

F.A.T. 16 of 2014
Union of India represented by Secretary
Department of Post & Ors.
Vs.
The Kusum Commercial Co. Ltd.

For the Appellants	Mr. Shyamal Chakraborty, Adv. Mr. Debajyoti Mondal, Adv. Ms. Manju Jaiswal, Adv. Ms. Anjana Das, Adv.
For the Respondent	Mr. Aniruddha Chatterjee, Adv. Mr. M. Saha Roy, Adv. Mr. Rahul Karmakar, Adv. Mr. S. Mukherjee, Adv. Mr. A. Saha, Adv.
CAV On	19.04.2024
Judgment On	20.06.2024

Apurba Sinha Ray, J. :-

1. The main challenge to the decree of eviction passed on 10.07.2013 against the appellant by the Learned Judge of City Civil Court, 3rd Bench, Calcutta in Title Suit No. 3841 of 2010 is that the appellant was a tenant under the respondent, and further, not the provisions of Transfer of Property Act, 1882 but the West Bengal

Premises Tenancy Act, 1997, will have application in the case. The learned counsel for the appellant, Mr. Shyamal Chakraborty, has strenuously argued that the original deed of lease was not marked as exhibit nor any notice was issued upon the competent authority for production of the same during the trial. The learned counsel has also submitted that there are documents in the proceedings wherefrom it would appear that the appellant was all along willing to renew the lease but due to sheer non-cooperation from the side of the respondent, the same could not be done.

2. As the original deed of lease was not produced by the respondent admission of certified copy in evidence was challenged by the appellant as improper and inappropriate. In this regard, the learned counsel relied upon the decisions reported at **(2010) 8 SCC 423 (Shalimar Chemical Works Limited Vs. Surendra Oil and Dal Mills (Refineries) & Ors.), AIR 2000 Supreme Court 426 (Ishwar Dass Jain, (dead) through LRs. Vs. Sohan Lal, (dead) by LRs) & (2002) 6 Supreme Court Cases 404 (Yadarao Dajiba Shrawane (dead) by LRs. Vs. Nanilal Harakchand Shah (dead) & Others).**

3. Moreover, in support of his plea that acceptance of rent by the landlord even after expiry of the lease is the proof of landlord's assent

to lawful possession of the tenant, Mr. Chakraborty, has cited the decision reported at **AIR 2000 Supreme Court 2796 (Bhuneshwar Prasad & Another Vs. United Commercial Bank & Others)**.

4. The learned counsel for the respondent, Mr. Aniruddha Chatterjee, has drawn the attention of the Court to the materials on record showing that it is the appellant who is the custodian of the original lease deed, and not the respondent. Furthermore, a copy of the lease deed authenticated by the officer of the appellant has been produced from the side of the respondent. No objection was taken at the time of marking the same as exhibit, and, during appeal, the appellant is taking a new plea which was never argued at the time of final hearing before the trial court.

5. The learned counsel has also argued that as the monthly rent is more than Rs. 10,000/-, the provisions of West Bengal Premises Tenancy Act, 1997 do not have any application in the case.

6. The learned counsel, Mr. Chatterjee, has also drawn the attention of the Court to the deposition of DW1, one of the responsible officers of the appellant, wherein he had admitted that no notice of renewal was issued upon the landlord/plaintiff intimating that the government was willing to renew the lease. According to him, as the

appellant failed to give such notice, the lease expired, and there is no scope for revival of the same.

7. The argument of the appellant that acceptance of rent by the respondent after expiry of the lease proved assent on the part of the respondent was seriously challenged by the learned counsel of the respondent. By citing the decision reported at **(1995) 5 SCC 698 (R.V. Bhupal Prasad Vs. State of A.P. and Others)** the learned counsel has submitted that the status of the appellant is, now, at best that of a tenant at sufferance and acceptance of such rent cannot by itself, even after expiry of the lease, be treated as assent of the landlord.

Court's View

8. One of the established principles of law is that the appellate court can interfere with the judgment of the trial court only when it is materially defective and non-interference by the higher court would perpetrate gross injustice to the concerned party. The appellate court cannot alter the judgment of the trial court or substitute its view, only because another view is possible.

