



2024:UHC:9724

HIGH COURT OF UTTARAKHAND AT NAINITAL

Civil Revision No. 119 of 2024

19 December, 2024

Rizwana Khan & Others

--Revisionists

Versus

Pradeep Kumar Sah Gangola & Others

--Respondents

Presence:-

1. Mr. Piyush Garg and Mr. Pulak Agarwal, learned counsel for the revisionists.
 2. Mr. I.P. Kohli and Mr. B. M. Pingal, learned counsel for the respondents.
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Hon'ble Vivek Bharti Sharma, J.

This civil revision is filed against the judgment and decree dated 26.10.2024 passed by the learned Judge, Small Causes Court / District Judge, Nainital in S.C.C. No.7/2021, '*Pradeep Kumar Sah Gangola and others Vs. Smt. Rizwana Khan and others*', whereby the revisionists/tenants have been directed to give possession of the suit property i.e. Coronation Hotel, Mallital, District Nainital by evicting the same within one month from the date of passing of the impugned order and to pay Rs.2,334/- per day from 01.01.2021 as damages, which was mesne profit for the use of the property in question.



2. The brief facts of the case are that the respondents/landlords filed a Small Causes Case No. 07 of 2021 before the Judge, Small Causes Court, Nainital against the revisionists/tenants for eviction from the tenanted premises, recovery of arrears and damages on the grounds, *inter alia*, that the letter of intent of the revisionists/tenants dated 20.11.2020 for renewal of the lease deed was not accepted by the respondents/landlords in their reply dated 03.12.2020.

The revisionists/tenants filed their written statements and took various grounds mainly that as per the lease agreement dated 18.10.2016, a renewal clause was stipulated, therefore, the lease was bound to be renewed for further period of five years on enhanced rent @ 70,000/- per month. On the pleadings of the parties, the learned Judge, Small Causes Court, Nainital framed three issues:-

- i. As to whether there is relationship of landlord and tenant between the parties?
- ii. As to whether the period of tenancy between the parties had expired?
- iii. As to whether the landlord is entitled to



receive the arrears of rent and damages?

iv. The relief?

The learned counsel for the respective parties would submit that the relationship of landlords and tenants is admitted.

3. Counsel for the revisionists/tenants would assail the impugned judgment on the following grounds:-

i. That in the rent deed executed between the parties (*Annexure No.3 to the revision*) at paragraph no.4 it is stated that the lessor has agreed to give the premises detailed in foot of this lease deed for a period of 5 years commencing from 01.01.2016 to 31.12.2020. If after the completion of this lease deed, and also during the lease period of this lease the lessor has not violated any terms of this lease, the preference of renewal of deed for further period of five years shall be given to lessee by lessor if the lessee expresses his intention in writing to renew the lease at least thirty days before the expiry of this lease deed on mutually



agreed terms, conditions and rent which shall be in no case less than 70,000/- per month and shall be increased @10% every year from 01/01/2022, therefore, the preference should have been given to the revisionists/tenants to take on the property in question on rent mandatorily; that, however, the respondents/landlords did not give such preference.

ii. That if such preference is not given then this condition as stated in paragraph 4 of the lease deed dated 18.10.2016 would become meaningless and this liberty cannot be given to the respondents/landlords.

iii. That the notice (*Annexure No.6 to the revision*) served by the respondents/landlords upon the revisionists/tenants says that the tenancy between the parties in question is terminated instantly; that, as per Section 106 of the Transfer of Property Act, the tenancy is terminated by giving 15 days notice.



iv. That the respondents/landlords in the cross-examination themselves admitted that Clause 4 of the lease deed dated 18.10.2016 is binding upon them to renew the lease after expiry of five years period of lease.

iv. That as per the lease agreement dated 18.10.2016, the revisionists/tenants were permitted to carry out the alterations & changes in the tenanted premises and that was the consideration for the preference being given to the revisionists/tenants to continue the tenancy after expiry of the tenancy on 31.12.2020.

4. Per contra, learned counsel for the respondents/landlords would submit that the lease deed simply uses the word 'preference' and this use of word 'preference' does not give any inalienable legal rights in favour of the revisionists/tenants for getting renewal of the lease deed of the tenanted property in question mandatorily or automatically; that, by notice (Annexure No.5 to the revision), the respondents/landlords have specifically expressed



their unwillingness to let out the Coronation Hotel building (*the tenanted premises*) further on as the respondents/landlords wished to run the hotel themselves, hence, the request of the revisionists/tenants for renewal of the lease cannot be accepted; that, the respondents/landlords further requested the revisionists/tenants to give them the peaceful possession of the tenanted premises on or before 01.01.2021 after payment of all the dues of rent and taxes.

