenant relationship; (ii) Whether the rent of the premises is ₹3,500/- and above; and (iii) Whether the tenancy stands validly determined?

6. In the instant case the first two ingredients have not been denied in the written statement. The only denial is, not to the fact of having received a notice determining the tenancy, but to the legality thereof.

7. The respondents had filed an application registered as IA No.11872/1994 under Order 12 Rule 6 Code of Civil Procedure pleading therein that in view of the written statement filed the claim in the suit pertaining to possession required no trial and decree should follow. Unfortunately, said application remained pending till; rather unfortunately. The application was dismissed as not pressed as recorded in the order dated July 20, 2005, but fortunately, with liberty to file another application in case the suit was not disposed of expeditiously.

8. Thereafter, the matter got adjourned from time to time till issues were settled as per order dated May 08, 2007 as under:-

“1. Whether the tenancy of the defendant had been validly terminated? OPP

2. Whether the plaintiff is entitled to possession of property No.22 Rajpur Road, Civil Lines, Delhi as claimed? OPP

3. Whether the plaintiff is liable to pay damages/mesne profits, on the defendant, and if so, at what rates and for what period? OPP

4. Whether the plaintiff is entitled to interest as claimed over damages, at what rate and for what period? OPP

5. Relief.”

9. Thereafter, since trial did not proceed and evidence could not be recorded, respondents filed another application registered as IA No.16402/2009 under Order 12 Rule 6 of the Code of Civil Procedure which has been allowed by the learned Single Judge.

10. Contention urged in appeal is that having filed and thereafter withdrawn IA No.11872/1994 under Order 12 Rule 6 of the Code of Civil Procedure, another application on the same plea and under the same provision of law could not be filed.

11. The contention is rejected by us and has been rightly rejected by the learned Single Judge for the reason order dated July 20, 2005 recording IA No.11872/1994 being not pressed expressly grants liberty to the respondents to file a fresh application on the same plea. The ethos of the order dated July 20, 2005 is that if trial could not be completed expeditiously, the respondents could revisit the Court on the same plea.

12. As noted by us herein above, the only plea on which the parties were at variance was to the legal effect of the notice dated April 1, 1991, receipt whereof was admitted by the appellant.

13. Let us extract the notice. It reads as under:-

“Date : 1st April, 1991.

The State Trading Corporation of India Ltd. ,
(Imported Cars Deptt).
22, Rajpur Road, Delhi-54

Dear Sirs,

1. The undersigned for and on behalf of and on instructions from S/Shri Jatinder Nath Gupta, Devinder Nath Gupta, Narinder Nath Gupta, sons of late Shri Guranditta Mal, Mrs. Nirmal Gupta wife of Shri J.N. Gupta, Mrs. Asha Gupta wife of Shri D.N. Gupta, Smt. Sudesh Gupta wife of Shri N.N. Gupta, resident of 1, Malkaganj, Delhi and owner landlords of property No.22, Rajpur Road, Delhi serves you with the following notice.

2. That you are tenant at property No.22, Rajpur Road, Delhi and that your tenancy commences from 15th of each calander month.

3. That my clients have called upon you a number of time to hand over the vacant and peaceful possession of the property to them but to no avail.

4. That you have not paid or tendered the rent in accordance with the contractual obligation subsisting between the parties.

5. That my clients are not inclined to keep you as their tenant and terminate your tenancy which shall come to an end on 15th day of May, 1991 or on such subsequent date tenancy expires as per your calculation.

6. I, therefore, call upon you to hand over the vacant and peaceful possession of property No.22, Rajpur Road, Delhi by the said date to avoid legal action for possession against you at your costs. It is without prejudice to the claim of my clients for arrear of rent at the contractual rate with interest thereon.

7. In order to ensure that you are property (sic.) served I am sending one copy each of this notice under RAD and Certificate of posting. A carbon copy is retained in my office for record.

Yours faithfully,

(R.P. Sharma)
Advocate”

14. The notice, vide para 5, determines the tenancy as of May 15, 1991, but makes it clear that the tenancy be treated as determined on such subsequent date if the appellant is of the opinion that the monthly tenancy comes to an end on some other date.

15. We have extracted herein above the response in the written statement filed by the appellant to para 11 of the plaint and would simply highlight that after admitting having received the notice determining the tenancy a plea has been taken that the notice is not in accordance with law. In what manner the notice is not in accordance with law has not been pleaded.

