HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A. No.102 OF 2015

JUDGMENT:

Assailing the judgment and decree dated 01.06.2015 in O.S. No.41 of 2012 on the file of III Additional Chief Judge, City Civil Court, Hyderabad, plaintiff preferred the present appeal.

2. By the aforesaid judgment, the Court below refused to grant the relief of evicting the respondent-defendant and to hand over possession of the ground floor admeasuring 1125 square feet, which constitutes southern portion of premises bearing D.No.6-3-790/4 & 4B within specific boundaries, located at Ameerpet, Hyderabad, and to pay future rents at Rs.85,686/- from the date of suit till possession is delivered.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Court below in the original suit.

4. The facts that are necessary for disposal of the present appeal are, the defendant was inducted into possession in the month of February, 2003, by virtue of a lease deed executed on 04.05.2003. On the very same day, the defendant has paid a sum of Rs.12,00,000/- towards security deposit interest free. The lease deed is an unregistered one and, therefore, the tenancy was oral. The rentals have been paid by deducting TDS. While so, the service tax was

imposed with effect from 01.06.2007 and as per the understanding between them, the defendant was obligated to pay service tax, but since the defendant promised to reimburse the service tax that would be paid by the plaintiff, the plaintiff paid service tax at Rs.8,785/- per month for a total period of eighteen (18) months and got issued notices to the defendant on 28.01.2008 and 24.06.2008, asking it to reimburse the service tax. The defendant got issued a reply on 05.12.2008, bringing to the notice of the plaintiff that the orders passed in W.P. No.1263 of 2007 by the High Court of Bombay and claimed exemption.

5. The plaintiff's grievance is that the defendant did not disclose the exemption of payment of service tax till December, 2008, by which time, it has paid 14 months service tax to the authorities and since the question of getting back the service tax paid to the authorities does not arise, it could not reimburse and, therefore, claims that the defendant is also due a sum of Rs.1,22,990/- towards fourteen (14) months service tax and also stated that it is entitled to adjust the same towards security deposit and, thus, when the said amount is deducted, a sum of Rs.10,77,010/- was lying with the plaintiff as security deposit. The plaintiff claims that the defendant informed him that this Court has directed them to pay 50% of the arrears of service tax in instalments through the letter dated 01.11.2011.

6. The plaintiff claims that due to personal necessities, it offered to sell the suit premises to the defendant both, to the Branch

Manager at Hyderabad and Managing Director of Coimbatore, but they did not come forward to accept the offer assuring it that they would vacate the premises in case it intends to sell to others. When the plaintiff asked the defendant to vacate, with a view to sell the suit premises, the defendant gone back and refused to vacate, and, therefore, the plaintiff was constrained to get the notice issued dated 29.09.2011, terminating the tenancy with effect from 31.10.2011, though, the notice sent to Hyderabad address was refused and it stood unanswered. Hence, the suit.

7. The defendant in its written statement, though, disputed the monthly rent as Rs.85,686/-, but claims that to avoid controversies for such trivial issue, started paying monthly rents at Rs.85,686/- into the plaintiff's bank account. The defendant denied the allegation that it did not come forward to execute a regular registered lease deed but admits that the lease deed was an unregistered document and also payment of security deposit of Rs.12,00,000/- free of interest to the plaintiff.

8. The defendant denied the alleged understanding between them to pay the service tax by the plaintiff initially and that it would reimburse the same. According to the defendant, such an understanding was never arrived at and nothing thereto was stated in specific terms in the lease deed dated 04.05.2003. The defendant claims that after service tax was imposed with effect from 01.06.2007, the plaintiff started harassing the defendant to pay the service tax,

though, not obligated and forced the defendant to file Writ Petition No.1263 of 2007 before the High Court of Bombay.

9. The defendant states that the plaintiff never offered to sell the premises and puts forth that the plaintiff was desirous that the defendant always expressed its readiness and willingness to purchase the same for the prescribed market value of the property. The defendant points out clause 20 of the lease agreement and claims that it has got option to give notice of termination and to deliver vacant possession of the leased property subject receipt/refund of all the amounts from the plaintiff. Claiming that the defendant is entitled to continue tenancy over the premises duly paying prescribed monthly rents and duly following the terms therein and also claiming that it has invested huge money in millions for the interior decoration of the demised premises, felt that the duration was fixed as 10 years in the lease agreement. The defendant claimed that in the month of April, 2012, officials of G.H.M.C. went to seize the property as the plaintiff failed to pay the property tax of Rs.1,06,814/- and when the same was informed to the Managing Partner of the plaintiff, in turn, the plaintiff informed the defendant to pay the said amount and, therefore, seeks to deduct the same from the lease rentals claiming that it has been paying lease rentals promptly and regularly. Finally, requests to dismiss the suit.

