SUPREME COURT OF INDIA

Inder Sain Bedi, Dead, Represented By His Legal Representatives

Vs.

Chopra Electricals

C.A.No.6405 of 2002

(Ashok Bhan and S. H. Kapadia JJ.)

27.08.2004

JUDGMENT

ASHOK BHAN J

Aggrieved against the judgment and decree dated 16.3.2000 passed by the High Court of Delhi, in Regular First Appeal No. 507 of 1993 whereby the High Court has allowed the appeal by setting aside the judgment and decree passed by the District Judge (hereinafter referred to as "the Trial Court") and dismissing the suit filed by the plaintiff/appellant (hereinafter referred to as "the appellant) has come up in this appeal.

Briefly stated the facts are:

Appellant filed a suit seeking a decree for possession by ejectment of the defendant/respondent (hereinafter referred to as "the respondent") and for mesne profit/damages from the date of institution of the suit with respect to a portion of property No. B-59/1, Naraina Industrial Area, Phase II, New Delhi, (hereinafter referred to as "the suit property") as shown in red colour in the site plan Ex. P.2.

It was averred in the plaint that the Respondent had taken from the appellant one hall, three offices-cum-store room and toilets for workmen in the ground floor and two mezzanine halls on the mezzanine floor of the suit property shown in the red colour in the plan attached with the plaint. That the suit property had been taken by the respondent as a licencee in 1981 for a period of 11 months at a monthly licencee fee of Rs. 4500/- and that respondent continued to remain in

possession even after the expiry of the period of licence and claimed himself to be tenant of the suit property at a rent of Rs. 4, 500/- per month and that appellant accepted the respondent as his tenant. It was also alleged in the plaint that respondent had made several unauthorised additions/alterations etc. which had been shown in the green colour in the plan attached with the plaint, Appellant did not claim possession in respect of unauthorised additions/alterations made by the respondent in the suit. [We were informed during the course of the arguments by the learned counsel for the parties that the appellant filed Suit No. 519 of 1994 for possession of the portion shown in the green colour in the plan attached with the plaint.] That the appellant served a notice under Section 106 of the Transfer of Property Act (hereinafter referred to as "the Act") dated 6.3.1989 terminating the tenancy of the tenanted premises w.e.f. 31.5.1989. It was mentioned in the notice that if according to the respondent the tenancy ended on any other date other than the last date of English calendar month then the respondent should treat its tenancy as terminated from the close of such a month of tenancy on the expiry of two months of the service of the notice. By the said notice, respondent was also notified that in case respondent does not comply with the said notice, respondent would be liable to pay damages/mesne profits at the rate of Rs. 1, 000/- per day which claim was without prejudice to the rights of the appellant to claim possession.

That the contents of the reply to the notice were false and baseless. That the respondent did not vacate the suit property hence the suit was filed for possession. Appellant also prayed for a preliminary decree directing enquiry about the amount of damages/mesne profits payable by the respondent in accordance with order 20 Rule 12 of Code of Civil Procedure.

Respondent in his written statement took preliminary objection that the plaint was liable to be rejected as the appellant has not given any valuation in the plaint regarding relief of mesne profit. Another preliminary objection taken was that notice to quit served upon the respondent was bad in law as the date from which the tenancy was alleged to have been terminated had not been specified and that premises let out had not been duly identified. On merits, the respondent pleaded that the respondent was a tenant in respect of the suit property vide agreement dated 26.5.1980 which though described as a licence deed was in fact a rent note. Rate of rent of Rs. 4, 500/- per month was not denied. In reply to para 2 of the plaint wherein the appellant had described the extent of accommodation let out to the respondent, respondent pleaded that the premises described in para 2 of the plaint was substantially correct. Respondent denied having made any unauthorised additions/alterations and pleaded that the portion shown in green colour in the plan attached with the plaint alleged to have been unauthorisedly constructed by the respondent had in fact been let out as it is from the commencement of the tenancy in May 1980. It was stated that the shed in the rear and the mezzanine portion shown in the green colour in the plan attached with the plaint were in existence at the time of letting out of the premises as was clear from the rent agreement originally executed although the said portion had been scored off since the appellant did not want to mention the same as he was apprehensive of the trouble from the Municipal Corporation of Delhi. Liability to pay damages at the rate of Rs. 1000/- per day was also denied.

Appellant filed replication to the written statement filed by the respondent denying the averment in the written statement and reiterated the averment set out in the plaint.

