

27.02.2024
Chamber

C.O. No. 4360 of 2023

Md. Ibrahim

Versus

Ahmed Reza & Ors.

Mr. Siddhartha Lahiri,
Mr. Debraj Dutta

...for the Petitioner.

Mr. Aniruddha Chatterjee,
Mr. Biswajib Ghosh,
Mr. Anuj Singh,
Mr. Sourojit Sengupta,
Mr. Sumitava Chakraborty

...for the Opposite Parties.

1. The revisional application arises out of an order dated December 4, 2023, passed in Title Suit No.624 of 2013, by the learned Judge 11th Bench, City Civil Court at Calcutta.

2. By the order impugned, an application under Section 114 of the Transfer of Property Act (hereinafter referred to as the said Act) read with Section 151 of the Code of Civil Procedure, was rejected. The petitioner, who is the defendant in the suit, has challenged the said order on the ground that the learned court misconstrued the provisions of Section 114 of the said Act. Denying the lessee an opportunity to seek the relief against forfeiture for

non-payment of rent, was an erroneous order. The learned court ought to have allowed the prayer of the lessee by directing the accumulated rent from the date of institution of the suit till November 2023, be paid.

3. According to Mr. Lahiri, learned Advocate for the plaintiff, such relief was an equitable relief and the Court ought to have exercised discretion in this regard. The lessee wanted to pay up the arrear rent @ Rs.1200/- per month. The said arrears came to around Rs.1,58,400/. It is further contended that the lessee was also willing to pay rent @ Rs.1200/- per month upto the date of disposal of the suit, if the court so directed. Provisions of Section 114 of the said Act, could be availed of by the lessee at any stage of the suit, even at the appellate stage. Accordingly, leave should have been granted by the learned Court to the defendant/petitioner, to avail such relief and the suit should have disposed of upon recording such payment.

4. Mr. Lahiri submits that the provision of law relating to forfeiture of lease for non-payment of rent, was intended as a security for payment of rent and a court of equity should grant such relief to the lessee and set aside the forfeiture, on his bringing the rent into Court. Mr. Lahiri contends that the rents for the period prior to institution of the suit were already

paid to Mr. Dawood, father of the plaintiffs, in a lump sum. The said amount had been adjusted against the monthly rent. Thus, the question of paying up the dues prior to the filing of the suit, would not arise. The plaintiffs did not compute the arrear rent in the actual figures, which meant that the allegation of default in payment of rent was false and frivolous. Moreover, claim for arrear rent, if any, prior to the filing of the suit, had become time barred. The defendant/lessee was only required to pay the lease rent from the date of filing of the suit and upto November 2023, and if the Court permitted, the rent upto the date of disposal of the suit would also be paid.

5. Mr. Lahiri referred to the following decisions :-

1. **Debendra Lal Khan vs. F.M.A. Cohen, reported in ILR 54 Cal 485.**
2. **Praduman Kumar vs. Virendra Goyal (Deal) by L.Rs. reported in (1969) 1 SCC 714.**

6. Mr. Aniruddha Chatterjee, learned Advocate appearing on behalf of the opposite parties/plaintiffs, submits that the application filed by the petitioner was not maintainable. The learned Court had rightly rejected the said application. Section 114 of the said Act will not be applicable as it is the specific case of the defendant that there were no arrears till the filing of the suit. The said provision of law contemplates

that the lessee was required to pay all arrears of rent with interest and cost of the suit. Such payment could not be conditional. The fact that the defendant asserts that the arrear rent till the date of filing of the suit had been paid in a lump sum to the predecessor of the plaintiffs, which was being adjusted against monthly rent, is contrary to the true meaning and purport of Section 114 of the said Act. The application filed by the petitioner will indicate that the petitioner actually wanted to pay the occupational charges during the pendency of the suit. It was the defence case all through that there were no arrears till the filing of the suit as the money had already been paid to the predecessor of the plaintiffs. The High Court in a first miscellaneous appeal being FMA No.599 of 2023 passed an order recording the contention of the petitioner that the entire rent from the period of the lease till the filing of the suit, had been paid to the predecessor-in-interest of the plaintiffs, and there was no requirement in law to pay the occupational charges. Such Misc. Appeal was filed by the petitioner and the Division Bench directed that such issue would also be decided by the learned trial judge at the final hearing of the suit and the suit was directed to be disposed of expeditiously.

