

Eih Limited Vs. Bata India Limited

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Court : Kolkata

Decided On : Jul-28-2015

Judge : Soumen Sen

Appellant : Eih Limited

Respondent : Bata India Limited

Judgement :

IN THE HIGH COURT AT CALCUTTA BEFORE: Ordinary Original Civil Jurisdiction ORIGINAL SIDE The Hon'ble JUSTICE SOUMEN SEN G.A.No.2629 of 2012 C.S.No.212 of 2012 EIH LIMITED versus BATA INDIA LIMITED For the petitioner : Mr.Jayanta Kr.

Mitra, Ld.Adv.Gen.

Mr.Sakya Sen, Ms.D.Dutta.

For the respondent : Mr.Mr.Mr.Mr.Mr.Heard On : 10.03.2015, 17.03.2015, 28.04.2015 Judgment On : 28th July, 2015 S.N.Mookherjee, Sr.Adv., Abhrajit Mitra, Sr.Adv., Anirban Roy, Kumarjit Banerjee, V.V.V.Sastry.

Soumen Sen, J.:- The petitioner has filed this application under Chapter XIII A of the Original Side Rules of this Court for eviction of the defendant from the suit premises.

The plaintiff is the owner of the premises.

The plaintiff says that having regard to the composition of the rent the relationship of the plaintiff and the defendant is governed by the Transfer of Property Act and not by the West Bengal Premises Tenancy Act.

The plaintiff on 8th February, 2012 initially had issued a notice to quit under Section 106 of the Transfer of Property Act.

In the said notice, the plaintiff stated that on and from the expiry of the notice period, the plaintiff shall claim damages and/or mesne profits at the rate of Rs.7500/- per diem till possession is made over to the plaintiff.

Thereafter, by another notice dated 21st March, 2012, the plaintiff withdrew the earlier notice dated 8th February, 2012 and issued a fresh notice under Section 106 of the Transfer of Property Act.

This time it is stated in the said notice that on expiry of the notice period, the plaintiff shall claim damages and mesne profits at the rate of Rs.7/- per sq.ft.

per diem for the area occupied by the plaintiff till the possession is made over by the defendant to the plaintiff.

The defendant is a lessee in respect of a showroom on the ground and mezzanine floors at Premises No.15/1, Jawaharlal Neheru Road, Kolkata-700013 paying a rent of Rs.12000/- and maintenance charges Rs.1200/- per month.

The said lease is a lease for month to month.

Mr.Jayanta Kumar Mitra, the learned Advocate General appearing with Mr.Sakya Sen, advocate on behalf of the plaintiff submits that since the notice period has expired and the defendant has failed and neglected to deliver vacant possession of the property in question, the plaintiff is entitled to a decree for summary eviction under Chapter XIII A of the High Court Original Side Rules.

It is submitted that the defendant has no defence to the claim of the plaintiff.

Anticipating that in defence the defendant might refer to an order of the Honble Division Bench dated 15th June, 2015 passed in an appeal from an order dated 10th March, 2015 by which I have refused to allow the application under Order 7 Rule 10 of the Code of Civil Procedure, it is submitted that the Honble Division Bench has clearly indicated that this application shall be considered on merits and disposed of in accordance with the procedure contemplated.

The learned Advocate General submitted that the observation made with regard to the determination of mesne profits cannot have any bearing in deciding the application filed by the plaintiff for summary eviction of the defendant based on expiry of the period of lease.

The learned Advocate General submits that unless the Court is of the opinion that the valuation made by the plaintiff is absurdly high to deprive the proper Lower Court of its jurisdiction, the Court shall allow summary eviction provided the Court is otherwise satisfied that the plaintiff is able to make out a case for eviction on expiry of the period of lease.

The learned Advocate General has referred to the following decisions in support of his submission: I) Coal India Limited versus Apeejay House Private LTD. reported at AIR 2013 Cal 66; II) Punjab & Sind Bank versus Technoshop Private Limited reported at 2012 (3) CHN (Cal) 225; III) J.

Thomas & Co. PVT. LTD. & Anr.

versus Pawan Kumar Tebriwala reported at 1998 (II) CHN 503 IV) Sashi Prasad Goenka versus Steelco Syndicate reported at 2014 (2) CHN 457 Cal). Mr. S. N. Mookherjee, the learned Senior Counsel appearing on behalf of the defendant submits that in view of the order passed by the Honble Division Bench that so far as the claim of mesne profits and the rate at which it has to be awarded were held to be a triable issue this application must fail.

