Beant Singh Vs. Compack Enterprises India (P) Ltd.

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Court : Delhi

Decided On : Nov-12-2014

Judge : Valmiki J. Mehta

Appellant : Beant Singh

Respondent : Compack Enterprises India (P) Ltd.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + C.M.(M) No.193/2013 12th November, 2014 % BEANT SINGH Through: ..... Petitioner Mr. H.S. Uppal, Advocate. Versus COMPACK ENTERPRISES INDIA (P) LTD. ..... Respondent Through: Mr. Rajesh Banati, Advocate with Ms. Deeksha Rao, Advocate. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This petition under Article 227 of the Constitution of India impugns the order of the trial court/Additional District Judge dated 19.9.2012 by which the trial court dismissed the application of the petitioner/plaintiff under Order XII Rule 6 of Code of Civil Procedure, 1908 (CPC).

2. By the application under Order XII Rule 6 CPC, petitioner/plaintiff prayed that the suit for recovery of possession of the tenanted/licenced premises being ground floor of the property bearing no.B60, G.T. Karnal Road, Industrial Area, Delhi-110033 be decreed.

3. In Delhi, the suits for possession have to be decreed where there is a relationship of landlord and tenant between the parties, rate of rent is more than Rs.3,500/- per month and the contractual monthly tenancy is terminated by the legal notice under Section 106 of the Transfer of Property Act, 1882 (hereinafter referred to as the Act).

4. The case of the petitioner/plaintiff in the plaint was that the suit premises were licenced to the respondent/defendant in terms of the agreement dated 1.4.2006 at a licence fee of Rs.33,900/- per month. In the written statement, the respondent/defendant only took up a case that there was no licence but there was a tenancy in favour of the respondent/defendant. The monthly charges of Rs.33,900/- with respect to the suit premises were admitted. Execution of the agreement dated 1.4.2006 was admitted but it was stated that signatures were taken from the defendant-company in good faith without reading of the same inasmuch as Director of the plaintiff claimed that the same was required for filing in some Government record. Respondent/defendant in the written statement also pleaded the defence of Section 53A of the Transfer of Property Act, 1882 on the ground that there was a receipt-cum-agreement to sell in favour of one Sh. Ajay Gosain whereby the suit property was to be sold by the plaintiff to one Sh. Ajay Gosain for a sum of Rs.4 crores and a sum of Rs.40 lacs was paid to the plaintiff. A receipt-cum-agreement dated 11.6.2008 was stated to be executed in favour of the said Sh. Ajay Gosain and who is said to have subsequently further paid an amount of Rs.25 lacs. The suit for specific performance filed by Sh. Ajay Gosain with respect to the suit property was said to be pending. The defendant-company is the close knit company of the family of Sh. Ajay Gosain.

5. So far as the first aspect that there is a relationship of landlord and tenant between the parties is concerned, the same is admitted by the respondent/defendant in the written statement. So far as the second aspect of the rent being more than Rs.3,500/- and being Rs.33,900/-is concerned, the same is also admitted in para 5 of the written statement. So far as the service of the notice terminating contractual tenancy is concerned, it is now the law so far as Delhi is concerned that service of summons in the suit amounts to service of a notice terminating a tenancy and this is so held in the case of M/s. Jeevan Diesels and

Electricals Limited Vs. Jasbir Singh Chadha (HUF) and Anr. (2011) 183 DLT712 Para 7 of the judgment in the case of M/s. Jeevan Diesels and Electricals Limited (supra) is relevant and the same reads as under:

7. The second argument that the legal notice dated 15.7.2006 was not received by the appellant, and consequently the tenancy cannot be said to have been validly terminated, is also an argument without substance and there are many reasons for rejecting this argument. These reasons are as follows:(i) The respondents/plaintiffs appeared in the trial Court and exhibited the notice terminating tenancy dated 15.7.2006 as Ex.PW1/3 and with respect to which the registered receipt, UPC and AD card were exhibited as Ex.PW1/4 to Ex.PW1/6. The notice admittedly was sent to the correct address and which aspect was not disputed before the trial Court. Once the respondents/plaintiffs led evidence and duly proved the service of legal notice, the appellant/defendant was bound to lead rebuttal evidence to show that the notice was not served although the same was posted to the correct address. Admittedly, the appellant/defendant led no evidence in the trial Court. In fact, even leading of evidence in rebuttal by the appellant would not have ordinarily helped the appellant as the notice was sent to the correct address. In my opinion, therefore, the trial Court was justified in arriving at a finding that the legal notice dated 15.7.2006 was duly served upon the appellant resulting in termination of the tenancy. (ii) The Supreme Court in the case of Nopany Investments (P)Ltd. Vs.Santokh Singh (HUF) 2008 (2) SCC728has held that the tenancy would stand terminated under general law on filing of a suit for eviction. Accordingly, in view of the decision in the case of Nopany (supra) I hold that even assuming the notice terminating tenancy was not served upon the appellant (though it has been served and as held by me above) the tenancy would stand terminated on filing of the subject suit against the appellant/defendant. (iii) In the suits for rendition of accounts of a dissolved partnership at will and partition of HUF property, ordinarily it is required that a notice be given of dissolving the partnership at will or for severing the joint status before the filing of such suits because such suits proceed on the basis that the partnership is already dissolved or the joint status of an HUF stands severed by service of notices prior to the filing of such suits. However, it has been held in various judicial pronouncements that the service of summons in the suit will be taken as the receipt of notice of the dissolution of the partnership or

