

Shiv Shanker Vs. Additional District Judge, Agra and ors.

Shiv Shanker Vs. Additional District Judge, Agra and ors.

SooperKanoon Citation : sooperkanoon.com/483084

Court : Allahabad

Decided On : Dec-01-2001

Reported in : 2002(1)AWC126

Judge : A.K. Yog, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 106, 111 and 114; Provincial Small Cause Court Act

Appeal No. : C.M.W.P. No. 36476 of 2001

Appellant : Shiv Shanker

Respondent : Additional District Judge, Agra and ors.

Advocate for Def. : Manoj Kumar Gupta, S.C. and ;Madhav Jain, Adv.

Advocate for Pet/Ap. : Swapnil Kumar, Adv.

Disposition : Petition dismissed

Judgement :

A.K. Yog, J.

1. Heard learned counsel for the parties at length as well as perused the writ petition, supplementary-affidavit, counter-affidavit in reply to the petition and supplementary-affidavit and the rejoinder-affidavit in reply thereto.

2. Learned counsel for the petitioner made three fold submissions : namely, first the tenant was entitled to the benefit of Section 114, Transfer of Property Act and no decree of eviction can be passed and to this extent. Judge Small Cause Court and Revisional Court under Provincial Small Cause Court Act have acted erroneously. Section 114, Transfer of Property Act reads :

'Where a lease of Immovable property has been determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrears, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment,' pass an order relieving the lessee against the forfeiture, and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.'

The said Section refers to Section 111(g) which starts with the word 'by forfeiture.....'

3. Section 114, Transfer of Property Act quoted above, gave an option to a tenant to make deposits contemplated therein within the prescribed period mentioned in the Section. In the case of forfeiture only the expression, used in the said Section 114. Transfer of Property Act 'whether a lease of immovable property has been determined by forfeiture.....' leaves no doubt that right of lessee to avoid suit for ejectment can be resorted to only in a case where a lease of immovable property determines by forfeiture and not otherwise. Consequently, defendant-petitioner cannot take advantage of the aforesaid Section 114, Transfer of Property Act in a case where lease of a transferee determine only itself or to quit the property leased, duly given by one party to the other ; as contemplated under Section 111(h) of Transfer of Property Act.

4. Second submission of the learned counsel for the petitioner is that the tenancy of the defendant-petitioner could not be determined or brought to an end in view of the relevant clauses contained in the agreement deed dated 1.8.1992/ Annexure-1 to the petitioner, inasmuch as, it contemplated a clause giving option to the tenant to review the lease after every three years.

5. A perusal of the said unregistered rent deed clearly shows that tenancy was month to month only after expiry of initial three years period of lease not having been extended specifically, it shall be deemed that the tenancy in question became a monthly tenancy. The defence of the defendant-petitioner on this score, thus has no merit.

6. The third and last submission of the learned counsel for the petitioner is that the notice under Section 106, Transfer of Property Act, in the instant case (copy of which has been annexed as Annexure SA-3 did not conform to the requirements of law, inasmuch as, the said notice in fact was a notice in presenti and, therefore, the notice in question was not a notice giving 30 days to determine and quit the property in question.

7. Both the learned counsels for the respective parties have placed reliance upon the decision in the case of A. Jalil v. Haji A. Jalil 1974 ALJ 381 (DB-LB).

8. The Division Bench in the case of A. Jalil (supra) took into account various earlier decisions on the point noted various expressions Implied in the different notices under Section 106. Transfer of Property Act.

9. In the instant case, the relevant expressions of the notice under Section 106, Transfer of Property Act (Annexure SA-3) reads that:

'My client does not intend to retain you as her tenant in the shop aforesaid and through the present notice terminates your tenancy.

Therefore required to pay all the dues as aforesaid within one month from the date of the receipt of the present notice and further to vacate the shop aforesaid with you after expiry of the 30th day from date of the receipt of the present notice by delivering actual physical vacant possession of the shop to my client.'

10. It is admitted at the bar that in none of the forms of the notice, reproduced by the Division Bench in para 10 of the judgment aforesaid in the case of A. Jalil (supra). Is parallel or analogous to the expression used in the present case.

11. Learned counsel for the petitioner submitted that notice. In the present case before the Court, is at par with the notice given on Form D of para 10 of the reported judgment in the case of A. Jalil (supra).

12. On the other hand, learned counsel for the contesting respondents submitted that notice in the present case is analogous to the notice in Form E of para 10 of the above-referred reported judgment.

13. Having given my considered thought, to the expression used in the notice of the present case (Annexure-SA-3), in the light of ratio laid down in the aforementioned Division Bench judgment, It will be clear that expression 'terminated' used in Form E of the reported Judgment or the expression 'terminates' used in the notice of the present case, are not determinative of the fact whether the notice is in presenti or not? Reading the notice, in the present case, as a whole, one can gather intention of the notice giver, and that is to determine tenancy on the expiry of 30 days as required under Section 106, Transfer of Property Act and not in presenti and reading the notice as given above, under Section 106, Transfer of Property Act, in the present cannot be said to be a invalid notice.

14. In view of the finding and observations made above, I do not find that the Impugned Judgment and orders passed by court below suffer from error apparent on the face of the record of the case.

15. No other point has been raised.

16. In the result present petition falls and is hereby dismissed. No order as to costs.

17. At this Juncture, learned counsel for the petitioner-tenant on the instructions of his client, submitted that he be allowed time to vacate the accommodation in question and that he shall vacate the same peacefully on or before one year subject to the usual terms and conditions imposed by this Court.

18. Learned counsel for the contesting respondent-landlord, Sri M. K. Gupta. Advocate did not oppose the said prayer on behalf of the petitioner provided the

petitioner undertakes to assure his client and this Court that the possession of accommodation in question shall be delivered to the respondent-landlord peacefully on or before one year subject to the terms and conditions given below.

In view of the above. I direct :

(1) The tenant-petitioner shall file before the concerned Prescribed Authority, on or before 31st December. 2001, an application along with his affidavit giving an unconditional undertaking to comply with all the conditions mentioned hereinafter.

(2) Petitioner-tenant shall not be evicted from the accommodation in his tenancy for six months, i.e. upto 30th November, 2002. Tenant-petitioner, her representative/ assignee, etc. claiming through her or otherwise, if any. shall vacate without objection and peacefully deliver vacant possession of the accommodation in question on or before 30th November, 2002, to the landlord or landlord's nominee/representative (if any, appointed and intimated by the landlord) by giving prior advance notice and notifying to the landlord by Registered A.D. post (on his last known address or as may be disclosed in advance by the landlord in writing before the concerned Prescribed Authority) time and date on which landlord is to take possession from the tenant.

(3) Petitioner shall on or before 31st December. 2001. deposit entire amount due towards rent etc. upto date i.e. entire arrears of the past, if any. as well as the rent for the period ending on the 30th November. 2002.

(4) Petitioner and everyone claiming under her undertake not to 'change' or 'damage' or transfer/ alienate/ assign in any manner, the accommodation in question.

(5) In case tenant-petitioner falls to comply with any of the conditions/or direction(s) contained in this order, landlord shall be entitled to evict the tenant-petitioner forthwith from the accommodation in question by seeking police force through concerned prescribed authority.

19. If there is violation of the undertaking of anyone or more of the conditions contained in this order, the defaulting party shall pay Rs. 25,000 (Rupees Twenty

five thousand only) as damages to the other party besides rendering himself/herself liable to be prosecuted for committing grossest contempt of the Court.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com