On the pleadings of the parties the following issues were framed by the Trial Court:

"i) Whether the plaintiff is entitled to a decree for possession? OPD

ii) Whether the plaintiff is entitled to claim damages/mesne profits for use and occupation of the

disputed property from the defendants? OPP.

iii) Whether the tenancy of the defendant is terminated validly? OPP

iv) Whether the suit is not maintainable in the present form? OPD

v) Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPD

vi) Whether the suit is not maintainable in view of provisions of Delhi Rent Control Act? OPD

vii) Whether the premises were not let out for manufacturing purposes? OPD

viii) Relief?" *

ix) Issue No. (vii) was amended vide order dated 21.3.1991:

"Whether the premises are let out for manufacturing purposes? OPD" *

Issue Nos. 2 and 5 were taken up together. It was held that the tenancy of the respondent had been validity terminated and respondent having failed to vacate the tenanted premises after termination of the tenancy, the appellant is entitled to claim mesne profits/damages from the respondent for use and occupation of the suit property. Issue No. 4 was decided in favour of the appellant and against the respondent and it was held that the suit was maintainable. Issue No. 5 was not pressed by the respondent, and therefore the same was decided in favour of the appellant. Issue No. 6 was decided in favour of the appellant and against the respondent and it was held that since property had been let out at a rent of more than Rs. 3, 500/- the provisions of Delhi Rent Control Act were not applicable. The only avenues open to the appellant to seek ejectment of the respondent was to file a suit for possession. Issue No. 7 was decided against the appellant and in favour of the respondent and it was held that the suit property had been let out for manufacturing purposes. Issue Nos. 1 and 3 which are the crucial issues were taken up together. Both these issues were decided in favour of the appellant and against the respondent.

Validity of the notice terminating of the tenancy as also the right of the appellant to claim possession of the suit property was disputed by the respondent on two grounds: (1) that the tenancy between the parties had been created for manufacturing purposes and the same could be terminated in terms of section 106 of the Act by giving six months notice which was not done; and (2) that the suit for possession of a part of tenanted premises was not maintainable and relief of ejectment from a part of tenanted premises could not be granted. Both the contentions were negatived by the trial Court and the suit was decreed. It was held that tenancy had been terminated validly by giving two months notice in terms of clause 15 of the lease/licence document. Since the lease/licence document was not registered document and the tenancy was from month to month the same could be terminated by giving 15 days notice under Section 106 of the Act. Further, the Trial Court held that the suit had been filed for the entire tenanted premises and not for a part of it as alleged by the respondent.

Aggrieved against the judgment and decree of the trial Court the respondent filed the first appeal which has been disposed of by the impugned order. The findings recorded on issue Nos. 2, 4, 5 to 7 were not contested by either of the parties and accordingly they were confirmed. Findings on issues No. 1 and 3 were contested. The High Court reversed the findings of the trial Court and accepted the appeal. It set aside the order of the trial Court and held that the appellant had let out the entire

premises including the portions shown in green in plan Ex.P.2. That the appellant had claimed eviction of the respondent only from a portion of the tenanted premises which amounted to splitting of the tenancy which was not permissible in law. The unity and integrity of the tenancy could not be splitted by the landlord by claiming possession of a part of the demised premises from the tenant. For the same reason notice of termination of tenancy was also held to be invalid.

Ex. D1 is the licence deed dated 26.5.1980. According to the appellant on the basis of this licence deed, the respondent was permitted to use portion shown in red as a licencee for a period of 11 months. Ex. P. 3 is another licence agreement dated 1.5.1981 also for the same portion shown in red but for the subsequent period of 11 months. While describing the portion permitted to be used by the respondent on licence basis in both the documents, one line has been scored off. It is not disputed that the line, which has been scored off in both the documents relate to the green portion in plan Exp. P.2. Ex. D1 describes the licensed premises as under:

AND whereas the licencee has approached the licensor for the use of a part of the building which include main hall on the ground floor, 3 offices cum store rooms, 2 mezzanine halls, toilets for workmen shed in the back portion of the premises and part of open premises excluding one room with attached W.C." *

Similarly in the document Ex P3 the licensed portion of the premises has been described as:

"AND whereas the licencee has approached the licensor for the use of a part of the building which include main hall on the ground floor, 3 offices cum store rooms, 2 mezzanine halls, toilets for workmen shed in the back portion of the premises and part of open premises excluding one room with attached W.C." *

Underlined portion in both the documents has been scored off.

Shri D.A. Dave, learned senior counsel appearing for appellant contended that the contents of documents Ex. D1 and P3 will govern the rights of the parties. Portion shown in green was not included in the two documents and did not form part of tenancy and the same is unauthorisedly occupied by the respondent. The suit has been filed for the portion shown in red in the site plan Ex. P2 which had been let out to the respondent. In para 2 of the plaint the appellant has specifically pleaded that the respondent had taken on rent from him a portion comprising of hall, 3 office cum store rooms, two mezzanine halls and toilet on the ground floor of the demised premises. In reply to this averment, respondent in his written statement pleaded that the premises described in para 2 in the plaint as having been let out to the respondent was substantially correct. This reply clearly amounts to admission of the allegations made in the corresponding paragraph of the plaint. That in view of this admission made by the respondent the High Court has gravely erred in recording a finding to the effect that the appellant had let out the portion shown in green as well to the respondent. That the High Court has built a new case for the respondent, which was not even pleaded by him, in holding that on the expiry of period of licence the respondent was taken as a tenant of the entire property of the appellant which was in occupation of the respondent. It was also contended that there was no registered instrument executed creating tenancy therefore tenancy will be deemed to be from month to month terminable with 15 days notice and the High Court has erred in holding to the contrary.