It is submitted that in none of the decisions cited at the Bar the Courts were invited to decide as to what would happen if there are two notices in quick succession quantifying mesne profits.

It is submitted that if the two notices are scrutinized it would appear that there was a quantum leap from Rs.7500/- per diem to Rs.7/- per sq.

ft.

per diem.

The plaintiff at the trial would be required to establish that such arbitrary increase in mesne profit was justified.

It is submitted that the plaintiff has quantified mesne profit arbitrarily and with the mala fide intention of denuding the Trial Court of its jurisdiction to try the suit.

It is submitted that the claim in the suit has been purposely inflated in order to attract the jurisdiction of this Court so that the plaintiff could avail the provisions of Chapter XIII A.

The other defence taken was that once the defendant was enjoying the protection of the West Bengal Premises Tenancy Act, the said protection is to be extended notwithstanding the agreement and the 1997 Act.

Mr.Mookherjee has relied upon the decision of the Honble Supreme Court in Suhas H.

Pophale versus Oriental Insurance Company Limited & Its Estate Officer reported at (2014) 4 SCC657 and submits that in the said decision it has been clearly stated that if a tenancy is protected under a law when the tenancy was created the same protection shall be extended notwithstanding the enactment of a new Act and in case of any inconsistency the protection that the defendant was enjoying as a tenant is to continue and the relationship should be governed by the provisions of the West Bengal Premises Tenancy Act, 1956 and not by the Transfer of Property Act.

In order to appreciate the rival contention I feel it necessary to refer to the paragraph of the order passed by the Honble Division Bench on 15th June, 2015 on which both the parties have relied.

The said Order reads: Ultimately by reading the judgment of Apex Court decided in 1987, we are of the opinion, so far as claim of mesne profits and at what rate the same has to be awarded is the only triable issue which ought to be decided by the Trial Court only after affording opportunity to bring on record evidence in support of respective contentions raised by the parties before the learned single Judge.

It is needless to say that plaintiff is the master of his suit and he is entitled to claim fanciful amount also.

Ultimately what is to be granted is a question of fact which has to be decided, as stated above.

The contention of the appellants counsel is that there is suppression of fact with regard to the notice dated 8th February, 2012.

While deciding the rate at which mesne profits had to be granted and from what date, the Trial Court can very well go into the said issue also, in order to know whether there was any dishonest and fraudulent intention on the part of the plaintiff, not to mention the notice dated 8th February, 2012 while issuing second notice dated 21st March, 2012, followed by presentation of plaint in the above matter.

So far as second issue with regard to Chapter XIII A, since the said application is already filed before the learned Single Judge, which is seriously contested by the defendant, the learned Judge can consider the same on merits and dispose of the same in accordance with the procedure contemplated. The principal defence appears to be fraudulent pecuniary valuation of the suit in seeking to invoke the pecuniary jurisdiction of this Court wrongfully.

This issue has been settled at least by three Division Benches of our High Court all of which have been relied upon by the learned Advocate General.

All the three decisions were rendered in connection with an application under Chapter XIII A of the Original Side Rules.

In J.

Thomas & Co.(supra) the Honble Division Bench considered the plea of fraudulent pecuniary valuation and stated that in order to succeed a plea based on fraudulent pecuniary valuation of the suit it has to be demonstrated that the plaintiffs case is very bad.

If it is found that the valuation is on a higher side and might be excessive that itself would not make valuation a fraudulent one.

The plea of the defendant resisting summary eviction by raising the plea of fraudulent pecuniary valuation was rejected.

Same was the view expressed in the subsequent two Division Bench judgments.

In Punjab & Sind Bank (supra) it was held that the defendant has failed to establish that the valuation put by the plaintiff is demonstrably arbitrary and unreasonable.

The Honble Division Bench has also taken the view that the continuation of the suit in this Court would not cause any inconvenience to the defendant since filing of the suit before the City Civil Court would not make any such difference as the appeal would be ultimately heard by the High Court.

This view finds place in Paragraph 17 which reads:17.

If the suit is filed in High Court parties do not stand to lose a forum because from a decree passed by the City Civil Court also an appeal lies to a Division Bench of this Court.

If a suit is overvalued High Court still has the jurisdiction to dismiss the same or pass a decree for less than rupees ten lacs.

