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HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 104 of 2015**

- Smt. Kamaljeet Kaur Wd/o Late Sawant Singh Gill, Aged About 51 Years Proprietor Of M/s Mahendra Travels, Hira Arcade, Shop No.52, New Bus Stand, Pandri, Raipur, Civil and Revenue District Raipur, Chhattisgarh(Plaintiff)

---- Appellant**Versus**

- Chhattisgarh Infrastructure Development Corporation Limited , a Company Registered and Incorporated under the Indian Companies Act, 1956 and an Enterprise of the Govt. of Chhattisgarh having its Headquarter at Shastri Chowk, Raipur and Divisional Office at Aamanaka, Raipur, Chhattisgarh(Defendant)

---- Respondent

For appellant	: Mr. B.P. Sharma, Adv.
For Respondent	: Mr. Ashish Shrivastava, Adv. on caveat.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order on Board

04/12/2015

1. With consent of the parties, heard the matter finally at motion stage itself.
2. Instant misc. appeal has been filed by the appellant against the order dated 15-10-2015 passed by the 7th Additional District Judge, Raipur in Civil Suit No. 134-A/2015 whereby the court below has rejected the application filed by the appellant under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure.
3. Learned counsel for the appellant submits that as per Annexure P-2 a civil suit was filed before the District Judge, Raipur on 7-10-2015 for declaration, mandatory and permanent injunction. In the said suit in para 4 onwards, it was pleaded that the disputed premises was given to the plaintiff as per terms and condition dated 26-5-2012 for 11 months. Physical possession of the premises was given on 18-6-2012 and the plaintiff was in possession as tenant till the date of filing of the suit. The premises was given for 11 months and thereafter as per para 6 of the agreement, it was to be extended for further 5 years by the competent authority on application in this behalf by the tenant. Hence the plaintiff made the premises worth official use

by spending about 75 lacs rupees. The plaintiff prays for extension of agreement for 5 years by moving an application on 2-4-2013. The same was allowed vide letter dated 26-6-2013 and the defendant extended the agreement for 5 years as per Annexure P-5. As per para 12 of the plaint, no new agreement was either agreed, executed or registered by the parties. The plaintiff prayed for the extension of period of agreement but no steps were taken for the same and the plaintiff continued paying rent of Rs. 23,100/- per month. The plaintiff in para 22 of the plaint prayed for relief which can only be considered and granted by the civil court as only the civil court has jurisdiction to consider the relief as claimed, meaning thereby, the suit is maintainable thereby there is possibility that the suit may be allowed.

4. Learned counsel for the appellant submitted that as per the decision in the matter of **State of UP and others -v- Lalji Tandon (dead) through LRs**¹ the Hon'ble Supreme Court held in para 13 and 14 as under:-

“13. In India, a lease may be in perpetuity. Neither the Transfer of Property Act nor the general law abhors a lease in perpetuity. (Mulla on The Transfer of Property Act, Ninth Edition, 1999, p.1011). Where a covenant for renewal exists, its exercise is, of course, a unilateral act or the lessee, and the consent of the lessor is unnecessary. (*Baker v. Merckel* (1960) 1 All ER 668, also Mulla, *ibid*, p. 1204). Where the principal lease executed between the parties containing a covenant for renewal, is renewed in accordance with the said covenant, whether the renewed lease shall also contain similar clause for renewal depends on the facts and circumstances of each case regard being had to the intention of the parties as displayed in the original covenant for renewal and the surrounding circumstances. There is a difference between an *extension of lease* in accordance with the covenant in that regard contained in the principal lease and *renewal of lease*, again in accordance with the covenant for renewal contained in the original lease. In the case of extension it is not necessary to have a fresh deed of lease executed; as the extension of lease for the term agreed upon

¹ (2004) 1 SCC 1

shall be a necessary consequence of the clause for extension. However, option for renewal consistently with the covenant for renewal has to be exercised consistently with the terms thereof and, if exercised, a fresh deed of lease shall have to be executed between the parties. Failing the execution of a fresh deed of lease, another lease for a fixed term shall not come into existence though the principal lease in spite of the expiry of the term thereof may continue by holding over for year by year or month by month, as the case may be.

14. The issue whether a right to a new lease consequent upon the option for renewal having been successfully exercised should again contain the covenant for renewal, is not free from difficulty and has been the subject matter of much debate both in England and in India. It would all depend on the wordings of the covenant for renewal contained in the principal lease, the intention of the parties as reflected therein and as determinate in the light of the surrounding relevant circumstances.”

