

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CITY CIVIL COURT APPEAL No.28 of 2017

JUDGMENT:

This City Civil Court Appeal, under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 (CPC), is filed by the appellant/defendant, challenging the judgment and decree dated 02.12.2016, passed in O.S.No.844 of 2013, by the V Senior Civil Judge, City Civil Court, Hyderabad, wherein the suit filed by the respondent herein/plaintiff against the appellant herein/defendant, for eviction and damages was decreed with costs, directing the defendant to handover vacant and physical possession of the suit schedule property i.e, first and second floor of the premises bearing No.1-9-9/2/A, admeasuring approximately 3,800 sq.ft. situated at Ramnagar, Hyderabad, to the plaintiff within two(2) months from the date of the judgment and also to pay Rs.2,00,000/- per month towards damages to the plaintiff from 01.08.2016 to till the date of delivery of vacant possession of the suit schedule property, on or before 5th of every month, failing which, the plaintiff is entitled to recover the possession of the suit schedule property and also damages from the defendant by following due process of law.

2) Heard Sri Challa Dhanamjaya, learned counsel for the appellant/defendant, Sri V.Srihari, learned counsel for the respondent/plaintiff and perused the record.

3) The appellant herein is the defendant and the respondent herein is the plaintiff before the Court below. For the sake of

convenience, hereinafter, the parties will be referred as they were arrayed before the Court below.

4) Learned counsel for the appellant/defendant would contend that the impugned judgment and decree dated 02.12.2016 passed by the Court below is contrary to law and facts of the case and opposed to the evidence on record. There is an option in the lease deed to extend the lease for a further period of five years after the expiry of the lease. There is no valid legal notice terminating the lease. Further, the termination of lease is not in consonance with Ex.A.1-registered lease deed dated 22.06.2012. There is no change of nature of business by the defendant. The cloth business is carried out by the defendant in terms of the lease deed only. The eviction was ordered on non-existing grounds. The respondent/plaintiff in order to evict the defendant by hook or crook, made a false report to the GHMC to pull down the upper two floors of the building and caused irreparable loss to the business of the defendant. It is also contended that there is no valid quit notice as required under Section 106 of Transfer of Property Act, 1882 (for short "T.P.Act") prior to the filing of the suit. Since the lease expires on 31.07.2016, filing of suit for eviction much before the expiry of the date of lease is not maintainable. No jewellery business is being carried out by the defendant contrary to the terms of the lease deed. The defendant had sent Ex.A.10-letter dated 22.06.2016 to the plaintiff seeking extension of lease for a further period of five years. Further, defendant company had made its own arrangements for parking

its vehicles as well the vehicles of its customers and so the notice issued by the GHMC, which is a stage-managed one by the plaintiff, does not give cause of action for eviction. The Court below has no jurisdiction to entertain the subject suit. It is also contended that there is no default in payment of rents by the defendant. The monthly damages awarded in favour of the plaintiff is highly exorbitant and excessive and ultimately prayed to allow the appeal by setting aside the impugned judgment and decree passed by the Court below.

5) On the other hand, learned counsel for the respondent/plaintiff would contend that as per the terms and conditions of Ex.A.1-registered lease deed dated 22.06.2012, either to vacate or evict the suit schedule property, either party shall give three(3) months notice to the other party. As per the terms of the lease deed, the defendant company is required to make its own arrangements for parking of its vehicles as well the vehicles of its customers, which was not done so. Due to parking of the vehicles by the customers of the defendant on the road margin, GHMC issued notice under Section 461-A of GHMC Act, 1955 and sealed the shop belonging to the father of the plaintiff in the ground floor. As per the terms of the lease deed, the plaintiff intended to start gold and jewellery business, besides textile business along with his family members in the ground floor portion as well as in the adjoining property and the defendant is not entitled to do any similar line of business in that regard but contrary to it, the defendant hastily and

