
Punjab National Bank and Others Vs Smt. Sundar Devi Agarwal

Civil Revision No. 542 of 2010

Court: Allahabad High Court

Date of Decision: Nov. 8, 2010

Acts Referred:

Provincial Small Cause Courts Act, 1887 & Section 25#Transfer of Property Act, 1882 & Section 107

Hon'ble Judges: Prakash Krishna, J

Bench: Single Bench

Judgement

Prakash Krishna, J.

Supplementary affidavit filed today may be taken on record.

2. Heard Shri Ashok Bhatnagar, learned Counsel for the applicant and Shri Neeraj Srivastava learned Counsel for the plaintiff-landlord.

3. The present revision has been filed u/s 25 of the Provincial Small Causes courts Act against the judgment and decree dated 5.8.2010 whereby

the court below has decreed the SCC Suit No. 27 of 2008 for recovery of arrears of rent, damages and ejectment of the defendant-applicants

who were the tenants.

4. The rent being more than Rs. 2000/- per month, the building in question is not a controlled building and therefore the provisions of U.P Act No.

13 of 1972 are not applicable.

5. Shri Ashok Bhatnagar, learned Counsel for the applicant submits that admittedly, the bank took the building in question on rent through a

registered lease deed for a fixed period. The said period according to him, expired in the year 2002. Therefore, the Bank sought the permission

from its head office for the renewal of the lease and the approval was granted and was also communicated to the landlady. The landlady agreed to

the proposal of the Bank but no formal lease deed was executed. Therefore, the suit for ejectment is not maintainable. In reply, the learned

Counsel for the opposite party submits that in view of the fact that the lease has already expired and there being no renewal of lease, even if for the

sake of the argument if it is assumed that she consented although the consent is being disputed, the tenancy of the applicant would at most be

month to month tenancy, in the absence of the registered lease agreement. Reliance has been placed upon the Apex Court judgment in the case of

Anthony Vs. K.C. Ittoop and Sons and Others,

6. Considered the respective submissions of the counsel for the opposite parties and perused the record.

7. It is not in dispute that the original period of lease has expired. It is also not in dispute that there is presently no lease agreement registered or

unregistered between the parties. The argument of the learned Counsel for the applicant that the landlady has accepted that the Bank may continue

in possession as tenant, if accepted it will at most create a monthly tenancy between the parties. Section 107 of the transfer of the property Act

provides that in the absence of a registered instrument, lease for a period of more than 11 months cannot be executed.

8. Shri Ashok Bhatnagar, learned Counsel for the applicant very fairly accepted that the Bank did not pay the enhanced rent which would have

been payable had there been a fresh lease agreement between the parties. The renewal agreement, if any, was not acted upon, even by the tenant

bank. This also supports the case of the landlady that there was no lease agreement oral or written after the expiry of the original lease period. In

other words, the tenancy of the Bank could be monthly tenancy and not more than that. This being so, the trial court was perfectly justified in

passing the eviction decree.

9. No other point was pressed.

10. Looking to the fact that the applicant is a nationalized Bank, time up to 30.4.2011 to vacate the premises is granted subject to the fulfillment of

the following conditions within a period of one month from today:

i) The Bank shall pay the entire decretal amount along with the damages at the decreed rate for the period up to April 2011 by Banker's cheque

drawn in favour of the plaintiff opposite party. And

ii) A responsible Officer of the Bank shall file an undertaking on affidavit before the trial court that the Bank will vacate the disputed accommodation and handover its peaceful possession to the landlady without creating any 3rd party interest, on or before 30.4.2011.

11. In case of default in compliance of either of the conditions as stipulated above, the time granted by the court shall stand vacated.

12. The revision is dismissed summarily.