16. In the decision reported as 2011 (6) SCALE 677 Ramrameshwari Devi v. Nirmala Devi, in para 52(a) the Supreme Court highlighted that pleadings are foundation of the claim by a party and it is the bounden duty and obligation of every trial Judge to carefully scrutinize the pleadings and

the documents on which the pleadings are predicated. In the decision reported as AIR 1999 SC 1464 D.M.Deshpande v. Janardhan Kashinath Kadam, the Supreme Court highlighted the relevance of pleading material facts. In the decision reported as AIR 1982 Bom. 491 Nilesh Construction Co. v. Gangu Bai, with reference to a plea of tenancy, the Bombay High Court highlighted that pleadings must disclose the details with reference to the day when the tenancy was created and the exact nature thereof. In the decision reported as AIR 2006 SC 1828 Mayar (HK) Ltd. & Ors. v. Owners & Parties Vessel MV Fortune Express, the Supreme Court highlighted the requirement to read pleadings meaningfully in view of the relied upon documents and see whether the same are not illusory or vexatious.

17. The vague plea in the written statement that the notice was not in accordance with law; without setting out as to why the same was not in accordance with law, is a vague plea and in our opinion does not merit an issue to be settled. That apart, from a perusal of the issues settled between the parties, as per their respective pleadings, it is apparent that it is only issue No.1 which requires adjudication and depending upon the decision thereon, issue No.2 and No.3 would follow; subject to proof of market rate of rent for purposes of determining issue No.3.

18. Issue No.1: Whether the tenancy of the defendant has been validly terminated; requires no evidence to be led inasmuch as the simple job is to note the language of the notice determining the tenancy and then determine its legal effect.

19. Learned counsel for the appellant could not make any submission as to in what manner the notice did not validly terminate the tenancy. The notice has expressly been issued on behalf of the respondents by their counsel and has been received by the appellant. The notice refers to the suit property. It determines the tenancy with effect from the 15th of the month, but indicates to the appellant that should the appellant treat the calendar month to be ending on some other date, it gives the freedom to the appellant to treat the tenancy having been determined with effect from said date. The plaint was instituted on April 14, 1992.

20. Apart from the fact that on the subject of the tenancy being determined, keeping in view the vague defence taken by the appellant, we are of the opinion that issue No.1 ought not to have been settled, and assuming it required to be settled, being an issue of law and not of fact, no evidence being required to determine the issue, the same could be decided at the very threshold.

21. The plea taken in the written statement that after determining the tenancy the respondents received rent, suffice would it be to state that after determining the tenancy as per notice dated April 01, 1991 the suit was instituted in April 1992. It is not the plea urged by the appellant that the amount which it tendered was towards rent and was accepted as rent. What we intend to convey is that when a tenancy is determined, either by efflux of time or by a notice determining the tenancy, the status of the tenant is reduced to that of a tenant at sufferance. People generally think that the status of the tenant becomes that of a tenant holding over. In law a tenant becomes a tenant holding over, if after the tenancy

being determined there is evidence that the consideration for occupying the premises was tendered as rent by the tenant and accepted by the landlord as rent. The reason is that a tenancy is a bilateral contract between the parties and its bilateral continuation has to be evidenced by a bilateral consensus ad-idem.

22. Looked at from any angle, the view taken by the learned Single Judge is correct, and before bringing the curtains down we would like to pen down that instant proceedings reflect a lackadaisical approach in dealing with the suit.

23. A vague plea which merited no consideration was taken into consideration and issue No.1 was settled. It was overlooked that the issue was on a matter of law and not on a matter of fact, nobody bothered to take a call on the said issue till the impugned decision was taken. A simple suit filed in the year 1992 has remained in the corridors of this Court for 20 years.

24. On the plea urged that since an issue has been settled with respect to the tenancy being determined, it would be apparent that Order 12 Rule 6 Code of Civil Procedure would have no application, we may only note the decision of the Supreme Court reported as AIR 2005 SC 2765 Charanjit Lal Mehra & Ors. v. Smt.Kamal Saroj Mahajan & Anr. As noted in para 5 therein, issues were settled on the pleadings of the parties and at the stage of evidence an application under Order 12 Rule 6 Code of Civil Procedure was filed which was dismissed by the learned Trial Judge but on a Revision Petition being filed was allowed by a learned Single Judge of this Court. The Supreme Court upheld the view taken by the learned

Single Judge and highlighted that mere settlement of issues had no bearing on the applicability of Order 12 Rule 6 Code of Civil Procedure.

25. Upholding the impugned decision we dismiss the appeal but refrain from imposing any costs.

(PRADEEP NANDRAJOG)
JUDGE

(MANMOHAN SINGH)
JUDGE

JULY 11, 2012
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