

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

% **Date of decision: 9th July, 2013.**

+ **RFA 10/2013**

PUNJAB NATIONAL BANK **.... Appellant**

Through: Mr. R.P. Vats, Adv.

Versus

VIJENDER KUMAR & ANR **..... Respondents**

Through: Mr. B.S. Maan, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

% **09.07.2013**

1. This appeal under Section 96 of the CPC impugns the judgment and decree dated 17th November, 2012 of the learned Addl. District Judge-03, South District, Saket, New Delhi allowing the application of the respondents/plaintiffs under Order XII Rule 6 of the CPC and passing a decree for ejectment of the appellant/defendant from the entire first floor *ad measuring* 3142.25 sq. ft. of property No.A-4, Sarvodya Enclave, Sri Aurobindo Marg, New Delhi.

2. Notice of the appeal was issued and the Trial Court record requisitioned. On subsequent date attempt at amicable settlement were initiated and the counsel for the respondents/plaintiffs made a statement not

to execute the decree. No amicable settlement has been arrived at between the parties and the counsels have been heard.

3. The respondents/plaintiffs instituted the suit from which this appeal arises on 4th November, 2011 pleading, (a) that the property aforesaid was let out to the appellant/defendant vide Lease Deed dated 30th January, 2006 by the erstwhile owners who sold the said property to the respondents/plaintiffs vide Sale Deed dated 30th June, 2006; (b) that the appellant/defendant upon being intimated of the same commenced paying rent to the respondents/plaintiffs; (c) that the term of the lease expired on 31st January, 2011; (d) no fresh registered Lease Deed was executed between the parties and the appellant/defendant thus became a month to month tenant w.e.f. 1st February, 2011 and which tenancy was determined by the respondents/plaintiffs vide Notice dated 4th October, 2011; (e) that the appellant/defendant gave a reply dated 29th October, 2011 refusing to vacate the premises; (f) that the appellant/defendant had never showed any intention to get the Lease Deed renewed and hence had not exercised the option of renewal of the lease and was not entitled to renewal of lease. The respondents/plaintiffs thus besides the relief of ejectment / recovery of possession, also claimed the relief of *mesne* profits/damages for use and

occupation w.e.f. 1st November, 2011.

4. The appellant/defendant contested the suit by filing a written statement on 2nd February, 2012, relying on the following clause of the Lease Deed dated 30th January, 2006 supra:

“that the period initial for the lease is 5 (five) years commencing from 01/02/06 with two options for continuing the lease for further two terms of five years each, on the same terms and conditions as herein contained, subject to the conditions that rent shall be increased by 20% on the last rent paid and the Lessors shall not be entitled to refuse the extension for further two terms of five years each if the Lessee exercised that option within one month before the expiry of the original terms of five years, provided that in the absence of notice for the exercise of option, the lessee will be deemed to have exercised the same. A fresh lease deed shall be executed on every renewal.”

5. It was further pleaded that on oral request of the respondents/plaintiffs the appellant/defendant started adjusting the advance rent of Rs.6,61,500/- from the month of December, 2010 at Rs.1,50,000/- for the months of October, November & December, 2010 and also adjusted an amount of Rs.50,000/- each in the months of January, February & March, 2011 and Rs.60,250/- for the months of April to July, 2011 and the balance amount was credited to the account of the respondents/plaintiffs and was thus regularly paying the enhanced rent in terms of the clause aforesaid.

It was further pleaded that the appellant/defendant having exercised the option for renewal of the lease, the respondents/plaintiffs were not entitled to the relief of ejectment.

6. The respondent/plaintiffs filed a replication denying having made oral request to the appellant/defendant for adjusting the advance rent.

7. The respondents/plaintiffs having filed the application under Order XII Rule 6 of the CPC, the learned Addl. District Judge while allowing the same has in the impugned judgment held:-

- (i). that the Lease Deed dated 30th January, 2006 between the parties was for a period of five years only and not for a period of 15 years;
- (ii). though the appellant/defendant had an option for renewal but no fresh Lease Deed was agreed to be executed for renewal of the lease;
- (iii). the appellant/defendant had not given any notice in writing in January, 2011 to renew the lease for a period of five years though claimed to have telephonically informed the respondents /plaintiffs of the same; however no date also of the said telephone communication was pleaded;