9. In this case, it appears that the learned Judge took the pain to distinguish all the judgments, which were also cited in this appeal, put

forward by the learned counsel of the appellant with reasons. We do not find any reason to differ with the views of the learned trial court. The appellant was unable to explain why the views expressed by the learned Trial Judge in dealing with the said case laws are not sustainable.

10. Be that as it may, if we go through Exhibit 1, we shall find that the same has been certified to be true and authenticated by the officer of the appellant. Undoubtedly, the original lease deed of the parties is lying with the appellant. It is true that no notice was served upon the appellant for production of the original lease deed, but a copy of such deed, authenticated by an officer of the appellant, was produced before the learned court. There is no denial on the part of the appellant that no such document was executed by and between the parties, nor there was any allegation regarding the contents of the said certified copy of the lease deed. Therefore, when the document is admitted, and contents thereof were not challenged from the side of the appellant who, incidentally produced the said certified copy, can the case of the respondent as a plaintiff fail only because no notice was issued to the appellant for production of the original? If there was anything new to bring on record before the trial court, what prevented the appellant to produce the original lease deed, particularly when the same was in the custody of the appellant? Therefore, we do not find that any prejudice

has been caused to the appellant for non-production of the original deed in the factual scenario of the case.

11. The above facts actually make the instant case unique and different from the cases cited by the appellant.

11.1. In the case of **Shalimar Chemical Works Limited (supra)**, the appellant produced before the Court, photocopies of registration certificates under the Trade and Merchandise Marks Act, 1958 along with the related documents attached to the certificates. The photocopies submitted by the appellant were “marked” by the trial court ‘subject to objection of proof and admissibility’.

The original certificates should have been produced by the appellant therein since the same were supposed to be in its custody. In our case, the respondent did not possess the original lease deed.

11.2. In the case of **Ishwar Dass Jain (dead) through LRs. (supra)**, there was an allegation that though there was a mortgage deed, but such mortgage was sham and the same was executed at the instance of the landlord to secure eviction of the tenant at the former’s will and desire. But in our case, the position is different. The appellant admitted the existence of a valid, legal registered deed of lease. Admission of facts absolves the party to prove the said fact once again.

Para 9 of the written statement of the appellant being the defendant in the suit may be quoted as hereunder:-

“A Registered Lease Deed was executed between the Department of Posts and Kusum Commercial Co. Ltd. on the 1st day of April 2005 for a period of five years for 1650 sq. ft. carpet area at a rent of Rs.18,975/- (Rupees eighteen thousand nine hundred seventy five) only per month for Khengrapatty P.O. Kolkata 700 001 for the purpose of public utility services commencing from 01.04.2001 with an option to the Govt. of India to renew the said lease for a further term as per Clause 14 of the said lease deed. Govt. of India is carrying their office under the name of Khengrapatty Post Office at premises No.40, Netaji Subhas Road, Kolkata 700 001. During the period of said Lease Agreement the Landlord/Plaintiff did not provide drinking water necessary repairing etc. as specified by the Govt. of India inspite of repeated reminders and by this violating the terms and condition as per lease Deed Clause No.8. That prior to the expiry of lease term several discussion as held with the Landlord for renew/New Agreement and obtaining the land cost certificate but the Land lord did not agree to pay the charge for obtaining land cost certificate and the required documents which

were very much essential for constituting the F.R.A.C. to enhance the rent of the premises used for the Khengrapatty P.O., Kolkata 700 001. So the Department retains the premises from year to year.

However, the Department of Posts has no intention for non-enhancement of rent of the said premises, rather several attempts were made to do the same. Even the names of the members of the committee had been considered but due to non-availability of the Land Cost Certificate and all other documents the same could not be done. However, after several attempts the Land cost certificate was issued by the 1st L.A. Collector on 26.10.2010 and the process of enhancing the rent in accordance with the rules of the Department is going on. In this regard it is worthy to mention that the Department of Post spent a sum of Rs.35,420/- (Rupees Thirty five thousand four hundred twenty) only as the charges for obtaining the Land Cost Certificates. The documents required for enhancing the rent has not been received from the Land Lord till this day.”

Therefore, the validity and existence of such lease deed have been admitted by the defendant/appellant in its written statement,

which distinguishes the present case from **Ishwar Dass Jain (Dead) through LRs. (supra)**.