7. Mr. Chatterjee further contends that in the decision of ***Dwarka Prasad Arya vs. Om Prokash***

Mohta and ors. reported in ***AIR 1967 Cal 212***, it was held that relief under Section 114 of the said Act was a discretionary relief and conduct of the lessee would play a vital role in deciding whether such judicial discretion should be exercised in a particular case or not. If the conduct of the lessee was harassing or the lessee was a habitual defaulter, under such circumstances no relief could be granted. A recalcitrant lessee, who had never agreed to pay the landlord's dues, must never be allowed such relief.

8. Heard the parties. This is a suit for declaration, recovery of possession, permanent injunction and other reliefs. The plaint case is that the father of the plaintiffs was granted lease of the property in question by the shebait of Iswar Sree Sree Lakshmi Janardan Jew. The lease was for 51 years, with an option for renewal for a further period of 51 years. Mr. Dawood, the father of the plaintiffs was also entitled to sublet the subject premises. Accordingly, a joint sub-lease was granted in favour of Shaheen Parveen, Masoom Reza and the petitioner/defendant, on and from August 2, 1994 for a period of 44 years 8 months by a registered deed of lease executed on August 2, 1994. The terms and conditions of the said lease, inter alia, provided that:-

a) Monthly rent @ Rs.1200/- would be paid within seventh of each succeeding month.

- b) In default of payment for two consecutive months, the lease would be terminated on the ground of forfeiture, with or without notice.
- c) On termination of the lease, the lessor would have the right to re-enter upon the demised premises and take possession thereof.
- d) The lessee would pay the corporation tax and upon payment, the lessee would deliver the tax bills and receipts to the lessor.
- e) The defendant would be entitled to enjoy 1/3rd portion in the leased property.
- f) Masoom Reza again leased out his 1/3rd portion to one Md. Anish, for a period of 38 years 04 months.
- g) Mr. Dawood died on July 12, 2008, leaving behind the plaintiffs as his only heirs to the estate and the plaintiffs, upon demise of their father, became the lessees in respect of the premises in question.
- h) By two registered deeds of surrender, Md. Anish and Shaheen Parveen surrendered their respective 1/3rd portions in the lease hold premises, but the defendant/petitioner continued to occupy the entire premises without paying a single farthing towards lease rent. The corporation taxes were also not paid.
- i) The petitioner was illegally enjoying the entire portion of the property and refused and neglected to comply with the obligations under the lease deed dated August 02, 1994.

j) The terms and conditions of the lease deed were violated and the petitioner was asked to give up the property and handover possession of the property, which he refused to do.

k) The plaintiffs terminated the said lease by a letter dated August 04, 1994, and further by a notice dated February 12, 2013, written by their learned Advocate.

l) Despite receipt of the said notice, the petitioner continued to occupy the property without payment of rent and without paying the corporation taxes.

9. Thus, the plaintiff filed the suit for declaration that the plaintiffs were the lawful lessees of the premises, for recovery of peaceful and vacant possession by evicting the defendant therefrom upon termination of lease, for permanent injunction restraining the defendant/petitioner and his men and agents from encumbering the property, for appointment of receiver and costs, etc.

