

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

C.R. No.4101 of 2015

Date of Decision.16.12.2016

M/s Malke Estates Pvt. Ltd. and others

.....Petitioners

Vs

Export Credit Guarantee Corporation of India Ltd.

.....Respondent

Present: Mr. Pankaj Jain, Advocate
for the petitioners.

Mr. Suvir Sehgal, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioners are aggrieved of the impugned order whereby the suit under Section 6 of the Specific Relief Act instituted at the instance of the respondents in respect of half portion of the back side of first floor measuring 1150 sq. ft of SCO No.147-148, Sector 9-C, Chandigarh, has been decreed.

Mr. Pankaj Jain, learned counsel appearing for the petitioners submits that by virtue of lease agreement dated 21.07.2003, the respondent was inducted as tenant w.e.f. 01.08.2003 on a rent of ₹30,000/- per month exclusive of all municipal/property taxes, water charges etc. The aforementioned lease deed was registered. The ground floor of SCO was in occupation of Lord Krishna Bank, erstwhile Centurian Bank of Punjab. The occupants of ground floor were facing leakage/seepage problem due to blockage of water from the office flooring.

He submits that the respondent-plaintiff instituted the suit on the premise that the petitioners-defendants had requested the respondent-

plaintiff/company to allow the repair work by dismantling the floor and shop and that after completion of the work, they will put company into possession. It is in this backdrop of the matter, the respondent alleged that they had vacated the premises aforementioned for a period of three months and occupied in another place i.e. SCO No.58-61, Sector 8-C, Chandigarh in a portion measuring 500 sq. ft. on the first floor.

On assurance, much less, voluntarily they handed over the possession and the provisions of Section 6 of the Specific Relief Act could not have been pressed into service. At the best, the respondent-plaintiff was entitled for damages for having not allegedly honoured the commitment. There was no wrong in this regard. If at all, the respondent-plaintiff had not been able to prove the breach of trust, could not have been compensated in terms of money, thus, there cannot be any violation of the provisions of Section 6 of the Specific Relief Act. The possession was not taken forcibly or under any other threat. In fact, the respondent-plaintiff volunteered to hand over the possession.

He further submits that the story of alleged repair work was a concocted one and no evidence in this regard has been brought on record. Neither assistance of any expert or surveyor in this regard has been taken, thus, urges this Court for setting aside the judgment and decree under challenge.

Per contra, Mr. Suvir Sehgal, learned counsel appearing on behalf of the respondent-plaintiff, during the course of the hearing, had brought to the notice of this Court a judgment rendered by Hon'ble Supreme Court in **East India Hotels Ltd. Vs. Syndicate Bank 1992(Sup2) SCC 29** to contend that identical question whereby the party had voluntarily handed

over the possession, in essence, the landlord had taken possession in accordance with the assurance, can be prevented or not in honouring the commitment and obligation in restoring back the possession. After noticing the relevant case law and other factors, the matter was referred to the larger Bench. The decree in the similar suit, in the meantime, was challenged by the landlord by seeking the eviction as there was no interim stay in favour of the lessee and therefore, the question posed remained un-answered. He further submits that vide order dated 12.09.1991, the Hon'ble Supreme Court disposed of the matter since the suit at the instance of the landlord had been filed by holding that parties would be at liberty to take all the possible pleas. In support of his contention, Mr. Sehgal, relies upon the observations made in paragraphs 25, 29 and 43 of the aforementioned judgment to contend that the whole purpose of referring the matter to the larger Bench was to rule out the mischief played upon by the lessor i.e. the pretexts of repair etc. etc, thus, the judgment and decree under challenge is perfectly legal and justified.