5. It is further submitted that as per the appreciation of Hon'ble Apex Court, as the lease was renewed, the earlier agreement is not in force. There shall be new agreement between the parties and as the earlier agreement becomes redundant hence para 21 of the agreement regarding vacation of the premises loses its importance. The lease was renewed for further 5 years. In these circumstances the plaintiff is a valid tenant and his tenancy may not be set aside suo moto. It is further submitted that the order of the court in para 12 is not proper with the facts of the present case. The defendant may file civil suit only. The Public Premises Eviction Act, 1974 is not applicable in the matter. The plaintiff is not an illegal person. A serious question is involved in the matter. Learned counsel further submitted that the agreement is not in existence hence he was not required to challenge the said agreement. New agreement has to be executed for 5 years after the renewal of the lease. New agreement has not been prepared and executed by the parties. Still the new lease deed has to be executed and the defendant has already provided alternative place for operation of the city bus. The plaintiff's condition is better. He only prays that he should not be

forcefully evicted. He further placed reliance on a decision in the matter of **State of West Bengal and others -v- Calcutta Mineral Supply Company Pvt. Ltd and anr.**² wherein Hon'ble Supreme Court while dealing with the matter relating to lease, held that renewal of lease amounts to fresh grant even where original lease contains a clause therefor and prospective operation of such clause where original lease granted by the State contained renewal clause which entitled lessor to inclusion of additional terms and conditions considered necessary and while renewing lease in favour of transferee-lessee additional condition of payment of *salami* introduced in lease deed by State Government in terms of amended Rules, same would be binding prospectively on such lessee.

6. It is further submitted that as prima facie balance of convenience and irreparable loss is in favour of the plaintiff, the rejection of the application made before the court below under Order 39 Rule 1 and 2, CPC is not proper. Hence it is prayed that right of the plaintiff/appellant be protected from forceful dispossession without any authority of law.

7. In reply, learned counsel for the respondent orally opposed the contention of the learned counsel for the appellant and submitted that there was agreement executed duly executed on 26-5-2012 for 11 months only. Para 6 of the said agreement is for the period of agreement and also there is provision for extension of the agreement for more 5 years. As per para 21 of the agreement, in case of any necessity, the respondent can take back the premises without any condition which shall be acceptable to the tenant and for the same the respondent shall give one month's notice. He further submitted that since all the conditions of the agreement are agreed by the parties, the appellant cannot skip from the agreement as the same is binding. On 26-5-2013, the lease was extended for further 5 years. Said order may not be read in isolation. It is an extension as per para 6 of the agreement. Hence the old agreement would be continued as there is no change in any of the conditions. On 23-6-2015, as per facts mentioned in the said letter, the agreement was terminated and it was directed that as per terms and conditions 19 and 21 of the agreement dated 26-5-2012, the premises be vacated within a week, though there was an error, as the agreement dated 26-5-2012 requires one month's notice. The appellant filed

2 (2015) 8 SCC 655

a W.P.(C) No. 1137/2015 before this Court. This Court vide order dated 13-8-2015 disposed of the said writ petition directing in para 4 and 5 of the said order as under :-

“4. At this stage, counsel for the petitioner submits that in the writ petition the petitioner has taken many other grounds and therefore, liberty may be given to the petitioner to raise all those grounds at the time when any such eventuality arises. He further submits that a direction may be given to respondents 2 and 3 to the effect that in case they wish to evict the petitioner, they would proceed in accordance with the law of land.

5. Without expressing any opinion on the merit aspect of the case the petition is allowed with the liberty prayed for. The parties would be further at liberty to act in accordance with law.”

8. It is further submitted that respondents were not restrained to take necessary steps in the matter. The land belongs to State within the jurisdiction of Public Premises Eviction Act, 1974 thereafter the respondent gave one month's notice to the appellant and as the plaintiff did not vacate the premises and filed the civil suit as aforementioned wherein he prayed for injunction, the respondent moved appropriate application before the competent authority under Public Premises Eviction Act, 1974 and the appropriate authority/Sub Divisional Officer (Revenue), Raipur passed the order on 20-11-2015 for vacation of the premises. Against the said order, the plaintiff had filed an appeal under the law before the Commissioner, Raipur which is pending. On 24-11-2015, the appellate authority heard arguments on interim relief and the matter was fixed for orders on 27-11-2015. Meanwhile on 24-11-2015, the Tehsildar has issued the dispossession warrant as per order dated 20-11-2015. Against the said dispossession warrant and the order of the Sub Divisional Officer, plaintiff had filed W.P. (C) No. 2107/2015 before this Court and at the same time, the order passed by the competent authority was under challenge before the Commissioner. The order of the Tehsildar could be challenged in the pending appeal before the Commissioner but it has been challenged along with the order of the competent authority in the said writ petition. On 27-11-2015, the