unauthorisedly constructed six floors in an area admeasuring 44 sq.yards and opened jewellery shop and running the same under the name and style of M/s. Srinivasa Jewels and thus violated the terms of the lease. The suit schedule property was let out to the defendant to run cloth shop only. Further, the plaintiff was forced to shutdown their business operations and they incurred continuous losses. There is a valid quit notice under Section 106 of T.P.Act terminating the tenancy. The Court below is justified in recording a finding that the defendant had violated the terms and conditions of Ex.A.1-lease deed dated 22.06.2012 and rightly granted the reliefs of eviction and damages. The findings recorded by the Court below in the impugned judgment and decree are based on oral and documentary evidence on record and ultimately prayed to dismiss the appeal sustaining the impugned judgment and decree passed by the Court below.

6) In view of the submissions made by both sides, the following points that arise for determination in this appeal:

- 1) Whether the appellant/defendant committed breach of terms and conditions of Ex.A.1-registered lease deed dated 22.06.2012?*
- 2) Whether there was a valid notice under Section 106 of T.P.Act to terminate the tenancy in between the parties?*
- 3) Whether the Court below is justified in granting Rs.2,00,000/- per month towards damages to the plaintiff from 01.08.2016 to till the date of delivery of vacant possession of the suit schedule property, on or before 5th of every month?*

4) *Whether the judgment and decree dated 02.12.2016 passed in O.S.No.844 of 2013, by the V Senior Civil Judge, City Civil Court, Hyderabad, is liable to be set aside?*

7) POINT Nos.1 and 2: The subject suit in O.S.No.844 of 2013 is filed by the respondent/plaintiff seeking eviction of the appellant/defendant from the suit schedule premises and for damages. The plaintiff himself was examined as PW.1 and got marked Exs.A.1 to A.9 on his behalf. In the cross-examination of DW.1, Exs.A.10 and A.11 were marked on behalf of plaintiff. Ex.A.1 is the registered lease deed bearing document No.1917/2012 dated 22.06.2012, Ex.A.2 is the copy of notice dated 06.11.2012, Ex.A.3 is the copy of notice dated 19.12.2012, Ex.A.4 is the copy of order in Writ Petition No.39799/2012 dated 26.12.2012, Ex.A.5 is the online copies of news published in newspapers dated 13.12.2012, Ex.A.6 is the copy of bank statement of State Bank of Hyderabad from 01.04.2011 to 18.06.2013, Ex.A.7 is the office copy of legal notice dated 09.01.2013 issued under Section 106 of T.P.Act, Ex.A.8 is the reply notice dated 11.02.2013, Ex.A.9 is the office copy of rejoinder to the reply notice dated 11.03.2013, Ex.A.10 is the letter dated 22.06.2016 issued by the defendant to the plaintiff and Ex.A.11 is the reply dated 30.06.2016 issued by the plaintiff. The Managing Director of the defendant company was examined as DW.1 and got marked Exs.B.1 to B.12. Ex.B.1 is the lease deed dated 05.01.2004, Ex.B.2 is the lease deed dated 23.05.2007, Ex.B.3 is the copy of bank statement of defendant, Ex.B.4 are the electricity bills, Ex.B.5 is the copy of legal notice dated

29.06.2015 issued to the plaintiff, Ex.B.6 are the postal receipts, Ex.B.7 is the postal acknowledgments, Ex.B.8 is the reply notice dated 22.07.2015 issued on behalf of the plaintiff, Ex.B.9 is the legal notice dated 02.07.2015 issued to the defendants, Ex.B.10 is the legal notice dated 21.08.2015, Ex.B.11 is the pamphlet and Ex.B.12 are three photographs with C.D.

