

Court No. - 19

Case :- MATTERS UNDER ARTICLE 227 No. - 4226 of 2024

Petitioner :- M/S Arun Enterprises Thru. Proprietor Smt. Uma Mansukhani

Respondent :- Addl. District Judge, Court No. 9, Lko. And 3 Others

Counsel for Petitioner :- Praveen Tripathi, Saud Rais

Counsel for Respondent :- Aakchad Nath, Nimit Srivastava

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Saud Rais, the learned counsel for the petitioner, Sri Nimit Srivastava, the learned counsel for the opposite parties and perused the records.
2. By means of the instant petition, filed under Article 227 of the Constitution of India, the petitioner has challenged the validity of a judgment and order dated 08.08.2024 passed by learned Judge, Small Causes Court, Lucknow in S.C.C. Suit No. 48 of 2017 (old number 218 of 2014), whereby the Suit for ejectment and recovery of arrears of rent and damages filed by opposite parties against the petitioner was decreed. The petitioner has also challenged the judgment and order dated 08.08.2024 passed by the learned Additional District Judge, Court no. 9, Lucknow whereby SCC Revision No. 41 of 2017, filed against the aforesaid order dated 08.08.2024, has been dismissed.
3. Briefly stated, facts of the case are that the opposite parties had filed the aforesaid S.C.C. Suit for ejectment and recovery of arrears of rent and damages pleading that they are co-owners/landlords of the land with building bearing municipal no. 352/2, Tulsidas Marg, Manjeet Singh Building Campus, New C-Block, Raja Ji Puram, Lucknow, having an area of 6390.65 Square Feet which is bounded as below:

East: Tulsidas Marg

West: Vacant land of the plaintiffs and thereafter warehouses

North: Land of the plaintiffs and thereafter Talkatora Power House

South: Office of Senior Marketing Inspector (Food Department) and vacant land of the plaintiffs. The petitioner was using the tenanted premises as a factory and Godown and the monthly rent payable by the petitioner was Rs 3,569/- per month.

4. It was further pleaded that initially the property in question was let out to the defendant as a single unit but on the request of the proprietor of the petitioner, the tenancy was bifurcated with one portion remained in the tenancy of M/s Arun Enterprises with its proprietor Sri Arun Mansukhani and the other portion fell in the tenancy of M/s. M.K. Enterprises with its new proprietor Smt. Meera Kumar (mother-in-law of Sri Arun Mansukhani). However, both the proprietorship concerns continued to be managed by Sri. Arun Mansukhani and both the concerns carry on business as a single unit. It was alleged that the tenant defaulted in payment of rent since 01.07.2014. The plaintiffs sent a notice dated 09.10.2014 under Section 106 of the Transfer of Property Act stating that the tenancy would stand determined upon expiry of 30 days from the date of receipt of the notice.
5. The petitioner filed a written statement of its defence stating that the tenanted premises is being used for manufacturing goods. The petitioner denied having committed any default in payment of rent and stated that the entire rent had been paid to the landlords.
6. The plaintiffs has filed a supplementary affidavit annexing therewith a copy of a lease agreement dated 30.07.1980 executed between Satender Jeet Singh – the predecessor in interest of the opposite parties, and Sri Arun Mansukhani, proprietor of M/s Arun Enterprises, wherein it was written that the petitioner had taken a Godown measuring 530 Square Feet in premises No. 532/2, Talkatora Road, Lucknow for a period of 3 years, on a monthly rent of Rs 150/-. The tenant had a right of renewal of lease after every 3 years enhancing the rent upto 10%. Clause 2 of the aforesaid agreement provides that

the tenancy shall begin from the first day of every month of the Gregorian calendar terminating with the last day of every month and the monthly rent shall fall due on the first day of each month. The petitioner had filed this lease agreement before the trial Court also.

