(2014) 08 AP CK 0041

Andhra Pradesh High Court

Case No: Second Appeal No. 646 of 2014

Andhra Stainless Steels and Wire Products		APPELLANT
	Vs	
Kanahayalal Jhawar		RESPONDENT

Date of Decision: Aug. 25, 2014

Acts Referred:

- Transfer of Property Act, 1882 - Section 106

Citation: (2015) 1 ALD 403 : (2015) 3 ALT 447

Hon'ble Judges: L.N. Reddy, J

Bench: Single Bench

Advocate: T. Muralidhar Rao, Advocate for the Appellant; Adesh Varma, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.

The respondent filed O.S. No. 1860 of 2008 in the Court of the V Senior Civil Judge, City Civil Court, Hyderabad against the appellant for eviction from the suit schedule premises and for recovery of arrears of rent. He got issued a notice under Section 106 of the Transfer of Property Act (for short ''the Act'') and pleaded that despite receiving notice, the appellant did not vacate the premises. The manner in which the premises were leased and the developments that have taken place thereafter, have been pleaded in detail.

2. The appellant filed a written statement opposing the suit. It did not dispute the fact that it is the lessee of the respondent. However, the principal objection raised by the appellant was that the activity of manufacturing is being undertaken in the premises and that the notice issued under Section 106 of the Act, requiring them to vacate the premises within 15 days is untenable and that it cannot constitute the basis for institution of the suit. The relief of recovery of rents was also opposed by stating that the rents were being paid from time to time.

3. The trial Court decreed the suit through judgment, dated 18.08.2010. Aggrieved by that, the appellant filed A.S. No. 386 of 2010 in the Court of III Additional Chief Judge, City Civil Court, Hyderabad. The appeal was dismissed through judgment, dated 02.06.2014. Hence, this second appeal.

4. Learned counsel for the appellant submits that though there was voluminous evidence in support of the plea that the premises are being put to manufacturing use, the trial Court and the lower appellate Court ignored the same. He contends that once the premises are put to manufacturing activity, notice of at least six months is required to be issued under Section 106 of the Act and that the time mentioned in the notice is totally inappropriate. It is also pleaded that the trial Court has determined the arrears of rent, by itself, without recording any evidence in this behalf and the finding cannot be sustained in law.

5. Learned counsel for the respondent, on the other hand, submits that the necessity to issue a notice of six months under Section 106 of the Act would arise, if only the concerned lease deed contains a stipulation to the effect that the premises are put to the activity of manufacturing and that in the instant case, there is no such recital. It is also urged that the trial Court and the lower appellate Court have taken into account, the evidence on record and arrived at the conclusion as to the arrears of rent.

6. The appellant did not dispute that it is the lessee of the respondent in respect of the suit schedule premises. The principal ground urged by it is as regards the legality of the notice and the plea as to the arrears of rent. The trial Court framed the following issues for its consideration:

(1) Whether the quit notice issued by plaintiff is valid and binding?

(2) Whether defendant fell in arrears of rent as claimed?

(3) Whether plaintiff is entitled for recovery of possession by eviction of defendant as prayed for?

(4) Whether plaintiff is entitled for recovery of arrears of rent from 01.09.2008?

(5) Whether plaintiff is entitled for future mesne profits, if so at what rate?

7. The respondent deposed as P.W. 1 and filed Ex. A1-notice issued under Section 106 of the Act; A2-postal acknowledgement; and A3-reply from the appellant. On behalf of the appellant, D.Ws. 1 and 2 were examined and Exs. B-1 to B-11 were marked.

8. On the suit being decreed, A.S. No. 386 of 2010 was filed and the lower appellate Court framed the following points for its consideration:

(1) Whether the plaintiff succeeded to prove his case as a owner and committed to issue the notice under Section 106 of the Transfer of Property Act?

(2) Whether the documents filed by the defendant under Ex. B-1 to B-11 got weightage in the eye of law?

(3) Whether the notice under Section 106 is valid to the facts of the present case?

The appeal was dismissed.

9. Two points are urged before this Court. The first is about the legality of the notice, Ex. A-1. The second is about the mesne profits.