10. Basing on the pleadings, the Court below settled the following three issues for trial:

"1) Whether the plaintiff is entitled for eviction of the defendant from the suit schedule property as prayed for?

2) Whether the plaintiff is entitled for future rents at Rs.85,686/- from the defendant as prayed for?

3) To what relief?"

11. The plaintiff examined one witness as P.W.1 and marked Exs.A.1 to A.9 to substantiate its case. The defendant examined one witness as D.W.1, but no documents were filed on its behalf.

12. The Court below, on appraisal of evidence, recorded findings that the suit was prematured, since the period of ten (10) years mentioned in the lease deed dated 04.05.2003, would expire by 03.05.2013, but the plaint was presented on 11.11.2011 and numbered in the first month of 2012 and the notice under Section 106 of the Transfer of Property Act, 1882 (for short, 'the Act') is defective. There is nothing else in the discussion except elaborating what was deposed by P.W.1 and D.W.1. The Court below, while recording the finding that the suit was prematured, observed that as per the recent amendment introduced into the Act, six months advance notice is a pre-condition, but Ex.A.3 is not in tune with the said amendment.

13. Aggrieved over the aforesaid judgment and decree, the plaintiff agitated in the grounds of appeal that the Court below was wrong in holding that the suit was prematured and ought to have seen that in identical circumstances, the Hon'ble Supreme Court held that

the suit is maintainable and the issues settled run contrary to the pleadings as well as the law laid down by the Constitutional Courts. It is stated that the judgment and decree passed by the Court below suffers from legal infirmities and the reasoning for dismissing the suit is contrary to law.

14. Heard Sri Kambham Madhava Reddy, learned counsel for the appellant-plaintiff, and Sri B.Chandrasen Reddy, learned counsel for the respondent-defendant.

15. Learned counsel for the appellant-plaintiff would submit that the Court below went totally wrong in recording the finding that the suit was prematured, somehow, loosing sight that the lease deed dated 04.05.2003 was unregistered and, therefore, sought to set aside the judgment and decree passed by the Court below by allowing this appeal.

16. Learned counsel for the respondent-defendant would submit that the quit notice is defective and the suit itself is liable to be dismissed, and the Court below rightly did so.

17. Adverting to the submission of learned counsel for the respondent, it is to be stated that the quit notice under Ex.A.3 cannot be viewed as defective. The finding recorded by the Court below that before the expiry of duration of lease, since the suit was filed, it is prematured, is not correct as the Court below, somehow, overlooked the fact that the lease deed in the present case was unregistered and,

therefore, no infirmity can be viewed in issuing quit notice of a month's duration. It is clear from the record that Ex.A.3 is dated 29.09.2011, and the acknowledgement of Managing Director shows the date as '03.10.2011' and the tenancy sought to be determined was with effect from 31.10.2011. Thus, Exs.A.3 to A.5 would clinch the issue.

18. Admittedly, the lease of immovable property in the present case is not for agricultural or manufacturing purposes so as to treat the lease from year to year terminable on the part of either lessor or lessee by six (6) months notice expiring with the end of the year of the tenancy. The subject property in the present case is ground floor, admeasuring 1,125 square feet. Thus, the property leased out is other than for agricultural or manufacturing purposes. Therefore, the lease herein shall be construed as a lease from month to month terminable on the part of the either lessor or lessee by fifteen (15) days notice expiring with the end of the month of the tenancy. Nothing more is required to discuss further in holding that the judgment and decree passed by the Court below do suffer from legal infirmity, as the reasoning given by the Court below that the suit is prematured and the quit notice is defective are based on improper appreciation of evidence on record and the mandate of the provisions of Section 106 of the Act, more particularly, the lease deed being an unregistered document.

19. Hence, the present appeal is allowed setting aside the judgment and decree dated 01.06.2015 passed by the Court below and the defendant is directed to vacate and hand over the physical possession within two (2) months from today and the plaintiff is entitled to future rents @ Rs.85,686/- from the date of suit till delivers the possession of the suit property to the plaintiff. There shall be no order as to costs.

20. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

25th November, 2016
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