

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

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Date of decision: 17 July, 2013

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RFA No.134/2013 & CM No.4201/2013 (for stay).

JAIN COOPERATIVE BANK LTD.

....Appellant

Through: Mr. Amit Gupta & Ms. Sumati
Jumrani, Advs.

Versus

SH. DHARAMVEER MUGRAI

.... Respondent

Through: Mr. Dinesh Kumar Gupta & Mr.
Vikas Mishra, Advs.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The appeal impugns the judgment and decree (dated 1st February, 2013 of the Court of Addl. District Judge (East) District, Karkardooma Court in CS 150/2011) on admissions, of ejectment of the appellant Bank from the ground floor portion of property No.459/6, Plot No.30, Bhola Nath Nagar, Delhi,.

2. Notice of the appeal was issued on 11th March, 2013 and vide subsequent order dated 12th April, 2013, the application of the appellant under Order XLI Rule 27 of the CPC was allowed and a copy of Lease Deed taken on record; by the said order the operation of the impugned judgment and decree was also stayed and the appeal listed for final arguments on 8th July, 2013. On 8th July, 2013 the counsels were heard partly but finding the Trial Court record to have not been requisitioned, the same was

requisitioned and the appeal listed for further hearing for today. The counsels have been heard further and the record perused.

3. The respondent/plaintiff filed the suit from which this appeal arises for recovery of possession and *mesne* profits pleading:

- (i) that the respondent / plaintiff had vide registered Sale Deed dated 20.05.2010 purchased the property No.459/6 constructed upon plot No.30, Bholanagar, Delhi from its erstwhile owner Ms. Kanak Prabha Gupta;
- (ii) that the ground floor of the said property was let out to the appellant / defendant vide registered Lease Deed dated 23.07.1997 for a period of five years with effect from 01.08.1997 to 31.07.2002 at a rent of Rs.17,000/- per month;
- (iii) that the erstwhile owner had vide letter dated 21.05.2010 asked the appellant / defendant to attorn to the respondent / plaintiff as landlord and the appellant / defendant since then had started paying rent to the respondent / plaintiff @Rs.22,483/- per month and had so paid rent till 31.01.2011;
- (iv) that the tenancy of the appellant / defendant after the expiry of five years of lease aforesaid was from month to month and the appellant / defendant was not protected from eviction under the provisions of the Delhi Rent Control Act, 1958 since the rate of rent was in excess of Rs.3,500/- per month;
- (v) that the respondent / plaintiff vide notice dated 22.03.2011 had determined the tenancy of the appellant / defendant;

- (vi) that the appellant / defendant had replied to the said notice;
- (vii) that however since on the notice the date thereof had been erroneously typed as 22.03.2010, another legal notice dated 20.04.2011 also determining the tenancy of the appellant / defendant was sent;
- (viii) that the appellant / defendant sent reply admitting existence of relationship of landlord and tenant with the respondent / plaintiff but otherwise denying liability to vacate the premises; and,
- (ix) that the possession of the appellant / defendant of the premises after the determination of its tenancy was unauthorized and the appellant / defendant was liable to pay *mesne* profits / damages for use and occupation at the prevalent letting value which then was Rs.1,00,000/- per month.

4. The appellant / defendant filed written statement defending the suit on the following grounds:

- (I) that the respondent / plaintiff had not filed any documents of its ownership of the property and was thus not entitled to maintain the suit;
- (II) that the appellant / defendant had been regularly tendering and paying the agreed rate of rent;
- (III) that the suit was motivated with a desire to extract enhanced rent from the appellant / defendant;