10. The petitioner/defendant entered appearance in the said suit and contested the same by filing a written statement. It was the specific contention of the petitioner that Shaheen Parveen and Masoom Reza did not enjoy the property at any point of time and did not pay any rent. The entire property was enjoyed by the defendant/petitioner and he had paid a lump sum amount to Mr. Dawood, which was being

adjusted against the monthly rent. Secondly, after demise of the father, the plaintiffs had attacked the petitioner with the help of anti-socials elements and tried to grab the property forcefully. The defendant filed a complaint before the local police station and the plaintiffs gave an undertaking before the police authorities that he would not commit any breach of peace. A criminal case was initiated by the petitioner which was continuing before the learned Metropolitan Magistrate, Calcutta. The petitioner had paid the sub-lease rent to Mr. Dawood in a lump sum and Mr. Dawood had actually acknowledged such payment by putting his signature in the requisite places, indicating that he had accepted the money in lieu of rent. The petitioner prayed leave of the court to submit the document during trial. The petitioner averred that Masoom Reza did not have any power to sub-lease the property to Md. Anish. The petitioner denied the allegation that he had violated the terms and conditions of the lease deed dated August 02, 1994. The petitioner denied the alleged surrender of the lease by Shaheen Parveen and Masoom Reza as per the plaintiffs' contentions. The petitioner contended that upto date corporation taxes had also been paid.

11. As per the plaint case, the petitioner was a joint sub-lessee along with Shaheen Parveen and

Masoom Reza. The father of the plaintiff Mr. Dawood had created a sub-lease in respect of Shaheen Parveen, Masoom Reza and the petitioner. They enjoyed the premises having 1/3rd proportionate share in the said premises. Thereafter, Shaheen Parveen and Masoom Reza surrendered their share to the plaintiffs. The petitioner, with a view to grab the property started enjoying the entire property without paying any rent. In the lease deed, a right of forfeiture of the lease and entry into the property was reserved to the lessor. I find that the plaint case is not only restricted to forfeiture of lease for non-payment of rent. The plaint case has been discussed in great detail. A declaratory relief has also been claimed. The defense case is that, Mr. Dawood, the original lessor had accepted a lump sum amount towards rent and the said amount was being adjusted towards monthly rent. No quantification of such amount and period against which the same was adjusted has been mentioned. There were no arrears according to the lessee. Receipts towards monthly rent had also been issued by Mr. Dawood to the petitioner and the petitioner wanted to rely on those at the time of hearing. When the petitioner claimed that there were no arrears before filing of the suit, Section 114 of the said Act, will have no application.

12. Under such circumstances, in my opinion, the learned court rightly rejected the application. First and foremost, the relief against forfeiture in terms of Section 114 would be available only if the defendant was willing to pay all arrear rents which were payable according to the lessor even before the filing of the suit, together with interest thereof and cost of the suit etc.

13. The defendant could not have availed of such provision of law on a conditional prayer i.e., he would only pay the rent at the rate of Rs.1200/- from the date of filing of the suit till November, 2023, or till disposal of the suit as the court may deem it fit and proper. Conditional payment is not available under law. The further contention of the petitioner that the claim for arrear rents would not be available at this stage as the claim was time barred, is also contrary to the principles governing grant of the discretionary and equitable relief provided under Section 114. The payment has to be unconditional. The conduct of the petitioner is also to be looked into. The petitioner categorically denies the liability to pay any arrear rent upto the date of filing of the suit. The suit has been filed with the specific pleading that the arrear rent had not been paid by the petitioner and the petitioner was trying to grab the entire premises, illegally. There are other issues to be decided in the suit. The suit is

at the stage of cross-examination and at this stage the defendant/petitioner has come up with an application to pay the rent from the date of filing of the suit. Such offer of payment is in the nature of payment of occupational charges rather than the arrear rents as contemplated under Section 114 of the said Act. The lessee, who wants to avail of Section 114 of the said Act would have to pay all arrears and even time barred claims. Thus, the relief could not have been granted on the conditions specified by the petitioner. Such relief is granted on the principles of justice, equity and good conscience.

14. Whether the defendant defaulted in payment of rent and violated the terms of the conditions of the lease deed, which led to the filing of the suit, will be decided in the suit. The Hon'ble Division Bench had already directed that the suit be expedited.

15. Under such circumstances, this Court holds that the order impugned is not perverse. The learned court proceeded on the basis of the provisions of law and rightly rejected the said application.

16. Accordingly, CO 4360 of 2023 is dismissed.

17. There shall be no order as to costs.

18. All parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)