

SUPREME COURT OF INDIA

Bijay Kumar Manish Kumar HUF

Vs.

Ashwin Desai

C.A.No.12025-12026 of 2018

(N.V.Ramana and Mohan and M.Shantanagoudar,JJ.,)

12.12.2018

JUDGMENT

N.V.Ramana, J.,

1. Delay condoned.
2. Leave granted.
3. Heard Mr. Jaideep Gupta, learned Senior counsel appearing for the appellant and Mr. Siddharth Bhatnagar, learned counsel appearing for the respondent.
4. These four appeals are filed against the orders dated 15/17.11.2016 and 20.7.2017 passed by the Calcutta High Court. The appellant before us is landlord of a building which is the subject matter of lease. This building was leased by the erstwhile owner, Nanjee Shamjee & Comp.(lessor) to the respondent (lessee) for a period of 99 years at Rs.350/- per month via a Registered Lease Deed on 20.11.1992. Later, on 30.8.1996 the appellant purchased the entire premises of the disputed property from the erstwhile owner via a Registered Deed of Conveyance. Thus,the appellant stepped into the shoes of the said lessor.
5. On account of default in payment of lease money, a suit, viz., Title Suit No.2450 of 2007 was instituted by the appellant before the XI City Civil Court, Kolkata for recovery of khas possession, mesne profits, permanent injunction and other reliefs. The respondent had filed an Order VII, Rule 11 CPC application for rejection of plaint which was dismissed by the trial court on 03.02.2015 and again by High Court in revision on 31.03.2015. A second application under Order VII, Rule 11 CPC was filed by the respondent claiming that plaint ought to be rejected for non-issuance of statutory notice under Section 6(4) of West Bengal Tenancy Act, 1997. This was dismissed by the trial court on 18.08.2016. However, the revision petition against this was allowed by the High Court on 15.11.2016 and it is against this that the present appeal is filed.

6. The contention raised by the appellant is that they are governed by the provisions of Transfer of Property Act, 1882 because the lease was executed in 1992 when the West Bengal Tenancy Act, 1997 was not in force and the same cannot have retrospective effect. On the other hand, the respondent contended that the suit was filed on 06.09.2007 when the West Bengal Tenancy Act, 1997 was in force.

7. Thus, the question involved in these appeals is whether the West Bengal Tenancy Act, 1997 or the Transfer of Property Act, 1882 applies.

8. This dispute can be resolved by framing an issue by the trial court on the said point and by adjudicating the same as a preliminary issue.

9. Taking into consideration the peculiar facts and circumstances of the case, since the suit is still in the preliminary stage, we dispose of the appeals directing the trial court to frame the issue, relating to maintainability of suit and applicability of enactments, as mentioned supra, and decide the same in accordance with law as a preliminary issue as expeditiously as possible, preferably within a period of six months from the date of communication of this judgment.