

Post Master General Vs. District Judge

Post Master General Vs. District Judge

SooperKanoon Citation : sooperkanoon.com/494116

Court : Allahabad

Decided On : Sep-06-2005

Reported in : AIR2006All1; 2006(1)AWC282

Judge : Vikram Nath, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 106 and 113; Code of Civil Procedure (CPC) - Sections 80; [Provincial Small Cause Courts Act, 1887](#) - Sections 25; [Constitution of India](#) - Article 226

Appeal No. : W.P. No. 34057 of 1996

Appellant : Post Master General

Respondent : District Judge

Advocate for Def. : R.P. Mishra, Adv. and ;B.P. Verma, S.C.

Advocate for Pet/Ap. : U.N. Sharma and ;K.M. Asthana, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Vikram Nath, J.

1. This writ petition has been filed by the tenant, Postmaster General, U.P. Lucknow and two others praying for writ of certiorari quashing the judgment and order dated 20-7-1996 passed by the District Judge, Mathura in SCC Revision No. 150 of 1994 (Mahesh Chandra Agarwal v. Post Master General, U.P. Lucknow and Ors.), whereby the District Judge allowed the revision of the landlord (respondent No. 3) and decreed the suit for ejectment of the petitioner from the premises in dispute.

2. The dispute relates to building situate in village town and post office Aring, Tehsil & District Mathura, wherein the post office was being run on a monthly rent of Rs. 100/-. Initially it was let out at rent of Rs. 50/- per month, which was subsequently enhanced to Rs. 60/- and, thereafter, with effect from 1978 the rent was enhanced to Rs. 100/-per month. The landlord respondent No. 3 gave combined notice under Section 106 of the Transfer of the Property Act read with Section 80 of the C.P.C. dated 2-7-1987 terminating the tenancy and requesting to vacate. Thereafter, suit was filed which was registered as SCC Suit No. 77 of 1987. The written statement filed by the petitioner in May 1988 in which two specific pleas were raised; firstly that the combined notice under Section 106 of the Transfer of Property Act and Section 80 of the C.P.C. could not have been given as such the notice being invalid the suit was liable to be dismissed and secondly the landlord had accepted the rent for the month of July and August 1987 after the notice dated 2-7-1987 and as such the suit could not be maintained on account of waiver on the basis of the notice dated 2-7-1987.

3. Both the parties led evidence in support of their cases. The Trial Court vide judgment dated 5-9-1994 dismissed the suit of the respondent on the ground that the landlord having accepted rent for the months of July and August 1987 after giving notice, amounted to waiver of notice by conduct and, therefore, under law no fresh notice having been given after August, 1987, the tenancy did not stand terminated and in the absence of valid termination of tenancy the suit had to fail. Revision was filed under Section 25 of the Provincial Small Cause Courts Act 1887, which was registered as SCC Revision No. 150 of 1994. The Revisional Court after considering the submissions of the parties framed three questions for determination, which were legal and did not depend upon any question of fact nor

did they require appreciation of evidence. The first question was whether the combined notice in the present case was valid, secondly whether the notice to quit stood waived on account of the plaintiff having accepted rent for the months of July and August 1987 and also by withdrawing the rent deposited by the petitioner in respect of subsequent months in the Court and lastly whether the landlord respondent had given express or implied consent to treat continuance of the lease after the service of notice. The revisional Court considered all the three questions and decided them in favour of the plaintiff landlord and accordingly allowed the revision and decreed the suit vide judgment dated 20-7-1996. It is this judgment, which has been impugned in the present writ petition.

4. I have heard Sri K. M. Asthana, learned Counsel for the petitioner and Sri R. P. Mishra, Advocate, holding brief of Sri B. P. Verma, learned Counsel for the respondents.

5. Learned counsel for the petitioner has tried to assail the finding recorded by the revisional Court mainly on the ground that in view of Section 113 of the Transfer of Property Act, the acceptance of the rent for the months of July and August 1987 by the landlord amounted to waiver of notice and would, therefore, result in non-termination of the tenancy resulting in the failure of the suit. He has placed reliance on the case of Vishwanath Prasad Didwaqri v. Hari Krishna Kedia reported in 1989 (1) Allahabad Rent Cases 299.

6. On the other hand learned Counsel for the respondent urged that there was no specific act on the part of the landlord to treat the lease as subsisting as admittedly from September 1987 the rent had not been accepted. It was further urged that the suit was brought by the plaintiff only after expiry of the period of combined notice i.e. after more than 2 months and, therefore, the acceptance of rent for the months of July & August 1987, which were part of the period of notice, cannot give any advantage to the tenant. The intention of the landlord was clear with regard to termination of the lease/tenancy on giving the notice and admittedly the rent from September 1987 onwards has not been accepted. It was further urged that for waiver of notice there has to be express act on the part of the landlord showing his clear intention to create fresh lease/tenancy.

7. I have considered the submissions made by the learned Counsel for the parties and have also examined the judgment of the revisional Court impugned in the writ petition. The revisional Court has specifically held that there was no material on record to establish necessary requirements for holding waiver of notice. The finding is also based upon the decision of the Hon'ble Supreme Court in the case of Associated Hotels of India Ltd. v. S. D. Sardar Ranjit Singh reported in : [1968]2SCR548 and in the case of Jhaman Das v. Ram Kishan reported in 1986 (1) ARC 427 wherein it was held that simply because the landlord had withdrawn the rent subsequent to terminating of the tenancy it would not amount to waiver of notice. Similar is the situation in the present case where the landlord had accepted rent only for the period which formed part of the notice.

8. It would be worthwhile to mention here even at the cost of repetition that the notice was given on 2-7-1987 and according to it the tenancy was to stand terminated at the expiry of the notice and 60 days time was allowed to vacate from the date of service of notice. Therefore the tenancy was determined after 60 days of the receipt of notice. Even if it is assured that tenancy had been determined on the receipt of notice and 60 days' time was given to vacate the premises, the landlord would be justified in receiving the rent for the period of 60 days from the date of service of notice. No implied or express consent to treat the lease/tenancy as subsisting on the part of the landlord could be derived merely because he accepted rent for the two months which was of the period of notice. After August 1987 the landlord did not receive rent from September 1987. Two months later he filed the suit in November 1987. This in clear terms indicated that the intention of the landlord determined the tenancy was clear and he acted in accordance with the terms of the notice. The landlord thus cannot be said to have waived the notice merely because he accepted the two months rent which was part of the period of notice.

9. On the other hand the judgment relied upon by the learned Counsel for the petitioner is based on different set of facts and is clearly distinguishable. In the said case the landlord had withdrawn the amount deposited for the period after termination of the tenancy but prior to filing the suit which was filed after more than a year after the notice terminating the tenancy was served upon the tenant.

Further in that case the landlord had accepted the rent for the period after the actual termination of the tenancy and therefore, the Court had held that there was clear waiver of the notice.

10. The revisional Court in the present case had rightly interpreted the legal provisions upon admitted facts and has recorded the finding that there is no waiver of notice and rightly decreed the suit.

11. I do not find any error in the judgment of the revisional Court calling for interference by this Court under Article 226 of the Constitution of India.

12. The writ petition fails and is accordingly dismissed. However, there shall be no order as to costs.

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