8) There is no dispute with regard to the jural relationship in between the parties to the litigation and also with regard to the plaintiff being the absolute owner of premises bearing No.1-9-9/2/A, situated at Ramnagar, Hyderabad, consisting of first and second floors and with a temporary shed on top thereof. There is also no dispute with regard to the execution and registration of Ex.A.1-lease deed dated 22.06.2012 and letting out first and second floors of the premises bearing No.1-9-9/2/A, admeasuring approximately 3,800 sq.feet, situated at Ramnagar, Hyderabad, to the defendant by the plaintiff. The duration of the lease was for a period of five years w.e.f. 01.08.2011. There is no dispute with regard to the agreed rent in between the parties to the suit. Initially, for the first year, monthly rent was Rs.55,000/- including TDS as per the Income Tax Act and thereafter, the rent was enhanced @ 5% on existing rent at the end of every year.

9) The specific case of the plaintiff is that the defendant had violated the terms and conditions of Ex.A.1-registered lease deed dated 22.06.2012 and there is valid termination of tenancy under Ex.A.7-legal notice dated 09.01.2013. There is no dispute with regard to the recitals mentioned in Ex.A.1-lease deed. Initially,

the lease was period of five years i.e, 01.08.2006 to 31.07.2011 and thereafter, it was extended for a further period of five years from 01.08.2011 to 31.07.2016 under Ex.A.1-registered lease deed dated 22.06.2012. Admittedly, the subject suit was filed on 19.06.2013 i.e, much before the completion of five years of lease period, alleging violation of terms and conditions of the lease deed. It is apt and appropriate to extract clause 12 of Ex.A.1-lease deed, which reads as follows:

“12. The LESSOR is presently doing his Textile business in part of the premises and intending to commence Gold & Jewellery business, as such, the LESSEE shall not do the similar line of business either directly or indirectly. If the LESSEE is found to be doing the same business, it amounts to violation of the terms and conditions of the Lease Deed and they will be evicted summarily without any notice.”

The above clause contemplates that the lessee shall not do the similar line of business in textiles, which is done by the lessor. Further, the plaintiff/lessor was intending to commence Gold and Jewellery business and as such, the defendant/lessee shall not undertake similar line of business either directly or indirectly and if it was found that lessee was doing the similar business, it would amount to violation of the terms and conditions of the Ex.A.1-lease deed and the plaintiff is entitled to evict the defendant from the suit premises without any notice. As seen from the record, there is no evidence to believe that the defendant has violated Clause 12 of Ex.A.1-lease deed i.e, carrying on textile business and jewellery business on the similar lines of the plaintiff. As per the evidence of DW.1, the defendant is carrying on business in

suiting, shirting, furnishing material etc, under the name and style of M/s. Srinivasa Textiles. Therefore, it cannot be said that the defendant has violated clause 12 of Ex.A.1-lease deed.

10) Clause 16 of Ex.A.1-lease deed, reads as follows:

“16. The LESSEE shall make his own arrangements for parking of their vehicles including the vehicles of their customers and the LESSOR is not responsible or liable to provide any parking place.”

The above clause clearly states that the plaintiff is not responsible to provide any parking place and the defendant company has to make its own arrangements for parking its vehicles as well as the vehicles of its customers. There is specific evidence of PW.1 that the defendant/lessee did not procure parking place for its vehicles as well the vehicles of its customers and as the visitors of the defendant company were parking their vehicles on the road margin and causing inconvenience and traffic problems to the locality people and pedestrians, notices were issued by the GHMC under Exs.A.2 and A.3 to the father of the plaintiff and thereafter, building bearing No.1-9-9/2/A, situated at Ramnagar, Hyderabad, was ordered to be sealed on 26.12.2012, for which, the father of PW.1 obtained stay order on 26.12.2012 by filing Writ Petition No.39799/2012 (Ex.A.4). It is an admitted fact that the defendant has been running cloth business under the name and style of M/s. Srinivasa Textiles in the first and second floor of the subject premises let out to him. The same is also the evidence of DW.1. Ex.A.2 is the notice dated 06.11.2012 issued by the GHMC under Section 452(1) and 455 of GHMC Act, 1955, wherein there is a