- (IV) that the appellant / defendant had invested a huge amount in the premises and it was not possible for it to vacate the premises;
- (V) that as per the Lease Deed, the appellant / defendant had agreed to increase the rent by 15% per annum after every five years and which had been agreed to by the erstwhile owner Ms. Kanak Prabha Gupta;
- (VI) that the respondent / plaintiff was not entitled to terminate the tenancy in view of the terms and conditions of the Lease Deed dated 23.07.1997;
- (VII) that upon the appellant / defendant increasing the rent by 15% after every five years, the lease was automatically extended for another five years and the respondent / plaintiff was obliged to execute a fresh lease deed in favour of the appellant defendant;
- (VIII) that the notice of termination of tenancy stood waived as the respondent / plaintiff had been accepting the rent from the appellant / defendant without any objection;
- (IX) that on receipt of letter dated 21.05.2010 from the erstwhile owner asking the appellant / defendant to attorn to the respondent / plaintiff as landlord, the appellant / defendant as a precautionary measure had started tendering / paying the agreed rent to the respondent / plaintiff but that did not amount to the appellant / defendant accepting the respondent / plaintiff as landlord;

- (XI) that as per the Lease Deed dated 23.07.1997 the tenancy of the appellant / defendant of the said premises was for an indefinite period with the condition that after every five years the appellant / defendant will pay the rent by increasing 15% and thereafter the tenancy was to automatically stand extended;
- (XII) that the rent after first five years was increased to Rs.19,550/- and thereafter to Rs.22,483/-; and,
- (XIII) that the notice of determination of tenancy was in violation of Clause 16 of the Lease Deed and was thus not valid.

5. The respondent / plaintiff filed a replication to the aforesaid written statement alongwith an application under Order 12 Rule 6 of the CPC for decree for ejectment on admissions. A reply was filed by the appellant / defendant to the said application.

6. The learned Additional District Judge has vide order dated 01.02.2013 allowed the application of the respondent / plaintiff under Order 12 Rule 6 of the CPC and has axiomatically passed a decree in favour of the respondent / plaintiff and against the appellant / defendant for recovery of possession of the premises, finding/holding/observing:

- (i) that the appellant / defendant had admitted that after receiving the letter dated 21.05.2010 from the erstwhile owner Ms. Kanak Prabha Gupta asking the appellant / defendant to attorn to the respondent / plaintiff as landlord, the appellant / defendant had been paying the rent to the respondent / plaintiff and had also been deducting tax at source; therefore under these

circumstances the appellant / defendant could not raise objection that the respondent / plaintiff is not the landlord of the tenanted premises;

- (ii) that it was an admitted fact that after the Lease Deed dated 23.07.1997 no further Lease Deed had been executed between the parties though the respondent / plaintiff had been receiving enhanced rent in terms of clause of the Lease Deed whereunder the rent was agreed to be enhanced by 15% after every five years;
- (iii) that however the Supreme Court in ***Sarup Singh Gupta Vs. S. Jagdish Singh*** 2006 (4) SCC 205 has clarified that the amount received after termination of tenancy can be taken as charges towards use and occupation because after that the tenant has continued to use and occupy the tenanted premises and is liable to pay the user charges thereof;
- (iv) that a fresh tenancy is a matter of bilateral contact coming into existence and unless there is a bilateral action and an agreement is entered into to create a fresh tenancy, mere acceptance of rent after termination of tenancy cannot create fresh tenancy;
- (v) Relying on ***Smt. Nargis Khanna Vs. Win Medicare Pvt. Ltd.*** 2011 (125) DRJ 51 holding that where a Lease Deed contains a clause for renewal but there is no contract in writing for renewal, deposit of increased rent stipulated in the renewal clause in the account of the landlord every month does not

result in renewal of lease, it was held that merely because the appellant / defendant had been paying increased rent in terms of clause of renewal / extension of lease, did not mean that the lease stood renewed / extended;

- (vi) that the lease in favour of the appellant / defendant could not be treated as automatically extended on the basis of payment of enhanced rent as there was admittedly no further written Lease Deed between the parties;

Accordingly, the respondent / plaintiff was held entitled to a decree for possession on admissions.

