

(1999) 08 CAL CK 0004

Calcutta High Court

Case No: Appeal No's. 261 and 262 of 1998, Suit No. 138 of 1995, A.P.O.T. No. 307 of 1998 and G.A. No's. 1530 and 1537 of 1998

Jute Corporation of India Ltd.

APPELLANT

Vs

Sudera Enterprises Pvt. Ltd.

RESPONDENT

Date of Decision: Aug. 24, 1999

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 26 Rule 9, Order 39 Rule 7
- Transfer of Property Act, 1882 - Section 105

Citation: AIR 2000 Cal 152 : 104 CWN 520

Hon'ble Judges: S.B. Sinha, Acting C.J.; M.H.S. Ansari, J

Bench: Division Bench

Advocate: Anindya Kumar Mitra, Surajit Mitra, Amitesh Banerjee and B. Boral, for the Appellant; P.C. Sen and Pratap Chatterjee, R.K. Khanna and Girish Gupta, for the Respondent

Judgement

S.B. Sinha, Ag. C.J.

1. These two appeals being inter-related were taken up for hearing together and are being disposed of by this common judgment.

2. M/s. Sudera Enterprises Pvt. Ltd. (hereinafter referred to as "Sudera") has filed a suit for eviction against Jute Corporation of India Ltd. (hereinafter referred to as the "Jute Corporation") inter alia, on the ground of expiry of the period of lease dated 5th December, 1970. Admittedly, the said indenture of lease contained a renewal clause which is in the following terms :--

"In case the Lessee shall be desirous of obtaining a renewed lease of the demised premises for a further period of ten years and of such desire shall give at least two months" previous notice in writing to the Lessor and shall have duly paid the rent and complied with the (sic) carried all the covenants and conditions herein

contained and on the part of the Lessee to be paid observed and performed then and in such case the Lessor shall at the cost and expense of the lessee grant to the Lessee a renewed lease of the demised premises for a further term of ten years on the same terms and conditions herein contained except as to rent as may be mutually agreed and that in the renewed lease there shall be no covenant for renewal."

3. The Jute Corporation has exercised the option to renew the lease within the stipulated period. It is, however, admitted that no mutual agreement could be reached as regard the quantum of rent.

4. In the aforementioned situation, Jute Corporation also filed a Suit for specific performance of contract. Before the learned trial Judge, five applications had been filed including one by Sudera for passing a decree under Chapter XIII A of the Original Side Rules for a summary decree. The second application was made by Jute Corporation for grant of leave to continue to deposit month by month by the 15th of every succeeding month, a sum of Rs. 69,642.23 being the sum equivalent to the rent payable by the defendant in respect of the suit premises. When arguments in relation to the aforementioned two applications were going on, Sudera filed a third application for appointment of a valuer for the purpose of computing reasonable market rent. A fourth application was filed by Jute Corporation directing issuance of a mandatory injunction upon the plaintiff to forthwith restore air-conditioning services in the suit premises. We are not concerned with the fifth application herein which was filed by Jute Corporation for extension of time for filing written statement.

5. The learned trial Judge by reason of the impugned order rejected the application of Jute Corporation for leave to deposit as also the application to restore essential supply of air-conditioning. The learned trial Judge also rejected Sudera's application for appointment of a valuer for fixing the quantum of rent. Both the parties, therefore, had preferred these appeals against the aforementioned orders.

6. Keeping in view the stand taken by Sudera before the learned trial Judge it now does not lie in its mouth to contend that he is entitled to a decree for eviction.

7. It has been conceded that in view of the decision of this Court in *Martin Bum Limited v. Steel Authority of India Ltd.* reported in (1988) 2 Cal LJ 416, in the event of disagreement of the quantum of rent between the plaintiff and the defendant in a suit for eviction on the ground of expiry of the period of lease containing renewal clause, the Court has the requisite jurisdiction to fix the proper rent.

8. Two questions, therefore, arise for consideration in these appeals:

1. Whether the learned trial Judge ought to have appointed a valuer for determination of the quantum of rent?

2. Whether Sudera would be compelled by mandatory injunction to restore the air-conditioning as prayed for by Jute Corporation?

9. The learned trial Judge rejected the application of Sudera for appointment of valuer on the short ground that he had no jurisdiction to determine the quantum of rent. According to the learned trial Judge, that question would arise in the suit filed by Sudera for eviction while ascertaining mesne profit and the same could not, in the opinion of the learned trial Judge, be ascertained at interlocutory stage.

10. Mr. Sen, the learned counsel along with Mr. P. Chatterjee appearing on behalf of Sudera, however, submitted that the only point of difference between the parties was as to the quantum of rent and that in short is the only issue in both the suits (i) filed by Sudera for eviction, and (ii) the suit filed by Jute Corporation for specific performance. It was, therefore, urged by Mr. Sen that the Court should have proceeded to appoint a Valuer and thereby give a quietus to the controversy between the parties.