5. This Court considered the submissions of learned counsel for the parties and perused the complete record.

6. Admittedly, the lease agreement dated 18.10.2016 is the foundation stone of the tenancy of the tenanted premises in question for the period commencing from 01.01.2016 to 31.12.2020. In Clause 4 of the lease agreement, it is specifically stated that

*“...the lesser has agreed to give the premises detailed in foot of this lease deed **for a period of 5 years commencing from 01.01.2016 and will come to end on 31.12.2020.**”*

After end of this sentence, the next sentence of this paragraph reads

“.....If after the completion of this lease deed, and



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also during the lease period of this lease the lessor has not violated any terms of this lease, the preference of renewal of the deed for further period of five years shall be given to lessee by lessor if the lessee expresses his intention in writing to renew the lease at least thirty days before expiry of this lease deed on mutually agreed terms, conditions and rent which shall be in no case less than 70,000/- per month and shall be increased @ 10% every year from 01.01.2022.”

7. On the basis of this language, the learned counsel for the revisionists/tenants would submit that the respondents/landlords did not have any right to terminate the tenancy of the revisionists/tenants.

However, this Court is not impressed by this submission of learned counsel for the revisionists/tenants as the second part of this paragraph merely says that the preference would be given to the revisionists/tenants to continue in tenancy, if he had not violated the terms of the lease. The word ‘*preference*’ used in the second part of this clause does not confer any inalienable right to the revisionists/tenants to continue in the tenancy. The



term of tenancy has been fixed clearly without any ambiguity in first part of clause 4 by words

*“.....for a period of five years commencing from 01.01.2016 **and will come to end on 31.12.2020...**”*

Therefore, tenancy came to an end on 31.12.2020 automatically by efflux of time fixed for tenancy.

8. Admittedly, the revisionists/tenants expressed their intent in writing (Annexure no. 4) to renew the lease for further period of five years from 31.12.2020 as per the terms mentioned in Clause 4 of the lease agreement dated 18.10.2016.

But, vide reply to this letter of intent of the revisionists/tenants, the respondents/landlords, (Annexure no. 5), told the revisionists/tenants that

“...we wish to inform you that we are not willing to let out the Coronation Hotel building further on and we wish to run the hotel ourselves, hence your request for renewal of lease deed cannot be accepted by us...”



In this reply of respondents/landlords to the letter of intent of the revisionists/tenants, it is unequivocally stated that they are not inclined to renew the lease deed as they wish to run the hotel of their own.

Secondly, the word '*preference*' could only refer to creation of the tenancy in future. The word '*preference*' used in Clause 4 has to be read in the context of Clause 4 itself and the lease agreement. This means, if at all preference is to be given, then it could be given only in the circumstances when this property in question was to be leased out to some other person than the revisionists/tenants.

However, in the present case when the respondents/landlords themselves want to run the hotel tenanted commercially for their own benefits then this clause, if presumed to be binding, would amount to clog the right of the owner of the property from using the same in the manner he wants to use it and such a clog cannot be without any consideration.

9. The submission of learned counsel for the revisionists/tenants is that the revisionists/tenants carried out maintenance and upgrades in the



tenanted premises; that, the upgrades in the tenanted premises is the consideration for this agreement of “*preference*”.

10. In view of this submission of learned counsel for the revisionists/tenants, Court perused the Clause 6 of the lease agreement dated 18.10.2016. This clause of lease agreement is in two parts:-

- i. That the lessee during the period of lease shall maintain or keep the leased premises, sanitary installation, fittings, fixtures and decorations etc. in good and sustainable condition and to decorate the building without causing damage to the premises and,
- ii. That lessee, as per the requirement, can make alterations in the tenanted premises without changing the length, width and height of the building **with permission of the respondents/landlords in writing** and the concerned Authority, if needed.

To the query of this Court, the learned



counsel for the revisionists/tenants **would fairly concede that no permission in writing was taken from lessor to carry any alterations or changes** in the tenanted premises. Similarly, no such permission was sought for sanction from any authority such as Lake Development Authority etc.