As against this, Shri Parag Tripathi, learned senior counsel appearing for the respondent contended that the green portion was also in existence during the year 1980-81. It was not made part of the

licence agreement because of some apprehension on the part of the appellant about the Municipal Corporation of Delhi taking action for demolition of the said portion, which appeared not to have been constructed on the basis of any sanction obtained from the said authority. He made reference to the original documents Ex. P3 and Ex. D1 in support of his submission that the portion delineated in green in the plan Ex. P2 was in existence and formed part of tenancy. Suit was filed only with respect to the portion shown in red.

The suit was filed with respect to a portion of the tenanted premises which is not permissible in law. As the premises were let out for manufacturing purposes and the respondent was carrying on manufacturing activities therein the tenancy will be deemed to be for manufacturing purposes terminable by giving six months' notice as provided in Section 106 of the Act. The tenancy was not terminated in accordance with law.

The High Court came to the conclusion that the portion shown in green was in existence at the time of the creation of the lease in favour of the respondent. Otherwise there was no reason why in documents D1 and Ex.P.3 the same would find mention. That the appellant did not want the green portion to be made a part of the licence/lease apprehending proceedings to be taken for demolition of the same at the behest of the Municipal Corporation of Delhi. From this the High Court inferred that the portion shown in green was in existence in 1980-81. After coming to this conclusion the High Court proceeded to record the following finding :

"In view of this, it has to be inferred that on expiry of the period of licence the defendant was taken as a tenant of the entire portion of property of the plaintiff, which was in occupation of the defendant." *

In para 2 of the plaint the appellant had made a specific averment that the respondent had taken from the appellant a portion comprising of hall, 3 office cum store rooms and toilet on the ground floor and two mezzanine halls in the mezzanine floor. In para 2 of the written statement filed by the respondent it was pleaded that the premises described in para 2 of the plaint as having been let out to the respondent was substantially correct. This reply amounts to admission of the allegations made in the corresponding paragraph in the plaint. Apart from this accommodation which had been let out to the respondent was specifically mentioned in the rent notes executed between the parties, i.e., Exs. D1 and P3. The accommodation shown in these documents is the same as had been mentioned in para 2 of the plaint and shown in red colour in the site plan Ex. P2. The line "shed in the back portion of the premises and part of open premises" in the said two documents had been scored off and had been initialed by both the parties. The submission of the learned counsel for the respondent that portion shown in green colour in the site plan Ex. P2 was a part of the tenanted premises but the appellant did not want this clause to be retained in these two documents because of some apprehensions of trouble from the Municipal Corporation of Delhi, which found favour with the High Court cannot be accepted. In fact, by deleting this line from the agreement, the intention of the landlord becomes clear that the portion which had been scored off was not intended to be let out and form a part of the tenanted premises. In so far as the accommodation shown in these two documents, i.e. one hall, 3 office cum store rooms and toilet on the ground floor and two mezzanine halls on the mezzanine floor, there is no dispute that the portion shown in red colour in the site plan Ex. P2 was this portion and for which a decree of possession was being claimed in the present suit. In view of the written documents Ex. D1 and P3 it is not permissible to the respondent to urge or prove or attempt to prove what had actually been scored off in the said agreements was also intended to be a part of the tenanted premises.

The appellant had admittedly filed the suit in respect of the premises as described in the two written documents between the parties. The portion shown in the green having been scored off and initialed by both the parties goes to show that portion shown in the green had not been let out by the appellant to the respondent. Even if it is assumed for the sake of argument, though we are not holding to be so, that the portion shown in green in the site plan Ex. P2 was in existence in the year 1980-81 it does not lead to the inference that this portion was leased out but was not shown as part of the leased premises apprehending proceedings being taken out for demolition at the behest of the Municipal Corporation of Delhi.

The finding recorded by the High Court that on the expiry of period of licence the respondent was taken as a tenant of the entire* portion of the property is against the pleadings of the parties. This is altogether a new case which has been made out by the High Court. The High Court has misconstrued and misinterpreted the two deeds of licence/lease as well as the plaint in observing that the suit was filed only with respect to the portion shown in red colour in the plan whereas the tenancy had been created for both the portion shown in red colour as well as green and thus there was a splitting of tenancy which was not permissible in law. #

Law laid down by this Court in Mohar Singh Vs. Devi Charan & Ors., on which reliance has been placed by the High Court would not be applicable to the facts and circumstances of the present case, inasmuch as it is clearly evident from the documents, i.e., Ext. D1 and Ext P3, that in fact there is no splitting off the tenancy and suit was filed for recovery of possession of the suit property already found indicated in the said document as well as in Plan Ext. P2 in the red colour.

