

(2013) 10 CAL CK 0038

Calcutta High Court

Case No: G.A. No. 510 of 2013 and C.S. No. 374 of 2012

Poddar Projects Ltd.

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision: Oct. 3, 2013**Hon'ble Judges:** Nadira Patherya, J**Bench:** Single Bench**Advocate:** Abhrajit Mitra, Mr. Jishnu Chowdhury, Mr. Sarvapriya Mukherjee and Mr. Soumabho Ghose, for the Appellant; Ranjit Jaiswal and Mr. Gautam Chakraborty, for the Respondent**Final Decision:** Disposed Off

Judgement

Nadira Patherya, J.

In a suit for eviction this application has been filed under Chapter XIII A of the Original Side Rules of this High Court for final judgment and decree for recovery of vacant and peaceful possession and for determination of mesne profit. The case of the plaintiff petitioner is that in October, 1999 a lease was executed between the parties for a period of 5 years. The said lease could be renewed by enhancement of rent, execution of lease deed and notice by the defendant intimating its intent to renew. The said agreement came up for renewal in 2004 and although an enhanced rent was paid, no lease agreement was executed nor notice of renewal given by the defendant. On expiry of the first renewal in 2009 for the second renewal period neither payment was made of the enhanced rent nor notice of renewal given or agreement executed. Therefore on expiry of the second lease period the defendant has continued in the said premises as a monthly tenant and therefore the plaintiff became entitled to issue notice u/s 106 of the Transfer of Property Act.

2. A reply has been given to the said notice admitting therein non-increase of 20% rent due to inadvertence and an unintentional mistake. An attempt was made to make payment of the arrears with a request to accept the rent at the enhanced rate which was refused by the plaintiff's representative. As renewal required execution of fresh lease agreement and no lease agreement executed the defendant is hit by Section 111(h) of

the Transfer of Property Act. For refusal on the part of the defendant to vacate the said premises, a suit was filed and therein an application under Chapter XIII A filed. It has been admitted by the defendant in the opposition filed that the second renewal will expire in April, 2014, therefore the defendant has no right to continue beyond the said period and the defendant is bound by the said admission made in its affidavit filed in the proceedings.

3. Counsel for the defendant submits that the lease agreement was executed in 1999 for a period of 5 years which expired in 2004. There was no execution of a fresh lease agreement nor notice of renewal given but as the plaintiff continued to accept rent at the enhanced rate there can be no doubt that the lease stood renewed from 2004. There was no reason for the plaintiff to maintain silence for the last 8 years. It is Section 111(g) of the 1882 Act which will govern the parties on expiry of the lease deed by efflux of time. The arrear rent has been paid along with municipal rates and taxes therefore the defendant be allowed to hold the property as if the default had not occurred as provided by Section 114 of the 1882 Act and the property be treated as leased on a year to year or month to month basis in view of Section 116 of the 1882 Act. The defendant has continued with the consent of the plaintiff and is to remain in possession on month to month basis.

4. As the defendant has raised triable issues the defendant be allowed to contest the suit and no decree be passed under Chapter XIII A.

5. In reply it has been submitted by counsel for the plaintiff petitioner that Section 114 of the 1882 Act will have no application as it is Section 111(h) of the 1882 Act which is to apply in the instant case and Section 111(g) of the Act is not to apply.

6. Having considered the submissions of the parties under a lease deed of 1999 the said premises was given on lease to the defendant by the plaintiff for 5 years with two renewal options of 5 years each. Admittedly the first renewal came up in 2004 and the second renewal came up in 2009. At the time of renewal the essentials to be satisfied by the defendant were-(i) enhancement of rent @ 20%, (ii) notice in writing expressing an intent to renew and (iii) to execute a fresh lease deed.

7. In the instant case in 2004 20% rent was enhanced. No lease deed was executed at the time of renewal nor was any notice given by the defendant expressing its intent to renew. Therefore in the absence of two essentials the first renewal was no renewal in the eye of law, but as rent was paid at the enhanced rate and accepted by the plaintiff therefore one of the essentials had been satisfied and the 1st renewal accepted by conduct of the parties. In fact the said first renewal period expired in 2009 and the second renewal period is to continue till 2014. It is during the second renewal that the suit has been filed as none of the essentials was complied with.

8. It is only after receiving notice u/s 106 of the 1882 Act that an attempt was made by the defendant to make payment of the arrear rent during the second renewal period. In the affidavit in opposition the defence taken by the defendant is that the plaintiff cannot determine the lease after having accepted rent at the enhanced rate. The lessee is to continue in possession till 2014. Even after the expiry of the first renewal period in 2009 the defendant continued to pay the rent paid during the first renewal period and it is only if the defendant agreed to file an undertaking that it would vacate in April 2014 the plaintiff was agreeable not to evict the defendant before the expiry of the 2nd renewal. Accordingly an order was passed on 14th August, 2013 directing the defendant to make payment of the arrear rents at the enhanced rate along with the municipal rates and taxes and payment has also been made by the defendant. The said direction was given in the belief that the defendant would undertake to vacate the said premises in May, 2014 and it was only for such undertaking which was to be filed that the matter was adjourned from time to time. On 14th August, 2003 also it was only for purposes of filing an undertaking that the plaintiff was directed to forward a statement of the arrear rents and municipal rates and taxes to the defendant. On 4th September, 2013 the matter came up for hearing when it was submitted on behalf of the defendant that no undertaking would be filed as the lease was to expire in April, 2014.

9. The defendant has admitted that although renewal contemplated issuance of notice of renewal by the defendant so also 20% enhanced rent while enhancement of rent was made at the time of first renewal, but no notice was given nor new lease agreement executed. The enhanced rent after the 1st renewal was paid till 2009 and thereafter there has been no payment of any enhanced rent till orders passed. No notice of renewal was issued nor lease deed executed, therefore after 2009 without a doubt the defendant continued as a monthly tenant and the notice issued u/s 106 of the 1882 Act is a valid notice. Although the defendant has taken the plea of Sections 111(g), 114 and 116 of the 1882 Act in its defence the plaintiff does not seek eviction of the defendant u/s 111(g) or Section 114 of the 1882 Act and Section 116 of the 1882 Act also does not aid the defendant. Sections 111(g) and 114 of the 1882 Act are of no assistance to the defendant as the case is not on the ground of forfeiture of rent or Section 111(g). Even if it is assumed that the defendant is continuing to be in possession with the consent of the plaintiff on a month to month basis as a monthly tenant a notice u/s 106 of the 1882 Act can be issued on such monthly tenant. Therefore no triable issue has been raised by the defendant.

10. Accordingly a decree for eviction is passed against the defendant but as arrear rent has been paid by it and received by the plaintiff pursuant to orders of Court, the said decree will come into operation on and from 1st May, 2014, as the lease provided for only two renewals and no third renewal has been contemplated by the lease agreement. The defendant on its own showing has also accepted that it is to continue in possession till April, 2014. In case the defendant continues to be in possession of the said premises beyond April, 2014 will entitle the plaintiff to mesne profit and for such purposes the

plaintiff will be entitled to seek necessary orders in respect thereof.

11. There is no doubt with the principle laid down in [Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation](#), is not applicable and is distinguishable on facts while (2009) 4 CHN 192 is distinguishable on facts as therein an unregistered lease was set-up as a shield. In the instant case also the lease agreement has been set-up as a shield to defend possession but it has been admitted that the possession of the defendant under the lease is till April, 2014. Therefore the said decision will have no application. In view of the aforesaid this application is disposed off. Let the decree be drawn up expeditiously.

Later:

Stay prayed for is considered and rejected.