7. The counsel for the appellant/defendant has not found fault with the reasoning aforesaid in the judgment of the Trial Court based on the judgments of the Apex Court in **Sarup Singh Gupta** supra and the judgment of this Court in **Smt. Nargis Khanna**. The only argument of the counsel for the appellant is on the basis of the following clauses in the Lease Deed dated 23.07.1997:

“3. That the lessee has further undertaken to increase the rent @ 15% of the rent after expiry of every five years from the date of this lease and after the increase of rent by 15% the lease period shall automatically extended for another 5 years and in this manner the bank will have the right to extend the lease period unless otherwise mutually decided.

15. *That in case the lessee desires to leave and vacate the premises before the expiry of the lease period, he shall vacate the same after giving three month prior notice in writing to the lessor, in that behalf but the lessor will have no right to get the premises vacated before expiry of the lease period i.e. five years. After the expiry of five years if the lessor wants the lessee to vacate the premises he will have to give a notice of one year before getting the premises vacated to the lease bank.”*

8. It is contended that the agreement between the parties was of ‘automatic extension’ of the lease by increase in rent and which extension is different from ‘renewal of lease’ and while a renewal of lease requires the execution of a fresh lease deed, an agreement for extension of lease has no such obligation and notwithstanding the Lease Deed dated 23.07.1997 being for a period of five years only, the same stood extended in the years 2002 and 2007 and again in the year 2012 and the respondent / plaintiff could not have determined the lease. Reliance in this regard is placed on ***Provash Chandra Dalui Vs. Biswanath Banerjee*** 1989 Supp. (1) SCC 487 and ***State of U.P. Vs. Lalji Tandon*** (2004) 1 SCC 1. It is further contended that the agreement between the parties was for determination of lease (by the landlord) by a notice of one year but the notice by which the lease was determined was of 15 days only and thus invalid. It is yet further argued that though the appellant / defendant had taken the said pleas in the written statement but the learned Additional District Judge in the impugned

judgment has not dealt therewith; that in the light of the said pleas in the written statement, there can be no decree for ejectment on admissions as the same raise a triable issue.

9. The counsel for the respondent / plaintiff on the contrary has invited attention to the letters of the appellant / defendant forwarding the cheques for rent of the premises to the respondent/plaintiff and the rent receipts issued by the respondent / plaintiff as owner to the appellant / defendant and filed by the appellant / defendant itself before the Trial Court and has contended that the same unequivocally contain the admission of the appellant / defendant of the respondent / plaintiff being its landlord qua the premises aforesaid. Attention is also invited to the copies of the letters dated 09.07.2007 and 31.07.2007 of the erstwhile landlord Ms. Kanak Prabha Gupta to the appellant / defendant asking the appellant / defendant to vacate the premises and copies of which letters bear the stamp of the appellant / defendant in acknowledgment of receipt of the originals thereof.

10. I have considered the rival contentions aforesaid. I, at the outset clarify that the counsel for the appellant having confined the arguments to aforesaid, need is not felt to deal with the other grounds if any taken in the memorandum of appeal or the other reasons given by the Additional District Judge for passing the decree for ejectment or the other pleas taken by the appellant / defendant in the written statement inasmuch as the hearing having been held in open Court and the counsel having addressed on the aforesaid aspects only, this Court is not required to extend the scope of judgment.

11. I will first take up the contention of the counsel for the appellant, of an extension of lease being different from renewal of lease and a lease even though for a certain period, as in this case for a period of five years only, if provides for extension, so stands extended even in the absence of execution of a fresh lease. Such an argument is often found to be raised on behalf of lessees or tenants relying on *Provash Chandra Dalui* (supra) which undoubtedly in para 14 thereof holds the word 'extension' to be different from the word 'renewal' and further that while in the case of renewal, a new lease is required, in the case of extension the same lease continues in force during the additional period by performance of the stipulated act.