7. The Judge Small Causes Court has decreed the Suit by the impugned judgment and order dated 08.08.2024 wherein the following four points for determination were framed: -
 - i. Whether the relationship of landlord and tenant exists between the plaintiff and the defendant.
 - ii. Whether the notice sent by the plaintiffs was duly served on the defendant.
 - iii. Whether the defendants made any default in paying the rent.
 - iv. To what relief the plaintiffs are entitled.
8. Point no. 1 was decided in the affirmative holding that the defendant is the plaintiffs' tenant and this finding has not been assailed before this Court.
9. While deciding point 2, the Judge Small Causes Court took into consideration the facts that the plaintiff has pleaded that he had sent a notice through registered post-acknowledgment due on 11.11.2014, through his advocate, whereby the defendant's tenancy was terminated. The notice was served on the defendant. The defendant had denied having received the notice in the written statement of his defence. The plaintiffs had filed a photocopy of the notice dated 09.10.2014 and the postal receipt of sending notice through registered post. The plaintiffs proved the aforesaid document by oral testimony.
10. DW-1 stated in his cross-examination that he had handed over the notice sent by the plaintiffs directing him to vacate the tenanted premises, to his counsel. He did not remember whether his counsel had sent any reply to this notice or not.

11. The learned trial Court held that from the aforesaid statement given by DW-1 in his cross examination, it was established that the notice sent by the plaintiffs was served on the defendant.
12. While deciding point no. 3, the Judge Small Causes Court has recorded that PW-1 has stated that the defendant has not paid rent since 01.07.2014. The defendant has disputed this fact. In his cross examination, DW-1 has stated that he used to pay rent of the premises through cheques. Sometimes the landlord issued receipts acknowledging payment of rent but at other times, no receipt was issued. Apparently, the defendant did not adduce any evidence regarding payment of rent for the period after 01.07.2014 and, therefore, the Judge Small Causes Court held that the defendant had not paid rent since 01.07.2014 and he was in arrears of rent amounting Rs.15,346/-.
13. In view of the aforesaid finding, the Judge Small Causes Court decreed the Suit filed by the opposite parties.
14. The petitioner filed Revision No. 41 of 2017 against the aforesaid order dated 08.08.2017 passed by the Small Causes Court, which has been dismissed by the learned Additional District Judge, Court no. 9, Lucknow by the impugned judgment and order dated 08.08.2024. the Revisional Court has framed the following points for determination:
 - (i) Whether the notice issued by the opposite parties/landlords to the revisionist/tenant was legal and was duly served on him?
 - (ii) Whether the revisionist/tenant was in default/arrears of rents
 - (iii) What relief, if any, is the revisionist/tenant entitled to?
15. On issue no. 1, the learned counsel for the revisionist/petitioner had submitted that the premises in question was a factory with a manufacturing unit installed therein and, therefore, the lease could have terminated only after giving a six months' notice as provided under Section 106 of the Transfer of Property Act.

16. The learned Revisional Court held that Clause 2 of the lease agreement executed between the parties specifically mentions that the lease was a month-to-month lease. Therefore, there was no need to issue a six months notice for terminating the lease.
17. On the second point regarding default in payment of rent, the learned counsel for the revisionist had drawn attention of the revisional Court towards a copy of Cheque No. 21078676 which was marked as Paper no. C-24/10 and a certificate dated 03.10.2014 issued by the Branch Manager of the Union Bank of India, Aishbagh Branch (Paper no. C-24/11), stating that the aforesaid cheque had been paid from the revisionist's account on 03.11.2014.
18. In response of the aforesaid contention, the learned counsel for the opposite parties had submitted that the aforesaid document itself established that the rent was paid on 03.11.2014 and, therefore, on the date of issuance of notice dated 09.10.2014, the revisionist was in default of payment of rent. Accordingly, the revisional court found that the revisionist was not entitled to any relief and dismissed the revision.
19. While assailing the aforesaid order, Sri. Saud Rais, the learned counsel for the petitioner, has submitted that the lease was for manufacturing purposes and as per the provision contained in Section 106 of the Transfer of Property Act, it shall be deemed to be a lease from year to year, terminable on the part of either the lessor or the lessee, by six months' notice. As the notice of the present case was a notice of 30 days only, it was not a notice as contemplated by Section 106 of the Transfer of Property Act and, therefore, the petitioner's tenancy could not be terminated by this notice. The learned counsel for the petitioner has submitted that the lease agreement had been executed only in respect of a portion of the tenanted premises measuring 530 Square Feet whereas the Suit had been filed in respect of a premises measuring 6390.65 Square Feet and there was no written agreement regarding the remaining 5,860.65 square feet land.