specific mention that father of the plaintiff was running business under the name and style of M/s. Srinivasa Textiles in the premises bearing No.1-9-9/2/A, situated at Ram Nagar, Hyderabad, in the residential area without providing parking area, due to which the visitors vehicles were parked on the road margin (in front of the shop) causing inconvenience and traffic problems to the locality people and pedestrians. In Ex.A.3-notice dated 19.12.2012 issued by the GHMC, there is also specific mention that under the provisions of Section 461-A of HMC Act, the premises bearing No.1-9-9/2/A situated at Ram Nagar, Hyderabad, was ordered to be sealed on 26.12.2012. It is pertinent to state that the premises bearing No.1-9-9/2/A consists of ground floor, first floor and second floor. First and second floors are in occupation of the defendant, wherein the defendant was running cloth business under the name and style of M/s. Srinivasa Textiles. Both Exs.A.2 and A.3 demonstrates that customers and visitors of M/s. Srinivasa Textiles, were parking their vehicles on the road margin (in front of the shop) creating problems to the pedestrians and locality people. There is nothing to doubt about Exs.A.2 and A.3. There is specific mention in Ex.A.7-legal notice dated 09.01.2013, no specific place was procured by the defendant company for parking and thus violated the terms and conditions of the Ex.A.1-lease deed. There is categorical admission of DW.1 that as per the terms of Ex.A.1, the defendant has to make its own arrangements for parking of its vehicles as well as the vehicles of its customers. However, he has not filed any proof to show that he has made his own

arrangements for parking of the vehicles. There is no single document to substantiate that defendant company had procured separate place for parking its vehicles as well as the vehicles of its customers. The evidence of DW.1 and Exs.B.1 to B.12 do not establish that the defendant had complied the clause 16 of Ex.A.1-lease deed. This aspect was meticulously dealt with by the Court below. The Court below is justified in holding that the defendant company did not procure separate place for parking its vehicles as well the vehicles of its customers and thus violated clause 16 of Ex.A.1-lease deed.

11) Ex.A.7 is the copy of legal notice dated 09.01.2013. The operation of the said legal notice reads as follows:

“Therefore, my client hereby terminates your tenancy of the premises mentioned above and give this notice of termination of the tenancy w.e.f. 01.05.2013 and calls upon you to handover vacant and peaceful possession of the tenanted premises to my client on or before 01.05.2013. Even if you dispute the month and date on which the tenancy ends or the mode of termination of the tenancy, you are at liberty to treat your tenancy terminated according to your month and tenancy and vacate the shop and deliver its vacant possession to my client.”

Admittedly, there was no extension of lease. As per the terms of Ex.A.1-lease deed, the plaintiff/lessor was given option to extend the lease. There is specific evidence of PW.1 with regard to the issuance of valid notice under Ex.A.7 dated 09.01.2013. DW.1- Managing Director of the defendant company also did not deny the issuance and receipt of notice under Ex.A.7. The other

documents placed on record also substantiate the service of Ex.A.7-legal notice on the defendant. The defendant company had sent notice under Ex.A.10 to the plaintiff seeking extension of lease period, for which, the plaintiff issued reply under Ex.A.11 stating that he has no interest to extend the lease. The defendant has no right to seek extension of lease unilaterally. Therefore, there was no extension of lease in between the parties to the litigation. Ex.A.7-legal notice is in consonance with the provisions under Section 106 of T.P.Act. Therefore, there is valid termination of tenancy in between the parties to the suit w.e.f. 01.05.2013 on the ground of violation of clause 16 of Ex.A.1-lease deed dated 22.06.2012. DW.1 also admitted that even after receipt of Ex.A.7 as well as Ex.A.9-notices, the suit premises was not evicted by the defendant. Furthermore, Ex.A.5 is the online copies of news publishes in Eenadu and Hindu daily newspapers dated 13.12.2012 showing illegal construction of 6 floors by the father of the defendant in 40 sq.yards adjacent to the building of the plaintiff. There is no denial with regard to the father of the defendant raising 6 floored building adjacent to the suit schedule property. DW.1 also admitted in his evidence that under Ex.A.1 there is a condition that either party has power to vacate or evict the premises by giving three (3) months notice before the expiration of period of lease mentioned in Ex.A.1. In the instant case, on violation of clause 16 of Ex.A.1-lease deed and also some other conditions like default in payment of rents, undertaking similar type of business by the defendant, the plaintiff got issued Ex.A.7-legal notice. Thus the evidence on