12. A lease of immovable property for a period exceeding one year can be made only by a registered instrument. Such a registered instrument is exigible to stamp duty under The Indian Stamp Act, 1899 which (as applicable to Delhi) provides a slab system for stamp duty on lease deeds with successively higher rates of stamp duty being provided for leases for a term of less than one year, leases for a term between one and five years, leases for a term exceeding five years and not exceeding ten years, leases for a term exceeding ten years but not exceeding twenty years, leases for a term exceeding twenty years but not exceeding thirty years, leases for a term exceeding thirty years but not exceeding hundred years and leases a term exceeding hundred years or in perpetuity.

13. I have wondered whether by paying minimum stamp duty or say stamp duty as on a lease for a period of five years, a lease for a period longer than five years or virtually in perpetuity as is sought to be argued here, can be created by merely providing for extension thereof beyond the period of

five years also and in which case as per the argument aforesaid, no new lease also would be required to be executed and no question of paying stamp duty thereon would arise. I am unable to digest the law to be so, levying stamp duty if the draftsman of the lease deed uses the word ‘renewal’ and not levying stamp duty if the draftsman of the lease uses the word ‘extension’. Such an interpretation would lend credence to the perception “the law is an ass – an idiot” echoed by Mr. Bumble in Charles Dickens ‘Oliver Twist’. It is the duty of every Court to prevent the rule of law from becoming an object of public ridicule and the law a laughing stock. Justice Krishna Iyer in ***Bushing Schmitz Private Limited Vs. P.T. Menghani*** (1977) 3 SCR 312 held each Court to be clothed with the power to prevent its process from being rendered a parody.

14. I have therefore minutely read the facts of ***Provash Chandra Dalui*** and find that the lease before the Court in that case was for a period of twenty years but with a condition that it will in the first instance be for a period of ten years and if the lessee did not fail to pay the rent and perform its other obligations during that period, the lease would be ‘extended’ for a further period of five years and similarly for a yet further period of five years. The question which had arisen in that case was whether such a lease would be for a period of ten years or twenty years inasmuch as under the Calcutta Thika Tenancy Act, 1949 protection from eviction was available only if the lease was for a period of less than twelve years and was not available if the lease was for a period of twenty years. While holding the lease in that case to be not for a period of less than twelve years, the Supreme Court carved out the distinction aforesaid between renewal of lease

and extension of lease. It would thus be seen that the observations in ***Provash Chandra Dalui*** relied upon by the appellant / defendant to the effect that extension of lease does not require execution of a fresh Lease Deed were made by the Supreme Court in the context of a lease for twenty years i.e. on which Stamp Duty as on a lease for twenty years had been paid and which as per its terms was in the first instance for ten years and extendable for two further terms of five years each on performance of some obligations by the lessee i.e. for total period of twenty years. In such a situation, where the parties had already executed the lease for maximum time agreed, even though operation of the lease for such maximum period was contingent, it was held that upon happening of contingency enabling the lease to operate for maximum time, no fresh lease was required to be executed. However the said judgment cannot be read as permitting making of a lease for a longer period by paying the stamp duty for lesser period, by using the word 'extension'.

15. In ***Lalji Tandon*** supra, the question for adjudication was not of difference between renewal and extension of lease. The question for consideration therein was whether a clause in a lease deed for renewal thereof would enure in the renewed lease deed also entitling the lessee to further renewal. While dealing with renewal of leases, the observations as in ***Provash Chandra Dalui*** supra of distinction between renewal and extension of leases were reiterated. There was no lease containing a clause for extension thereof before the Supreme Court in ***Lalji Tandon***. It is the settled principle of law that a judgment is a precedent on what it decides and on what is for decision before the Court. Reference in this regard may be

made to (i) *State of Orissa Vs. Sudhansu Sekhar Misra* Air 1968 SC 647, (ii) *Sreenivasa General Traders Vs. State of Andhara Pradesh* (1983) 4 SCC 353, (iii) *Union of India Vs. Dhanwanti Devi* (1996) 6 SCC 44 and (iv) *Government of Karnataka Vs. Gowramma* (2007) 13 SCC 482.