severing of the joint status in case of non service of appropriate notices and therefore the suits for dissolution of partnership and partition of HUF property cannot be dismissed on the technical ground that the partnership was not dissolved before filing of the suit or the joint status was not severed before filing a suit for partition of the HUF property by serving of appropriate notices. In my opinion, similar logic can be applied in suits for possession filed by landlords against the tenants where the tenancy is a monthly tenancy and which tenancy can be terminated by means of a notice under Section 106 of the Transfer of Property Act. Once we take the service of plaint in the suit to the appellant/defendant as a notice terminating tenancy, the provision of Order 7 Rule 7 CPC can then be applied to take notice of subsequent facts and hold that the tenancy will stand terminated after 15 days of receipt of service of summons and the suit plaint. This rationale ought to apply because after all the only object of giving a notice under Section 106 is to give 15 days to the tenant to make alternative arrangements. In my opinion, therefore, the argument that the tenancy has not been validly terminated, and the suit could not have been filed, fails for this reason also. In this regard, I am keeping in view the amendment brought about to Section 106 of the Transfer of Property Act by Act 3 of 2003 and as per which Amendment no objection with regard to termination of tenancy is permitted on the ground that the legal notice did not validly terminate the tenancy by a notice ending with the expiry of the tenancy month, as long as a period of 15 days was otherwise given to the tenant to vacate the property. The intention of Legislature is therefore clear that technical objections should not be permitted to defeat substantial justice and the suit for possession of tenanted premises once the tenant has a period of 15 days for vacating the tenanted premises. (iv) Another reason for rejecting the argument that the tenancy would not be terminated by the legal notice Ex.PW1/3 is that the respondents/plaintiffs admittedly filed a copy of this notice alongwith the suit way back in the year 2007. Once the summons in the suit alongwith documents were served upon the appellant/tenant, the appellant/tenant would obviously have received such notice. Even if we take this date when the appellant/tenant received a copy of the notice when served with the documents in the suit, once again, the period of 15 days has expired thereafter and keeping the legislative intendment of amended Section 106 in view, the

appellant therefore cannot argue that the tenancy is not terminated and he did not get a period of 15 days to vacate the premises. I am in view of this position consequently entitled to take notice of subsequent events under Order 7 Rule 7 CPC, and taking notice of the subsequent events of the expiry of 15 days after receipt of a copy of the notice alongwith documents in the suit, I hold that the tenancy has been validly terminated, and as on date, the appellant/tenant has no right to stay in the premises and consequently the decree for possession was rightly passed by the trial Court.

An SLP against the said judgment being SLP No.15740/2011 has been dismissed by the Supreme Court on 7.7.2011.

6. Therefore, it is clear that there are admissions for decreeing of the suit for possession.

7. Learned counsel for the respondent/defendant argued that the tenancy was not with respect to the entire ground floor but was only with respect to 2200 sq ft and the other area of about 3272 sq. ft. was with other persons, however, who are the other persons are not mentioned in the written statement and when we see the agreement entered into between the parties on 1.4.2006 the same shows that the same is with respect to the ground floor. Though what is the area on the ground floor is not specified in the agreement, however there is an admitted document on record being the letter dated 26.7.2010 sent by the GT Karnal Road Industrial Estate C.E.T.P. Society (Regd.) to the respondent/defendant and which specifically states that the area with the respondent/defendant is 608 sq yds. Therefore, the contention of the respondent/defendant/tenant is misconceived that the tenancy is for an area of 2200 sq ft and not for the total area of 5472 sq ft. In any case, as stated above, why should the respondent/defendant have any concern with respect to other area beyond 2200 sq ft of which no tenancy rights are claimed and if there are any rights in favour of any other person in an area of 3272 sq ft of the tenanted premises, then such person will claim rights but since the respondent/defendant does not claim any right in the same, it will not be prejudiced if the decree is passed with respect to the ground floor portion of the property bearing No.B-60, G.T. Karnal Road, Industrial Area, Delhi-110033 and

which is an area of 608 sq yds as stated in the letter dated 26.7.2010.

8. So far as the argument that Sh. Ajay Gosain has entered into an agreement to sell and therefore the suit for possession cannot be decreed against the respondent/defendant is concerned, this argument is wholly misconceived for various reasons. Firstly, such an argument can only be raised by Sh. Ajay Gosain and not the defendant company. Secondly, the agreement to sell in question being unregistered and consequently such an unregistered agreement to sell after 24.9.2001 when Section 53-A of the Act was amended by Act 48 of 2001, is not a document which at all can be referred to in law for the same to create any rights under Section 53-A of the Act in the nature of part performance. A mere agreement to sell cannot create an existing right to stay in the suit property once there is no protection under Section 53-A of the Act and that there is no tenancy for a fixed contractual period by a registered lease deed. Tenancy being a monthly tenancy, the same stood terminated in terms of notices dated 20.10.2008 and 23.12.2008 sent by the petitioner/plaintiff to the respondent/defendant, and in any case as stated above, service of notice is no longer material because summons of the suit when served, can be treated as a notice under Section 106 of the Act and in view of the ratio in the case of M/s. Jeevan Diesels (supra).

9. In view of the above, the petition is allowed. The impugned order dismissing the application under Order XII Rule 6 CPC is set aside. Suit of the petitioner/plaintiff for possession is decreed against the respondent/defendant with respect to the ground floor portion of the premises having an area of 608 sq. yds/5472 sq. ft. in the property bearing no.B-60, G.T. Karnal Road, Industrial Area, Delhi-110033. Parties are left to bear their own costs. VALMIKI J.

MEHTA, J NOVEMBER12 2014 ib/Ne