11.3. Moreover, the case of **Yadorao Dajiba Shrawane (Dead) by LRs.(supra)** also supports the case of the respondent. It has been observed in para 31 of the said judgment that:-

*“From the discussions in the judgment it is clear that the High Court has based its findings on the documentary evidence placed on record and statements made by some witnesses which can be construed as admissions or conclusions. The position is well settled that when the judgment of the final court of fact is based on misinterpretation of documentary evidence or on consideration of inadmissible evidence or ignoring material evidence the High Court in second appeal is entitled to interfere with the judgment. **The position is also well settled that admission of parties or their witnesses are relevant pieces of evidence and should be given due weightage by courts.** A finding of fact ignoring such admissions or concessions is vitiated in law and can be interfered with by the High Court in second appeal. Since the parties have been in litigating terms for several decades, the records are voluminous. The High Court as it appears from the judgment, has discussed the*

documentary evidence threadbare in the light of law relating to their admissibility and relevance.”

In our case, not only in the written statement but in the deposition of defence witness, the existence and validity of the lease deed have been admitted. In view of the above case law, we cannot ignore such admission of the appellant/defendants.

12. Therefore, in our view, though the original deed of lease was not produced before the trial court, such non-production did not cause any prejudice to the defence.

13. Now, the most relevant question is whether the trial court was justified in decreeing the suit for eviction or not. The plaintiff/respondent's sole contention is that the defendant/appellant did not issue any notice seeking for renewal of the lease as per terms of the lease deed and eventually, the lease expired. On the other hand, the defendant/appellant's contention was that the plaintiff designedly avoided to obtain land cost certificate or to provide consent letter for such certificate. Further, the repairing works on the part of the respondent were not done.

14. Let us examine the relevant renewal clause of the lease deed.

Clause 14 of the lease deed stipulates as hereunder:-

“If the Government of India shall be desirous of taking a new lease of the said premises after the expiration of the term hereby granted it will give a notice in writing to the Land Lord not less than 3 months before the expiration of the term hereby granted to the Land Lord. There upon if the Land Lord requests for enhancement of the present rent, the Government shall review the rent in accordance with the departmental procedures ensuring that the enhancement of rent is fair and reasonable, if an agreement is reached regarding the proposed enhanced rent between the Government of India and the Land Lord, a fresh lease deed will be executed accordingly. However, If no such agreement is reached the Government of India will have the option of retaining the premises for a further term of one year to commence from after the expiration of the term hereby granted at the same rent and subject to the same agreement and conditions as in this present agreement including the present covenant for renewal and so on from year without lease deed on the Government of India excluding such option and giving the notice as aforesaid.”

15. From the renewal clause, it appears that the option to renew the lease for a further period has been exclusively given to the appellant. It is clear statement in the agreement that the appellant was under an obligation to give a notice in writing to the respondent not less than three months before the expiration of the relevant terms. Therefore, the process of renewal was to be started before three months of the stipulated date of expiry. There is no documentary evidence that the appellant had ever given such notice to the landlord. After giving such proposed notice, if the landlord wants to enhance the rent, the government/appellant shall review the rent in accordance with the departmental procedure. Therefore, the first stage of renewal requires a notice in writing from the appellant signifying that it is willing to renew the lease. The second stage i.e. the issue of enhancement of rent at the request of the respondent/landlord arises only when the appellant signifies its willingness to renew in writing and the third stage includes the enhancement of rent, if any, in accordance with departmental procedures, etc.

16. From the record, it appears that as per agreement the appellant did not issue any notice of renewal, and therefore, there is no illegality in passing the impugned judgment and decree of eviction from the side of the trial court.

17. Furthermore, as the rent is more than Rs. 10,000/- per month, the provisions of West Bengal Premises Tenancy Act, 1997 have got no application.

18. Although, it was not submitted at the time of argument as to why the arbitration clause was not pressed into service, it appears that the appellant/defendant did not take any objection against the filing of suit without adhering to the arbitration clause and such inaction goes to show that the parties have waived the benefit of arbitration clause as mentioned in the agreement on their own.

19. In fine, we do not find any reason to interfere with the impugned judgment. The instant appeal stands dismissed on contest. No costs. The judgment dated 10.07.2013 in Title Suit No. 3841 of 2010 by the Learned Judge, 3rd Bench, City Civil Court, Calcutta is hereby affirmed.

20. Urgent Photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)