Validity of the notice as also the right of the appellant to claim possession of the tenanted premises was questioned by the respondent on the ground that as tenancy between the parties had been created for manufacturing purposes the same could be terminated only after giving six months' notice to quit as provided under Section 106 of the Act, which was not done. The trial Court has negatived this submission by holding that according to the provision of Section 106 of the Act a lease for manufacturing purpose is deemed to be a lease on year to year basis but the same was subject to the contract to the contrary if any between the landlord and the tenant. The landlord and the tenant can agree to create a tenancy even for manufacturing purpose for a period of less than one year. That in Clause 15 of the lease document it is specifically mentioned that the tenancy could be terminated by either of the parties by giving notice of two months. That the tenancy of the respondent had been validly terminated by serving a notice in terms of Clause 15 of the lease document. The High Court has not given any reason for reversing this finding and holding that the termination of the tenancy was invalid.

We agree with the view taken by the Trial Court that the tenancy has been validly terminated. Clause (1) of Section 106 reads thus:

"106. Duration of certain leases in absence of written contract or local usage. (1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice." *

According to the provisions of Section 106 of the Act a lease for the manufacturing purpose is deemed to be a lease from year to year but the same is subject to the contract to the contrary between the parties. The landlord and the tenant can mutually agree to create a tenancy for

manufacturing purpose for a period less than a year. Only in the absence of this kind of contract the lease for manufacturing purposes would be deemed to be a lease from year to year. The same can be created by a registered document in view of the provision of Section 105 of the act. In the present case, admittedly the lease was created for a period of 11 months only and it was provided in clause 15 that tenancy could be terminated by either of the parties by giving two months' notice. There was a contract to the contrary between the parties providing for termination of the lease between the parties by giving a notice of less than six months and as such it was not necessary for the appellant to terminate the tenancy by giving six months' notice. In view of the terms of the contract between the parties the tenancy could be terminated by giving two months' notice. In the present case, the lease in question was not from year to year or for a period exceeding one year. Since the lease was not from year to year there was no requirement of giving six months' notice. Manufacturing lease which is not from year to year does not require six months' notice for termination. It will fall in the second half of Section 106 requiring fifteen days' notice of termination. #

This Court had the occasion to examine this point in Shri Janki Devi Bhagat Trust, Agra Vs. Ram Swarup Jain (dead) by Lrs., , and it was held thus:

Section 106 provides, inter alia, that in the absence of a contract between the parties, a lease of immovable property for manufacturing purposes shall be deemed to be a lease from year to year terminable by six months' notice. In the present case there is a clear finding to the effect that the lease in question was not from year to year or for a period exceeding one year. Therefore, even though the lease may be for a manufacturing purpose, since the lease was not from year to year, six months' notice was not required. A manufacturing lease which is not from year to year does not require six months' notice of termination. It will fall in the second half of Section 106, requiring fifteen days' notice of termination. A lease from month to month or a lease other than a lease from year to year is terminable by fifteen days' notice. Hence the notice in the present case is a valid notice to quit. The High Court, having come to the conclusion that the lease was not for a period exceeding one year, and was not a lease from year to year erred in holding that six months' notice to quit was required. Such a notice is required, provided there is no contract to the contrary, only when a manufacturing lease is, or is deemed to be, from year to year. This not being the case, the lease is terminable by fifteen days' notice even if the lease is a manufacturing lease." *

We respectfully agree with the view taken by this Court in the above quoted case. Since the lease was for a period of less than one year notice of six months to quit was not required to be given In the present case there was a contract to the contrary between the parties providing that the tenancy could be terminated by giving two months notice. The tenancy had been validly terminated.

We are of the considered view that the High Court has erred in holding that the appellant had split the tenancy and had asked for possession of a portion of the tenanted premises. The High Court has also erred in holding that the tenancy had not been validly terminated by serving a notice in accordance with law. #

For the reasons stated above, the judgment of the High Court is set aside and the judgment and decree passed by the Trial Court is restored. The suit filed by the plaintiff/appellant stands decreed and the appellant would be entitled to take possession of the demised premises. Appeal is allowed with no order as to costs.

Keeping in view that the respondent is carrying on manufacturing activities in the demised premises his dispossession is stayed till 31.5.2005 provided he files an undertaking within a period of three

weeks from today to vacate the premises and hand over possession of the same to the appellant on or before 31.5.2005. Further he is required to deposit arrears of rent, if any, and undertake to pay the rent in future as well.