I have heard learned counsel for the parties and appraised the paper book. Paragraph Nos.25, 29 and 43 from the judgment relied upon by Mr. Sehgal, referred to above reads as under:-

25. The contention of Sri Nariman that dispossession by any means, fair or foul unless it is visited with breach of peace and is not amenable to exercise of power under [Section 6](#), would be fraught with insidious and pernicious effects on the efficacy of the rule of law as it germinates, generates or inculcates disbelief and apathy therein and drives the people to extra legal remedies. In my considered view, therefore, that possession obtained either by violence, misrepresentation, fraud, coercion, undue influence, seemingly innocuous but hidden with oblique motive or any other mode or method unlawful or otherwise except in due course of law

attracts Section 6. Law frowns upon such conduct. The court accords legitimacy and legality only to possession taken in due course of law. In Section 6 proceedings the consideration of the right, title or interest in immovable property either of the person claiming possession as an owner or under colour of title or person dispossessed or threatened to be dispossessed are irrelevant. It concerns itself whether the person was dispossessed without his consent and in due course of law and whether the suit was laid within six months from the date of the suit. The claim based on title or possessing title, after six months, would be gone into in a suit under Section 5 of the Act. Therein all relevant considerations would enter into the area of consideration.

29. What is meant by due course of law? Due course of law in each particular case means such an exercise of the powers by duly constituted Tribunal or Court in accordance with the procedure established by law under such safeguards for the protection of individual rights. A course of legal proceedings according to the rules and principles which have been established in our system of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must thus be a Tribunal competent by its constitution, that is bylaw of its creation, to pass upon the subject-matter of the suit or proceeding; and, if that involves merely a determination of the personal liability of the defendant, it must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. Due course of law implies the right of the person affected thereby to be present before the Tribunal which pronounces judgment upon the question of life, liberty or property in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of the controversy by proof, every material fact which bears on the question of fact or liability be conclusively proved or presumed against him. This is the meaning of due course of law in a comprehensive sense.

43. Law respects possession even if there is no title to support it. No-one is permitted to take law in one's own hands and to dispossess the person in actual settled possession without due course of law. No person can be allowed to become a judge in his own case. The object of Section 6 is to discourage people to act in self help, however, good their title may be. The licensee in possession for well over 15

years is in settled possession and is entitled to remain in possession and make use of the premises for the purpose for which it was demised until it is ejected in due course of law. The acquiescence of the landlord in this context would be to the initial unlawful entry into possession and continuation thereafter but not to the continuance in possession of the licensee after the expiry or termination of the licence. That was what this court appears to have meant in the previous decisions. Take for instance that when a licence was granted for a couple of years and after its expiry, by efflux of time, or on termination, if the possession of the licensee, though unlawful and unjust is not protected, the aggressor or mighty would trample upon the rights of the weak and meek and denial of relief under [Section 6](#) would put a premium upon the aggression or treachery or tricks. No doubt long delay in disposal of cases due to docket explosion became a ruse to unscrupulous litigant to abuse the due course of law to protract litigation and remain in unjust or wrongful possession of the property. Landlord could be suitably compensated by award of damages. It cannot, by any stretch of imagination, be said that a person in settled possession, though unlawful, is not entitled to the protection under [Section 6](#) of the Act. Maintenance of law and order, and enthusing confidence in the efficacy of rule of law are condition precedent for orderly society. Therefore, giving primacy, legitimacy or legality to the conduct or acts of the landlord to take possession of the property in derogation of the due course of law would be deleterious to rule of law and a pat on high-handedness or self-help.”

From the perusal of the aforementioned observations, certain eventualities were envisaged in such type of situation and it is in this backdrop of the matter, the matter was referred to the larger Bench because there was a divergent view as to whether on account of assurance given by a landlord/lessor, the lessee would be entitled to restore the possession by invoking the provisions of section 6 of the Specific Relief Act or not. The question, as noticed above, has remained un-answered, owing to the subsequent events having taken place. Be that as it may be. I am of the

view that the remedy for the lessee was not to seek restoration of the possession as there is categoric averment in the suit that on the so-called alleged assurance, he has taken the alternative premises, as noticed above, on rent. If at all, the landlord/lessor had not honoured the commitment, the remedy under Section 73 of the Contract Act should have been invoked by claiming the damages. In my view, this aspect has not been taken care by the Court below while decreeing the suit. The fact of whether the repair was effected or not has also not been proved on record.

For the reasons aforementioned, the judgment and decree passed by the trial Court, in my view, is not sustainable and hereby set aside.

The revision petition is allowed.

It has also been brought to the notice of this Court that the lessee has already availed the remedy of claiming the damages. The suit has been decree but subjected to challenge before the lower Appellate Court. Any observations made herein shall not be construed as an expression of merit in pending litigation claiming damages.

(AMIT RAWAL)
JUDGE

December 16, 2016
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	Yes