- (iv). that though the appellant/defendant pleaded having credited enhanced rent in terms of the clause aforesaid of the Lease Deed to the account of the respondents/plaintiffs w.e.f. 1st February, 2011 but the same was done only on 8th October, 2011 i.e. after the respondents/plaintiffs notice dated 4th October, 2011;
- (v). that even in the reply dated 29th October, 2011 sent by the appellant/defendant to the notice of determination the appellant/defendant did not call upon the respondents/plaintiffs to execute fresh Lease Deed; the same was done subsequently on 25th July, 2012 and thereafter on 4th October, 2012 a suit for specific performance was filed; and,
- (vi). the respondents/plaintiffs were thus, in the absence of a registered Lease Deed after 31st January, 2011, entitled to determine the tenancy and sue for possession.

8. Though the impugned judgment has also discussed the defence of the appellant/defendant of waiver of Notice of determination of tenancy and of being entitled to continue in possession under Section 53A of the Transfer of Property Act, 1882 but need is not felt to elaborate on the said aspect as

the counsel for the appellant/defendant has confined his submissions before this Court to only one aspect.

9. It is the contention of the counsel for the appellant/defendant that for an order of ejectment to be passed, three ingredients are required to be fulfilled, firstly relationship of landlord and tenant; secondly the rent being in excess of Rs.3,500/- per month; and, lastly determination of tenancy. He has further argued that though the first two ingredients are fulfilled in the present case but the last ingredient in the present case is not fulfilled. It is argued, that there is a distinction between 'renewal' and 'extension' of lease; that the language used by the parties in the clause aforesaid in the lease deed in the present case is of 'extension' of the lease and which 'extension' does not require any renewal or fresh Lease Deed to be executed and the learned Addl. District Judge has erroneously come to the conclusion that the registered Lease Deed in favour of the appellant/defendant had expired by efflux of time and the appellant/defendant was a month to month tenant thereafter and which tenancy could have been terminated by notice. Reliance in this regard is placed on a judgment of the High Court of Calcutta reported in *Ranjit Kumar Dutta Vs. Tapan Kumar Shaw* AIR 1997 Calcutta 278 and which in turn relies on the judgment of the Apex

Court in *Provash Chandra Dalui Vs. Biswanath Banerjee* 1989 SCC Supl. (1) 487.

10. The Indian Stamp Act, 1899 in Article 35 of Schedule I thereof provides for payment of stamp duty on leases in slabs of less than one year, less than five years, less than ten years and less than 20 years etc. It has been enquired from the counsel for the appellant/defendant whether the stamp duty on the registered Lease Deed dated 30th January, 2006 was paid for a period of five years or for a period of 15 years.

11. The counsel has fairly stated that the stamp duty paid was for a period of five years only and the lease contemplated execution of a fresh Lease Deed at the time of each of the two renewals of five years.

12. It has next been enquired from the counsel for the appellant/defendant whether by having a Lease Deed registered by paying stamp duty for five years and mentioning therein for extension thereof for further period of five years each, the payment on stamp duty can be avoided.

13. The counsel has fairly admitted that it cannot be.

14. It has next been enquired from the counsel (till that time the impugned judgment had not been gone into) whether the appellant/defendant had instituted any suit for specific performance of the

agreement claimed by it for extension of lease.

15. Though the counsel replied in the negative but on instructions from the officer of the appellant/defendant present in Court states that a suit for specific performance has been filed.

16. The counsel for the respondents/plaintiffs states that the same was instituted after the institution of the suit from which this appeal arises.

17. As far as the judgments relied upon by the counsel for the appellant/defendant are concerned, in the case before the Supreme Court, the lease was for a period of 20 years but with a condition that it will be in the first instance for a period of 10 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 was whether such a lease would be for a period of 10 years or 20 years in as much as under the Calcutta Thika Tenancy Act, 1949 protection from eviction was available only if the lease was for a period of less than 10 years and was not available if the lease was for a period of 20 years. While holding the lease in that case to be for a period of 20 years, the Supreme Court carved out a distinction between renewal and extension. It would thus be seen that the context in

which the observations relied upon were made was entirely different and the said judgment cannot be read as permitting registration of a lease by paying the stamp duty for a lesser period, for a longer period by using the word extension. I, for the said reason am unable to agree with the judgment aforesaid of the Calcutta High Court and with respect whereto also it may be stated that there was a dichotomy of opinion between two of the Hon'ble Judges of that Court before which the matter was listed first and the third Judge to whom the reference was made applied the judgment aforesaid of the Supreme Court to hold that a lease for a lesser period could be treated as for a larger period if the word used was extension and not renewal.