16. Thus neither of the judgments relied upon by the counsel for the appellant lead me to hold that even though after the expiry of five years as far back as in the year 2002 and till which period only the Lease Deed was executed and inspite of no further Lease Deed being executed, the appellant can be said to be a tenant under a registered Lead Deed. The rule of law otherwise is that in the absence of a registered Lease Deed, the lease is from month to month, determinable by a 15 days notice. Reference in this regard can be made to Division bench judgments of this Court in *Kidarsons Industries Pvt. Ltd. Vs. Allahabad Bank* MANU/DE/7641/2007 & *Virender Singh Vs. State Bank of India* 185 (2011) DLT 407.

17. I find a Division Bench of this Court in *Punchip Associates P. Ltd. Vs. Rajdev Singh* MANU/DE/0633/2011 before which also reliance was placed on *Lalji Tandon* supra to have held the reference in the Lease Deed to extension thereof to mean renewal thereof and finding that Lease Deed had not been renewed to have held that there was no Lease Deed in existence/operation. Another Division Bench of this Court in *Lord Chloro Alkali Ltd. Vs. Mohinder Pal Singh Khurana* MANU/DE/0595/2013 before which also *Lalji Tandon* was relied upon, finding that after four years for which the Lease was executed and inspite of provision in the Lease Deed for renewal thereof on enhancement on rent no new Lease Deed to have

been executed held the Lease Deed to be for a period of four years only for which the Stamp Duty thereon had been paid and not for any longer period.

18. The counsel for the respondent/plaintiff in this regard has cited ***Hardesh Ores (P) Ltd. Vs. Hede & Company*** (2007) 5 SCC 614 holding that there is no concept of automatic renewal of lease by mere exercise of option by the lessee and on ***Shanti Prasad Devi Vs. Shankar Mahto*** (2005) 5 SCC 543 holding that there can be no implicit renewal of lease by holding over on mere acceptance of rent offered by the lessee.

19. I have enquired from the counsel for the appellant whether the appellant, after the receipt of letters dated 09.07.2007 and 31.07.2007 aforesaid from the erstwhile landlord, filed any suit for specific performance of the agreement claimed by it of extension of lease. The counsel for the appellant has fairly stated that no such action has been taken by the appellant. I may add, that by now the limitation therefor has also expired.

20. There is thus no merit in the first of the aforesaid contentions of the counsel for the appellant/defendant.

21. I will now take up the second contention, of the respondent/plaintiff landlord being required to give notice of determination of tenancy of one year and the determination of tenancy by a notice of 15 days being bad for this reason.

22. The said argument is based on the term contained in the Lease Deed, which had lapsed several years prior to the notice dated 20th April, 2011 of determination of tenancy. After the Lease Deed dated 23rd July, 1997 stood determined by efflux of time on 31st July, 2002, the parties cannot be said to

be bound by any term therein requiring the landlord to give one year's notice of determination of tenancy. As per Section 106 of Transfer of Property Act, in the absence of a contract (and which, of lease, under the law could be by a registered instrument only) to the contrary the lease was terminable by a 15 days notice.

23. Not only so, the Supreme Court in *Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF)* (2008) 2 SCC 728 followed by this Court in *Shriram Pistons & Rings Ltd. Vs. C.B. Agarwal HUF* MANU/DE/2381/2008 has held that service of summons of a suit for ejectment by a landlord itself serves as a notice of determination of tenancy and even in the absence of valid notice, ejectment can be ordered on the basis of determination of tenancy by service of such summons.

24. The purpose of a notice of determination of tenancy is to give time to the tenant to make alternate arrangement and to vacate the premises. The appellant/defendant now for the last more than one year has had notice of the respondent/plaintiff landlord not desiring to continue with it as a tenant. The appellant/defendant thus has had sufficient notice of more than one year which it seeks and cannot now be heard to make any grievance in that regard.

25. There is thus no merit in the second contention also of the appellant/defendant.

26. Axiomatically this appeal is dismissed. However, the appeal having been dealt with expeditiously, no order as to costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

JULY 17, 2013

pp/gsr..