10. The issuance of a notice under Section 106 of the Act is an essential step, to be taken by a lessor if he intends to seek eviction of the lessee. It maintains a dichotomy as to the text of the notice, depending upon the nature of the premises. If the leased premises are put to agricultural or manufacturing activities, the lessor is required to give a notice of six months. The rigour as to the requirement of notice has been substantially reduced through the recent amendment to Section 106 of the Act. However, the requirement as to the issuance of notice of at least six months, in case the premises are put to agricultural or manufacturing activity, continues to be essential.

11. A lessee can insist that the quit notice must be of at least six months duration, if only there is no dispute as to the nature of activity carried out in the premises. If there is any dispute in this behalf, one has to fall back upon the contents of the lease deed or the clinching evidence in this behalf.

12. The relationship between the parties herein is not governed by any lease deed and thereby, it is oral in nature. The respondent asserted that the premises were leased for the purpose of godown. The plea of the appellant, on the other hand, was that the premises were taken on lease for establishing a factory and that a factory has been established. Even if a factory has been established, there is nothing on record to disclose that the permission of the respondent has been obtained for that purpose. An unauthorised activity of manufacturing carried out in a premises, which were leased out for a different purpose, does not place an obligation on the lessor to issue a notice of six months under Section 106 of the Act. It is only when there is consent from the lessor for carrying out the manufacturing activity in the leased premises, either from inception or halfway through, that the corresponding obligation would devolve upon the lessor.

13. There is neither oral nor documentary evidence to prove that the suit schedule premises, in the instant case, were leased by the respondent for undertaking any manufacturing activity. The appellant does not have any grievance vis-a-vis Ex. A1, except as regards the period. The notice was found to be in accordance with law in all respects. The trial Court and the lower appellate Court have arrived at findings based on the evidence and this Court is not inclined to take any different view.

14. Coming to the second aspect, there is some strength in what is pleaded by the appellant. The respondent, no doubt, prayed for a decree for mesne, profits.

Normally, in suits of this nature, the exercise of determining the arrears of rents must be relegated to separate proceedings, though in the same suit. There is no bar for a Court to determine the arrears also in the same decree in which eviction is ordered. However, there must be clinching evidence in this behalf. It has already been mentioned that except the respondent, no other witness has deposed nor any documentary evidence touching on the question of determination of rent after the termination of lease.

15. It is rather curious to note that the trial Court clubbed all the issues and did not undertake any discussion, worth its name, on issue Nos. 4 and 5, which pertain to recovery of arrears of rent from 01.09.2008 and determination of future mesne profits respectively. It has simply observed that though the rent is Rs. 7,800/- per month, the appellant can be required to pay Rs. 14,000/- per month from 27.09.2008 onwards. The only basis mentioned for this is that the appellant did not vacate the premises even after receiving the quit notice. Such an approach cannot be countenanced in law. The respondent was under obligation to plead the relevant facts as regards the rents that are fetched by the comparable premises with similar features, as that of the suit schedule property. The evidence in this behalf is totally lacking. The trial Court has simply jumped to the conclusion that Rs. 14,000/- can be treated as reasonable rent. The finding on Issue Nos. 5 and 6 therefore, cannot be sustained in law.

16. In the normal course, the decree to that extent must be set aside even while upholding the one for eviction and it must be left to the parties to work out those aspects. The record discloses that ever since the decree was passed, the appellant is paying rent at the rate of Rs. 14,000/- per month, that is almost double the undisputed rent.

17. During the course of appeal, this Court verified from the parties and both of them agreed that Rs. 1,00,000/- can be treated as arrears of rent or damages for use and occupation in full and final settlement.

18. Therefore, the second appeal is partly allowed, upholding the decree of eviction, but modifying the one for mesne profits, now fixed at Rs. 1,00,000 in all. The said amount shall carry interest at the rate of 9% from the date of this decree till the date of realisation.

19. The appellant is also granted time till 30.04.2015 for vacating the premises subject to payment of rent at the rate of Rs. 10,000/- per month from September, 2014 and subject to its filing an undertaking before the trial Court within four weeks from today to the effect that it would put the respondent in vacant possession of the suit schedule property on or before 31.04.2015. There shall be no order as to costs.

20. The miscellaneous petitions filed in this appeal shall also stand disposed of.