In view of the above statement of learned counsel for the revisionists/tenants at Bar, the only presumption is that no material change, alteration etc. was made by the revisionists/tenants in the tenanted premises. Moreover, the Clause 6 is nothing but only a legitimate expectation of a landlord that the tenant shall keep the tenanted premises in good and sustainable condition without causing any harm to its structure. Therefore, this clause cannot, by any stretch of imagination, be said to be a consideration for any promise of giving preference to them for renewal of the tenancy after expiry of the period of tenancy on 31.12.2020.

11. In support of his case, learned counsel for the revisionists/tenants would rely upon a judgment of Allahabad High Court in the case of **‘Hakim Ziaul Islam vs. Mohd. Rafi, 1971 0 AIR (All) 302.’**



12. This Court perused the said judgment and is of the view that the facts of the case quoted by counsel for the revisionists/tenants are different from the facts of this case. In that case, suit was filed for eviction of the tenant on the non-payment of rent which was dismissed by the trial court but allowed at the stage of First Appeal. However, in the present case, the term of the tenancy is mutually agreed to commence from 01.01.2016 and to end on 31.12.2020. Rather this judgment, if followed, would go against the revisionists/tenants because this stipulation in respect of date of commencement and the end of the tenancy period has to be acted upon otherwise this stipulation period of tenancy shall become hollow and without any substance.

13. In the considered view of this Court, after expiry of period of tenancy on 31.12.2020, the tenancy had come to an end *ipso-facto*, by efflux of time in view of the mutually agreed stipulation of the parties in Clause 4 of rent agreement. This tenancy was not renewed on the request by letter of the intent of the revisionists/tenants. The respondents/landlords, in their reply (*Annexure No.*



5) to the letter of intent to renew the tenancy (*Annexure No. 4*) have specifically stated that the respondents/landlords do not want to renew the tenancy as the respondents/landlords wish to run the hotel themselves. The respondents/landlords further stated in Annexure No. 5 that the tenancy is expiring on 31.12.2020, therefore, the revisionists/tenants are requested to handover the peaceful possession of the lease property Coronation Hotel on or before 01.01.2021 by paying all dues.

14. In the considered view of this Court, the terms of the lease agreement are to be honoured by the parties. The terms of the tenancy had already expired on 31.12.2020. On receipt of the reply of respondents/landlords to their letter of intent, the revisionists/tenants should have complied with the terms and conditions and stipulations made in this agreement and should have vacated the tenanted premises on or before 31.12.2020.

15. The last submission made by the learned counsel for the revisionists/tenants is that the respondents/landlords have admitted in their cross-examination that Clause 4 of the lease agreement is



binding upon them.

The perusal of the cross-examination of PW1 Pradeep Kumar Sah Gangola would reveal that PW1/respondent no.1 admitted in his cross-examination that the terms of the lease deed dated 18.10.2016 were binding between the parties but at the same time when he was specifically asked *then he in paragraph no. 36 of the cross-examination has unequivocally stated that it was incorrect that as per the terms of the lease deed, the respondents/landlords were duty bound under the law to renew the lease for the next five years on the letter of intent by the revisionists/tenants*, therefore, there is no force in this submission of learned counsel for the revisionists/tenants.

16. After perusal of the record of the revision and annexures filed therewith, this Court is of the considered view that the learned Judge, Small Causes Court has not erred in passing the impugned judgment and not committed any error of facts and law and all points of determination framed are decided as per facts proved and law.

In the instant revision, the



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revisionists/tenants could not make out the case if the learned Judge, Small Causes Court has exercised its jurisdiction excessively and wrongly without following the canons of law and passed the incorrect judgment. Hence, there is no ground in the present Civil Revision.

17. Accordingly, the present Civil Revision is hereby dismissed *in limine*.

18. The revisionists/tenants are, therefore, directed to vacate the tenanted premises and pay the damages, arrears of rent and mesne profit as per the judgment dated 26.10.2024 of Judge, Small Causes Court, Nainital.

If the revisionists/tenants fail to vacate the tenanted premises and to pay the mesne profit/damages on or before 31.12.2024, then they shall be liable to pay mesne profit @ ₹4,000/- per day from 01.12.2024 till the date on which possession of the tenanted premises is handed over to the respondents/landlords.

(Vivek Bharti Sharma)
19.12.2024

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