But if on the contrary the plaint is directed to be presented before the City Civil Court that Court will lack jurisdiction to entertain the suit being valued more than rupees ten lacs.

On that ground also the decree is liable to be upheld. In Coal India LTD.(supra) the Honble Division Bench held that unless the valuation of the suit is

demonstrably ridiculous or arbitrary or unreasonable Court would ordinarily rely on such valuation and entertain suit if it was within its pecuniary limit on the basis of such valuation.

There is no dispute that the property is situated at a prime location of Kolkata.

It is, in fact, located at the nerve centre of the City.

The area is considered to be a commercial hub.

The plaintiff thought that having regard to the location, the said property is capable of fetching an annual rent of Rs.7/- per sq.ft.

per diem although in the earlier notice it was assessed at Rs.7500/-.

The Honble Division Bench while dealing with the application for return of the plaint held that the plaintiff is the master of his suit and he is entitled to claim fanciful amount also.

That the property is capable of fetching sky-rocketing price having regard to its location cannot be disputed.

The present enquiry is limited to continuation of the tenancy of the defendant at the suit premises upon service of notice under Section 106 of the Transfer of Property Act.

The issue as to whether the plaintiff would ultimately get a decree for the sums claimed as mesne profits for the present would be desultory and should not stand in the way in considering the application for summary judgment.

It is true that within a very short time there is a quantum leap in the claim towards mesne profits.

The Honble Division Bench while disposing of the appeal has also pointed out that during the quantification of the mesne profits, the claims made by the plaintiff in the earlier notice was also required to be taken into consideration.

I am not passing any decree for mesne profits.

determination of mesne profits is a triable issue.

The I am only deciding the claim of the plaintiff to have a summary decree on the basis of a notice issued under Section 106 of the Transfer of Property Act.

It is not argued that the said notice is defective.

However, what sought to be argued is that the defendant is enjoying a protection under the West Bengal Premises Tenancy Act.

I am unable to accept the said submission.

The similar point was raised before the Honble Division Bench in Coal India LTD.(supra) and the same was addressed by the Honble Division Bench in Paragraph 19 which reads:19.

In the present case whatever Mr.Dutta argued on the proposition of law would have been justified in case such protection would still be available to him.

The suits were filed in 2006 when the protection was no more available.

The General Clauses Act, 1897 particularly Section 8 that was relied upon by Mr.Dutta, would be of no assistance to the tenant once the tenant did not enjoy any vested right to be in possession.

The protection was given to the tenant under a particular law that stood repealed by a new law and the new law specifically continued such protection for a particular period.

On expiry of such period the protection would no more be available.

In this regard, we get support from the decision in the case of Vishwant Kumar (AIR 2004 SC1887 (supra).In an identical situation the Apex Court observed, it was not a right accrued or vested under Section 6(c) of the General Clauses Act.

The Apex Court observed, the mere right existing on the date of repeal to take advantage of the repealed provisions is not a right accrued within Section 6(c) of the General Clauses Act.

The Apex Court further observed, there is a vast difference between rights of a tenant under the Rent Act and the rights of the landlord.

The right of the statutory tenant to pay rent not exceeding standard rent or the right to get standard rent fixed are protective rights and not vested rights.

On the other hand, the landlord has rights recognized under the law of contract and the Transfer of Property Act which are vested rights and which are suspended by the provisions of the Rent Act but the day the Rent Act is withdrawn the suspended rights of the landlord revive. The defendant does not dispute that they are paying a rent which is over and above Rs.10,000/-.

The defendant agreed to pay the said rent pursuant to a notice issued on 22nd December, 2003 for fixation of fair rent.

The parties have agreed to revise the rent and thereby to opt out of the provisions of the West Bengal Premises Tenancy Act and governed by the provisions of the Transfer of Property Act.

The parties have entered into such arrangement and/or agreement with their eyes wide open.

The judgment cited by Mr.Mookherjee Suhas H.

Pophale (supra) has no manner of application.

In Suhas H.

Pophale (supra).the Honble Supreme Court was considering the protection that a tenant was enjoying under the State legislation but for the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

The Honble Supreme Court was considering whether the Act of 1971 would have an overriding effect over the State Rent Act which is a welfare legislation.

Under such circumstances, there shall be an order in terms of Prayer (a) of the Master Summons.

The other claims are to be tried and adjudicated at trial.

This application succeeds in part.

The department is directed to draw up the decree as expeditiously as possible.

Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

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