

* HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

+ CCCA No.177 of 2003

% 05-01-2018

Badri Vishal
rep.by its General Secsretary

... Appellant/
Defendant

Vs.

\$ The Kshatriya Rajput Sabha
Kutbiguda, Hyderabad.

... Respondents/
Plaintiff

! Counsel for the appellant: Sri B. Balchand

Counsel for the Respondent: R.A. Achuthanand

< Gist:

> Head Note:

? Cases referred:

¹ (2005) 1 SCC 705

² (2005) 11 SCC 547

³ (2016) 11 SCC 406

⁴ (2012) 5 SCC 370

⁵ 2015 (1) ALT 209

⁶ 2013 (2) Madras Weekly Notes 403



HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**C.C.C.A.No.177 of 2003****JUDGMENT:**

This appeal arises out of the judgment and decree dated 25.02.2003 passed in O.S.No.301 of 2001 by the XI Additional Chief Judge, City Civil Court, Hyderabad.

2. For the sake of convenience, as this is a first appeal, the parties are referred to as plaintiff and defendant only.

3. The brief facts of the case are that the plaintiff-society is the owner of the suit schedule property which is premises bearing No.3-3-869 situated in the heart of the Hyderabad City. The defendant has been staying in the said premises on rent of Rs.1,800/- per month. The tenancy, as per the lease deed dated 16.04.1981, is for a period of 11 months. Thereafter also, the tenants stayed over in the property. Ultimately, on 26.01.1999 the plaintiff got issued a legal notice for termination of the defendant to vacate the premises on 16.03.1999 and deliver the possession by 17.03.1999. The plaintiff is also claiming damages for use and occupation on 17.03.1999, arrears of rent etc.

4. The defendant, on the other hand, filed a written statement denying the averments made in the plaint and stating that there was an oral understanding that the defendant can continue as a tenant till he desires. He also

raised a plea that the tenancy is not from the 16th of the month and that this notice for termination of tenancy is not correct or valid. He states that there are no arrears of rent and therefore, he is praying that the suit may be dismissed.

5. On the basis of the pleadings, the lower Court framed the following seven issues:

- a) Whether the tenancy month commenced from 16th April or from 10th April?
- b) Whether the quit notice under Section 106 of the Transfer of Property Act is valid?
- c) Whether the plaintiff is entitled for arrears of rent of Rs.4,500/-?
- d) Whether the plaintiff is entitled for use and occupation at Rs.10,000/- per month from 17.03.1999 and if not at what rate?
- e) Whether the plaintiff is entitled for legal notice charges as claimed?
- f) Whether the plaintiff is entitled for objection of the defendant?
- g) To what relief?

5. During the course of trial, the plaintiff examined one witness as PW.1 and marked as Exs.A.1 to A.13. The defendant examined himself as DW.1 and also examined DWs.2 & 3 and marked Exs.B.1 to B.10. Ex.X.1 to X.3 were also marked by the lower Court. After considering the oral and documentary evidence, the lower Court decreed the suit directing the defendant to vacate the premises and also to pay damages at Rs.1,980/- per month from 17.03.1999 with an increase of 10% till he delivers the vacant possession. Three months time was granted to the defendant to vacate the

premises. Proportionate costs were also awarded. It is this judgment and decree that is assailed in the present appeal.

6. I have heard Sri B. Balchand, learned counsel for the appellant/defendant and Sri R.A. Achuthanand, learned counsel for the respondent/plaintiff.

7. As this is the first appeal for eviction on the basis of an admitted lease deed, the first question that arises in this case is whether the lease commenced from 16.04.1981 as pleaded and the necessary corollary is whether the notice to quit demanding the defendant to vacate the suit schedule property is correctly issued and is valid.

8. The first and foremost submission of the learned counsel for the appellant/defendant is that the tenancy did not begin from 16.04.1981 and that the payment of rent, as per the receipts, is from the first of every month, therefore, the assertion that the date of commencement of lease is 16.04.1981 is not correct.

9. The learned counsel for the respondent, on the other hand, pointed out that as per the Ex.A.1 lease deed, the tenancy, which commenced from 16.04.1981 is up to 15.03.1982. He also pointed out that the carbon copy of Ex.A.1 is marked as Ex.B.4. In Ex.A.1, the date of commencement of lease is not mentioned, but the same is mentioned in Ex.B.4, which is in the custody of the defendant

and which is filed by him into the court. He also pointed out that both in Ex.A.1 and in Ex.B.4, in page-2, para-1 of the body of the lease, it is clearly written in handwriting that the lease would expire on 15.03.1982. The hand written portion is after the type written portion, which clearly states that the lease commenced from 16.04.1981. Both in Ex.A.1 and in Ex.B.4, after the word 'and' ends on 15.03.1982 an initial was put by the defendant himself in Ex.A.1 and by the representative of the plaintiff society in Ex.B.4. Ex.A.1 clearly bears the signature of the defendant commenced to the words written in ink. Therefore, it is clear that the lease commenced on 16.04.1981.