Commissioner had passed the order on the interim relief rejecting the same and the appeal was fixed for hearing in 16-12-2015. On 30-11-2015 the writ court has passed the order in WPC. No. 2107/2015 wherein this court disposed of the petition. Para 6 of the order dated 30-11-2015 is reproduced below:-

“In view of the submission made by Mr. Shrivastava, the writ petition is disposed of with a direction that in the event, the petitioner prefers a fresh application for grant of stay before the appellate authority within a period of one week from today, the said appellate authority shall consider and decide the application afresh on its own merits, without being influenced by its earlier order dated 27-11-2015. In the event of any adverse order, the petitioner would be at liberty to move afresh before this Court. Till the petitioner's interim application is decided by the appellate authority, the petitioner shall not be dispossessed from the subject premises. It is also directed that in the event of rejection of his application for grant of stay, the same shall be given effect to for a period of one week thereafter.”

9. Learned counsel further submitted that proceedings under Public Premises Eviction Act, 1974 are separate proceedings. If the plaintiff was not satisfied with the authority and jurisdiction under Public Premises Eviction Act, 1974 he could have challenged the same before the appropriate forum but on the other hand he preferred an appeal before the Commissioner. The plaintiff had no prima facie case, no balance of convenience is in his favour and there is no irreparable loss to him if the injunction is not granted in her favour. She has to prove all these limbs of the order. The premises is a shop allotted for a limited period. No ownership is transferred. The appellant is merely a tenant under the agreement. There is no frivolous grounds for vacating the same as it is for public cause. He further submitted that they have not evicted the appellant immediately after 11 months, rather they extended the period and when necessity arose, they have terminated the agreement. No right is accrued in her favour.

10. It is further submitted that on 25-6-2015, the agreement was terminated. The same was not challenged and there is no prayer for the same. It is further submitted that the trial Court while passing the order, in para 10 mentioned all the facts. It is further submitted that as the appellant is not having any prima facie case hence instant misc. appeal may be dismissed at the motion stage itself.

11. For the purpose of appreciation of arguments made by respective parties, I have perused the record and the orders referred.

12. From a close scrutiny of the matter prima facie it appears that the disputed property belongs to State. The competent authority passed an order for vacating the premises duly authorized under the law for the moment and against the order, an appeal is pending before the Commissioner, Raipur CG. The writ court in W.P. C. No. 2107/2015 vide order dated 30-11-2015 has given opportunity to the appellant to prefer a fresh application for grant of stay before the appellate authority within a week and the appellate authority is directed to consider and decide the same afresh on its own merit without being influenced by its earlier order dated 27-11-2015. The writ court further gave opportunity in the event of any adverse order the appellant would be at liberty to move afresh before this court and till the decision of the interim application by the appellate authority, the appellant shall not be dispossessed from the subject premises. The writ court further directed that in the event of rejection of application for grant of stay the same shall not be given effect to for a further period of one week. It goes to show that the Commissioner has to decide fresh application for grant of stay filed by the appellant and the appellant shall not be dispossessed for a week thereafter. The appellant was also granted opportunity to move afresh before the writ court. Looking to the entire facts and circumstances, if we consider the para 6 of the agreement dated 26-5-2012 and the order passed by the respondent dated 26-5-2013, prima facie this court is unable to agree with the argument advanced that the agreement dated 26-5-2012 is expired and dead. Reading of both together goes to show that there is merely an extension of the agreement and by the order dated 26-5-2013, the period of agreement is only extended. In the considered view of this Court, the same is still functional, operative and has to be looked into thereby there is no prima facie case in favour of the

appellant. Also there is no balance of convenience in favour of the appellant and no irreparable loss is caused because the loss may be ascertained in terms of money. Consequently, same in the presence of all other fact cannot be held as irreparable loss.

13. Having considered the facts and circumstances of the case, it is clear that there are opportunities for the appellant of hearing in the dispute, even before the writ court, the appellate authority, the commissioner where the appeal is pending against the order of SDO and competent authority. In the opinion of this Court it cannot be said that the order dated 15-10-2015 passed by the appropriate authority or the order passed in civil suit in an application under order 39 Rule 1 and 2 read with Section 151, CPC is illegal or perverse, in the considered opinion of this Court, both the case law cited are not applicable in the present case and are of no help to the appellant.

14. In the result, in the opinion of this Court, the appellant has failed to make out a ground for admission of this misc. appeal. Consequently, the same is dismissed as not maintainable.

Sd/-
(Chandra Bhushan Bajpai)
Judge