record proved that the defendant had violated clause 16 of Ex.A.1-lease deed. There is ample oral and documentary evidence to prove the valid termination of tenancy.

12) In view of the violation of clause 16 of Ex.A.1-lease deed dated 22.06.2012, the tenancy was terminated by issuing Ex.A.7-legal notice dated 09.01.2013 by giving three(3) months time to the defendant to vacate the suit schedule property. On perusal of Ex.A.7-legal notice dated 09.01.2013, it clearly demonstrates that there was valid termination of tenancy in between the parties to the litigation w.e.f. 01.05.2013. Therefore, it cannot be contended that there was no valid termination of the tenancy under Section 106 of T.P.Act. Accordingly, point Nos.1 and 2 are answered against the defendant and in favour of the plaintiff.

13) POINT No.3: As far as the payment of rents is concerned, rents were paid by the defendant to the account of the plaintiff from time to time. It is evident that there is admission of PW.1 with regard to the payment of rents by the defendant through RTGS in plaintiff's account. Thus there is no default in payment of rents by the defendant during the subsistence of lease. While dealing with the grant of damages, the Court below having analysed the entire evidence, was pleased to grant damages @ Rs.2,00,000/- per month w.e.f. 01.08.2016. Now the question is whether the grant of Rs.2,00,000/- per month towards damages is exorbitant. Under these circumstances, it is appropriate to refer clause 3 of Ex.A.1-lease deed, which reads as follows:

“3. With the expiry of 5 (five) years of the Tenancy (i.e, the lease), if the Lessee wishes to continue, in the said schedule of property for a further period, he may apply for extension by intimating to the LESSOR in writing his desire to continue, by executing a separate Lease deed. However, it is for the LESSOR, whether to extend the lease, by fresh registered lease deed. If the LESSEE fails to vacate after expiry of the lease period, his occupation shall be treated as unauthorised occupant and he shall be liable to pay liquidated damages @ Rs.2,00,000/- per month towards for his illegal use and occupation apart from that the LESSOR is entitled to evict the LESSEE summarily without any notice at the cost of the LESSEE.”

Admittedly, there is no extension of lease in between the parties to the suit after 31.07.2016. There is valid termination of tenancy w.e.f. 01.05.2013. There is a written agreement in between the parties as indicated above that Rs.2,00,000/- per month has to be paid by the defendant to the plaintiff towards liquidated damages from the date of expiry of the lease (31.07.2016) for unauthorisedly occupying the let out premises. Therefore, the Court below is justified in granting Rs.2,00,000/- per month towards damages w.e.f. 01.08.2016. Accordingly, this point is answered against the defendant and in favour of the plaintiff.

14) POINT No.4: In view of the facts and circumstances of the case, the Court below is justified in passing the impugned judgment and decree. The findings recorded by the Court below are based on oral and documentary evidence on record. There is nothing to take a different view. All the contentions raised on behalf of appellant/defendant are unsustainable. The appeal is devoid of merits and is liable to be dismissed.

15) In the result, the appeal is dismissed, confirming the judgment and decree dated 02.12.2016, passed in O.S.No.844 of 2013, by the V Senior Civil Judge, City Civil Court, Hyderabad. No order as to costs.

Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 24th February, 2020
scs