10. It was also pointed out that in the cross-examination of DW.1 also, he clearly admits that he has agreed to the terms and conditions of Ex.A.1 and he signed the document. He also admits that in Ex.A.1, there is a mention that the tenancy commenced from 16.04.1981 and ended on 15.03.1982. He admits that the correction contains his signature. In addition to these two documents, the learned counsel for the respondent/defendant also points out that Ex.B.2 notice dated 30.06.1982 also clearly mentions that the lease is from 16.04.1981. In Ex.B.2, which is a reply notice issued by the plaintiff, he admits that the hire charges for fixtures and fittings were being collected from 16.04.1981 itself. Therefore, from the clear admissions of DW.1 in his

cross-examination and from the contents of the documents, it is clear that the tenancy commenced from 16.04.1981 and was for 11 months.

11. The next question that arises for consideration is whether Ex.A.2 notice is valid or not. It is a fact that there is no subsequent lease deed after Ex.A.1. Under Ex.A.1, lease expired in March, 1982. Since March 1982 till this Ex.A.2-notice preceding the suit (which is dated 26.01.1999), the defendant was in possession and the plaintiff was accepting the rents from him. Therefore, by operation of law, a lease from month to month came into play. By conduct both the parties allowed this month-to-month tenancy to continue. Ex.A.2 notice was issued on 26.01.1999 and it clearly states that the defendant should vacate the premises by 17.03.1999. This notice was received on 02.02.1999 and later a reply notice was given. Therefore, the question is whether the notice is valid or not under the un-amended Section 106 of the Transfer of Property Act. The notice to quit in case of non-manufacturing lease was required to be of 15 days duration and ending with the month of tenancy. This Ex.A.2-notice which is issued on 26.01.1999 clearly allows the defendant time up to 17.03.1999. The notice clearly states that the defendant should vacate the occupation of the premises by 16.03.1999 and hand over the same on 17.03.1999. Thus, more than the required 15 days time was given to the

defendant to vacate. The option was also given to the defendant to vacate the premises on any other day of his choice if he felt that the tenancy was not from 16.04.1981. This Court has already held that the original lease commenced from 16.04.1981 and ended on 15.03.1982. By the same yardstick, Ex.A.2-notice dated 26.01.1999 proceeds to terminate the tenancy on 16.03.1999.

13. In addition, it is important to note that Section 106 of the Transfer of Property Act was amended in the year 2002 by Act 3 of 2003, which came into effect on 31.12.2002. By this amendment, the requirement that the notice to quit should be co-terminus with the end of month of tenancy has been taken away. Now, as per the applicable amended Section 106 of the Transfer of Property Act, 15 days notice is enough to terminate the tenancy. This amendment came into force even before the judgment was delivered in this case on 25.02.2003 and the amendment makes it clear that it is applicable to all suits and proceedings pending as on 31.12.2002. Therefore, this Court is of the opinion that the notice dated 26.01.1999 is correct and valid both as per the old Section 106 and new Section 106 of the Transfer of Property Act. Sub-section (3) also mentions that a notice is not invalid if the period mentioned therein is short and where suit is filed after expiry of the period. Therefore, the rigor of old Section 106 of the Transfer of Property Act has been

substantially relaxed by the amendment in 2002. For all the above reasons, this Court holds that the lower Court rightly held that the notice to quit is valid. Issues 1 & 2 are decided correctly and this Court does not see any reason to interfere with the same.

14. Coming to issue No.3, the lower Court has rightly held that there are no arrears of rent.

15. As far as issue No.4, which is about damages for use and occupation is concerned, the lower Court held that the defendant is liable to pay damages for use and occupation at Rs.1,980/- per month with effect from 17.03.1999 with an increase of 10% of every year till he vacates and handovers the suit premises. This award plus increase of 10% is challenged by the appellant. The learned counsel for the appellant/defendant submits that the findings of the lower Court are not based on a correct appreciation of fact's and that the Court erred in awarding damages/mesne profits from 17.03.1999 and that the prayer for damages from the date of filing of the suit till the date of vacant possession is handed over is not correct. He further argued that the escalation of 10% is also incorrect as per the learned counsel. The landlord/respondent, however, urged that the figure is itself low and that Rs.10,000/- per month should have been awarded.

16. The demand for damages to use and occupation can only commence after the termination of the tenancy. In this case, the termination of tenancy was with effect from 16.03.1999. It is an admitted fact that the suit was filed in April 1999. Therefore, this Court finds that an error was committed by the lower Court was in awarding damages for the month of March 1999 as the suit was filed only on 06.04.1999. Apart from this, this Court finds that the parties introduced evidence for the damages and the assessment of damages is made by the lower Court on the basis of available evidence of a shop belonging to the second floor of the same building, but it is argued by the learned counsel for the respondent that the lower Court ignored Exs.A.11 and A.13. In Ex.A.11, a direction was issued by the Inspector General of Registration and Stamps, as the basis for assessment of rental value of the building. Ex.A.13 is a Government Order dated 27.02.1997 for assessing rental values. This Court finds force in the submission that the assessment of damages is rather low and agrees that the court should have fixed the damages for use and occupation of liberally at least Rs.5/- per square feet as per Ex.A.11. It was argued that the said GO may not be applicable strictly to the facts and circumstances of the present case still it should have been taken as a yardstick for assessment of damages for use and occupation. Two factors important are here: i) the building is situated in Sultan Bazar; a commercial area of these twin

cities and ii) the turnover of the appellant is Rs.25 – 30 lakhs per annum as per the oral evidence. Therefore, this Court holds that the assessment is low in the circumstances and the tenant should be called upon to pay a realistic sum as damages.