18. Once the aforesaid judgments relied upon are out of the way, no other aspect has been argued by the counsel for the appellant/defendant save for contending that if the appellant/defendant is ejected from the premises, the suit for specific performance filed by the appellant/defendant would become infructuous.

19. I am unable to agree. The claim of the appellant for specific performance is not before me. It is for the appellant/defendant to prove, if he has a case in the said suit for specific performance, to seek an order restraining its ejectment from the premises during the pendency thereof.

20. No merit is thus found in the appeal which is dismissed; however

since the enquiry into *mesne* profits is still going on, no costs.

21. At this stage, the counsel for the appellant Bank under instructions from Mr. Harish Gupta, Senior Manager, Punjab National Bank, Sarvodaya Enclave, New Delhi states that the appellant Bank be granted sometime to vacate the premises.

22. The counsel has been asked whether the appellant Bank is willing to withdraw the appeal and furnish an undertaking to vacate the premises.

23. The counsel again under the instructions from Mr. Harish Gupta, Senior Manager, Punjab National Bank sought a passover, to take instructions from the appropriate/authorized officer of the appellant Bank.

24. On passover, it is informed that Mr. L.K. Malhotra, Circle Head, South Delhi Circle, Punjab National Bank has been telephonically contacted by Mr. Harish Gupta present in Court and he has on behalf of the appellant Bank offered to withdraw the appeal and to furnish an undertaking to vacate the premises on or before expiry of one year from today, subject to the said time being granted.

25. The counsel for the respondents also in the meanwhile has obtained instructions and has agreed to the aforesaid.

26. The counsels have further on suggestion of the Court agreed that the enquiry underway before the Trial Court be also disposed of in terms of this compromise.

27. The counsel for the appellant Bank in the circumstances withdraws this appeal and on behalf of the appellant Bank states, (i) that the appellant Bank accepts the order of its ejectment and shall not challenge the same; (ii) that the appellant Bank be granted time till 31st July, 2014 to vacate the premises; (iii) that the appellant Bank if has not already paid the charges for use and occupation of the premises enhanced by 20% with effect from 1st February, 2011, will pay the same within four weeks from today and will hereinafter pay charges for use and occupation of the premises till vacation thereof enhanced by 20% as aforesaid; and, (iv) that the appellant Bank through Mr. Harish Gupta, Senior Manager and Mr. L.K. Malhotra, Circle Head of the appellant Bank undertakes to this Court to hand over vacant, peaceful and physical possession of the premises to the respondents on or before 31st July, 2014 and to, till the date of such vacation pay all water and electricity dues with regard to the said premises as per actuals. The said officers of the appellant Bank further undertake to continue to pay the user charges as aforesaid in advance for each month by the 10th day of the month

till the date of vacation of the premises.

28. The counsel for the respondents has stated, (a) that subject to the undertaking aforesaid of the appellant Bank being accepted, the appellant Bank be granted time as aforesaid; and, (b) that the respondents are agreeable to confine the relief for mesne profits/damages for use and occupation as aforesaid and the enquiry underway before the Trial Court there into shall also stand disposed of in terms of this compromise.

29. The aforesaid compromise is found to be lawful and is allowed.

30. The appellant is however granted time till 31st July, 2014 to hand over vacant, peaceful and physical possession of the premises to the respondents.

31. The undertakings of Mr. Harish Gupta, Senior Manager and Mr. L.K. Malhotra, Circle Head of the appellant Bank on behalf of the appellant Bank are accepted and the appellant Bank is ordered to be bound thereby and has been cautioned with the consequences of breach of undertaking given to the Court.

32. It is further ordered that upon failure of the appellant Bank to pay the user charges as undertaken, the appellant Bank besides being liable for consequences of breach of undertaking given to this Court shall also be liable for ejectment forthwith.

33. The enquiry into mesne profits/damages for use and occupation underway before the Trial Court shall also stand disposed of/compromised in terms of above.

34. The appeal is disposed of in terms of above compromise, leaving the parties to bear their own costs. Decree sheet be drawn up.

This order to form part of the decree sheet.

RAJIV SAHAI ENDLAW, J

JULY 09, 2013
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