11. On the other hand, Mr. Anindya Mitra, the learned senior counsel appearing on behalf of the Jute Corporation contended that the issue as to the quantum of rent is a matter to be decided upon evidence that may be adduced by the parties in the light of the agreement of lease executed on the basis whereof renewal of the lease has been prayed for and the surrounding circumstances including the subsequent agreements entered into between the parties with respect to the electricity and air-conditioning charges, and the mode and method for enhancement thereof. In short it was the submission of Mr. Anindya Mitra that the matter is not one which could have been decided either at the interlocutory stage or by appointment of a valuer as the same was a matter in issue in the suit and had to be decided by the Court upon the evidence that may be adduced by the parties.

12. We note that almost five years have elapsed and keeping in view the fact that the renewed term of lease is 10 years, the matter requires to be decided expeditiously. We also take note of the fact that the only controversy or point of dispute between the parties in the two suits is with regard to the fixation of the amount of rent for the renewed period of lease.

13. Such being the position, we are inclined to accept the submission made by Mr. Mitra that the matter has to be judicially decided and is riot one which could be decided at an interlocutory stage. The Court no doubt has issued certain interim direction from time to time directing the Jute Corporation to make certain ad hoc payments to the landlord. But a lasting solution to the problem between the parties lies in early disposal of the two suits by deciding the main issue between the parties as regard the quantum of rent.

14. It is now a well settled principles of law that a Court cannot delegate its judicial function to any other authority. On its own showing the appellant is bound by its contention that the quantum of rent is to be fixed by the Court. Such a judicial

power cannot be delegated to a Valuer either in terms of Order 39, Rule 7 of the CPC or Order 26, Rule 9 thereof.

15. In [The State of Bihar Vs. Rani Sonabati Kumari](#), the Apex Court, inter alia, held that a Commissioner cannot be appointed for the purpose of seizure of documents. For the purpose of collection of evidence on behalf of the parties also no commissioner can be appointed.

16. In re. [S KUPPUSWAMI Vs. COMMISSIONER OF Income Tax, MADRAS. OCTOBER 20, 1953.](#), and [Sasanka Sekhar Pal and Others Vs. Dinanath Gorain and Others](#), it has been held that adjudication on the basis of evidence adduced by the parties is a judicial function and such judicial function cannot be delegated in terms of Order 26, Rule 9 or Order 37, Rule 7 of the Code of Civil Procedure.

17. So far as the second question is concerned although, according to Mr. Sen, air-conditioning is a luxury but keeping in view the fact that under the terms of the lease the demise is in respect of centrally air-conditioned 5th floor of the premises No. 1 Shakespeare Sarani, Calcutta containing an area of about 191.35 sq.ft. we are of the opinion that having regard to the structures meant for Centrally Air-conditioned buildings, grant of facility of air-conditioning cannot be said to be a luxury. It, in the fact situation of this case, is a basic necessity particularly in view of the fact that the same is the subject of demise.

18. It has not been disputed before us that lessee used to pay to the lessor not only the rent but also the service charge as also the air-conditioning charges. The parties had also agreed from time to time to fix and refix the mode and manner of reckoning such charges. It is not the case of Sudera that Jute Corporation had not paid such charges to it so far. However, according to the Jute Corporation the monthly rental should be at the rate of 6.50 per square feet whereas according to Sudera the monthly rental would be about Rs. 150 per sq.ft. The Court in a situation of this nature can only take judicial notice of the fact that there had been increase in the electricity tariff. The job of the Court in arriving at a figure, keeping in view the controversy between the parties at an interlocutory stage is a difficult one. However, it appears that Sudera had been realising different rates of air-conditioning charges from different tenants although all of them are occupying the same building.

19. From the affidavit-in-opposition filed on behalf of the Sudera it appears that National Insurance Company had been paying air-conditioning charges at the rate of 9.55 per sq.ft. with effect from October, 1997; whereas Export Credit Guarantee Corporation had been paying 7.14 per square feet with effect from April, 1997.

20. Keeping in view the facts and circumstances of this case, we are of the opinion that interest of justice will be sub served if on an ad hoc basis the Jute Corporation is directed to deposit the arrears of rent at the rate of Rs. 10 per square feet to be calculated from the date of expiry of the lease subject to any adjustment of any amount that might have been made and service charges at the rate of Rs. 3.33 per

sq. ft. and Rs. 10 per sq. ft. towards air-conditioning charges and continue to pay the current and further monthly rent by the 15th of the next month succeeding for which the charges fall due. On deposit of the amount towards arrears charges Sudera shall forthwith restore the air-conditioning facilities to Jute Corporation. This order shall be subject to the judgment and decree which may ultimately be passed in the suit and, thus, it would also be open to the learned Court to pass a consequential order at the time of passing the judgment and decree as to him may seem fit and proper.

21. We accordingly find no infirmity in the order of the learned trial Judge rejecting the application for appointment of a Valuer on the ground as he did. Appeal No. 262 of 1998 in our view, deserves to be dismissed, however, with an observation that the two suits should be heard analogously and expeditiously.

22. These two appeals are disposed of with the aforementioned directions and observations. In the facts and circumstances of this case, there will be no order as to costs.

M.H.S. Ansari, J.

23. I agree.