17. The next question is about the “rate”. It is a fact that has been recognized by various High Courts and the Hon’ble Supreme Court of India is that assessment of mesne profits/damages must be realistic and must offset laws delay. A tenancy that was terminated in the year 1999 in this case has still not resulted in the tenant vacating the building. The tenant is continuing to enjoy the building by paying rent at old rate after 18 years also. The Hon’ble Supreme Court of India in a) ***Atma Ram Properties (P) Ltd. v. Federal Motors Pvt. Ltd.***¹, b) ***Crompton Greaves Ltd v. State of Maharashtra***² and c) ***Delhi Development Authority v. Anant Raj Agencies Pvt. Ltd.***³ talks of the need to award damages etc. as per market value and mesne profits to offset the delays. Even while granting injunction, in ***Maria Margarida Sequeria Fernandes and Ors. v. Erasmo Jack de Sequeria (Dead) through L.Rs.***⁴, which was followed in ***Dasari Laxmi v. Bejjenki Sathi Reddy***⁵, the need for imposing a condition to give mesne profits and market rent while granting injunction has also been stressed by the

¹ (2005) 1 SCC 705

² (2005) 11 SCC 547

³ (2016) 11 SCC 406

⁴ (2012) 5 SCC 370

⁵ 2015 (1) ALT 209

highest court of law. The law which admittedly is not static should change and recognize the need for modification to suit the times. Therefore, to offset legal delays; to protect an innocent landlord and to discourage a clever tenant the Court has to award damages for use and occupation at the prevalent/current market rents. This will deter unscrupulous tenants from clinging onto the property for years together, taking advantage of the period in which the matter is pending in the Court. Even if the delay is genuine, there will be a realistic amount realized by awarding damages at current rates.

18. This Court agrees with the contention of the learned counsel for the respondent/plaintiff that the assessment of damages in this case are very conservative. In terms of Order XX Rule 12 CPC, the Court is empowered to decide the same. Also in ***P.T. Lee Chengalvaroya Naicker Trust v. A.R. Brothers***⁶, Clauses (b) and (ba) of Order XX Rule 12 CPC have been considered ejusdem generis also. Order XLI Rule 24 CPC also enables this Court to embark on this enquiry. Exs.A.11 and A.13 should have been used as a yardstick to assess the damages. This Court, therefore, holds that the appellant/defendant is liable to pay damages for use and occupation of the premises @ Rs.5/- per square feet per month for the suit schedule property measuring 1768 square feet from the date of the suit till the date of this order along

⁶ 2013 (2) Madras Weekly Notes 403

with escalation of 10% per annum as is being paid by all other tenants in the building and as noticed by the lower Court. In this case, the damages are assessed @ Rs.5/- per square feet as this is a building in a commercial area. The same cannot be the basis in all cases. The evidence introduced in each case should be considered for deciding the mesne profits/damages. Current market rates based on the evidence must be awarded to offset the delays in disposal of such cases.

19. In this case, for the period from the date of this judgment also, the tenant will continue to pay to the landlord at the current rate (calculated as per Rs.5/- per square feet with 10% increase as per para-18) as an interim rate fixed in line with the judgment of the Hon'ble Supreme Court of India in **Crompton Greaves Ltd** (2 supra), which followed **Atma Ram Properties (P) Ltd.** (1 supra) and also **P.T. Lee Chengalvaroya Naicker Trust** (6 supra). The landlords can also move an application for further enquiry in terms of Order XX Rule 12 CPC. The landlord/respondent is to file an affidavit of undertaking stating that all the amounts paid as per the directions of this Court and the amounts, if any, determined in the enquiry under Order XX Rule 12 CPC shall be ultimately adjusted/refunded accordingly.

20. This Court also does not find any merit in the contention of the learned counsel for the appellant/defendant

that the costs awarded are very high. In fact, in ***Maria Margarida Sequeria Fernandes*** (4 supra), the Supreme Court held that in case of dismissal of the suit, restitution in the form of actual costs should be awarded. Nevertheless, in this case, it is held that the award of costs by the lower Court does not deserve any interference.

20. For all the above reasons, the appeal is dismissed and the order of the lower Court is confirmed with the modification in the damages for use and occupation. Three months time is given to the tenant to vacate the premises. However, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

Date: 05.01.2018
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D.V.S.S. SOMAYAJULU, J

Note: L.R. Copy marked.