He has submitted that on several occasions, rent of the entire premises has been paid on yearly basis which establishes that the entire tenancy was an year-to-year tenancy.

20. Before proceeding to examine applicability of the aforesaid judgment to the facts of the present case, it would be appropriate to have a look at the provisions contained in Section 106 of the transfer of Property Act, which reads as follows: -

“106. Duration of certain leases in absence of written contract or local usage.—

(1) In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.”

21. Section 106 of the Transfer of Property Act provides that in the absence of any contract or local law or usage to the contrary, a lease for manufacturing purpose shall be deemed to be a lease from year to year, terminable by six months' notice and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable by fifteen days' notice.

22. The learned counsel for the petitioner has relied upon a decision of Hon'ble Supreme Court in **Idandas Vs. Anant Ramchandra Phadke (Dead) by Lrs.**: (1982) 1 SCC 27. Para 5 of the aforesaid judgment records the admitted facts of the case, which is being reproduced below: -

“5. In the present case, the admitted facts are as under:

- 1. That to begin with the lease was given to the defendant in respect of an open piece of land;*
- 2. That on the open piece of land the appellant installed a flour mill and that the defendant was not using the land for any other purpose except running a flour mill;*
- 3. That the receipts filed by the tenant clearly show that the lease was doubtless a yearly one.”*

On the basis of aforesaid facts, the Hon'ble Supreme Court held that the lease was for manufacturing purposes, the notice of one month must be held to be invalid and the Suit for ejectment should have failed on that ground.

23. In the present case, there was a lease agreement dated 30.07.1980 between the parties in respect of a portion of tenanted premises measuring 530 Square Feet, which categorically states that the lease was a month to month lease. Although subsequently a further portion of the property of the opposite parties was given on lease to the petitioner under an oral agreement, the entire leased premises was always treated as a single tenement and a single rent was payable for the entire tenanted premises. Therefore, the facts of the present case are entirely different from the facts of **Idandas** (Supra) and the principle laid down in Idandas case will not apply to the facts of the present case.
24. In **Paul Rubber Industries (P) Ltd. v. Amit Chand Mitra**: 2023 SCC OnLine SC 1216, the Hon'ble Supreme Court referred to a precedent on the point and held that: -

“In the case of G. Mackertich v. Steuart and Co. Ltd. [(1971) 3 SCC 39], it has been held that burden of proving that the lease was for manufacturing purpose lies on the party who claims it to be so. In the present appeal, it would have been for the defendant (appellant before us) to discharge this burden, as held by the High Court. In

the case of Shivaji Balaram Haibatti v. Avinash Maruthi Pawar [(2018) 11 SCC 652] as also in a judgment of the Calcutta High Court in the case of Shree Nursing Timber Works and Shree Nursing Electric Stores v. Sm. Amala Bala Dassi [1973 CWN 522], it has been held that on this ground, there must be pleading supported by evidence to prove that the lease was for manufacturing purpose.”

25. There is neither any pleading nor any evidence in the present case that the terms or oral lease agreement were different from those of the lease agreement dated 30.07.1980. Therefore, the petitioner has failed to discharge his burden to prove that his tenancy was an year-to-year tenancy.
26. There is nothing on record to substantiate the contentions of the learned counsel for the petitioner that the rent was payable in respect of the tenanted premises on an yearly basis. Even if rent was paid on yearly basis on some occasions, it would not make the lease an yearly lease.
27. In view of the foregoing discussions, this Court finds itself unable to accept the contention of learned counsel for the petitioner that the petitioner was holding the premises in question under an yearly lease and it could not have been terminated by a 30 days' notice.
28. There appears no illegality in the impugned orders passed by the Judge Small Causes Court and the Revisional Court warranting any interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.
29. Accordingly, the petition lacks merit and is **dismissed** at the admission stage.

(Subhash Vidyarthi J.)

Order Date: 10.09.2024

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