

(2005) 11 DEL CK 0138

Delhi High Court

Case No: Regular First Appeal 699 of 2005

Union Bank of India

APPELLANT

Vs

Sushila Goela and Others

RESPONDENT

Date of Decision: Nov. 7, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 6
- Transfer of Property Act, 1882 - Section 106, 111, 116

Citation: (2006) 2 CivCC 153 : (2005) 125 DLT 161 : (2005) 85 DRJ 318

Hon'ble Judges: Markandeya Katju, C.J; Madan B. Lokur, J

Bench: Division Bench

Advocate: Ravinder Sethi and Aditya Madan, for the Appellant; A.S. Chandhiok Sanjeev Sindhvani and Swaty, for the Respondent

Final Decision: Dismissed

Judgement

Markandeya Katju, C.J.

This appeal has been filed against the judgment of the Additional District Judge Delhi in Suit No. 560/04/01.

2. Heard learned counsel for the parties and perused the record.

3. The plaintiff/respondent filed a suit for ejectment, recovery of Rs. 58000/- and damages of Rs. 29,000/- per day w.e.f. 1.7.2001 in respect of premises No. 625-632, Ward VI, Chandni Chowk, Delhi against the defendant on 2.7.2001.

4. The plaintiff/respondent are owners of the suit premises. They inducted the defendant bank as a tenant of the said premises in an area of 5528 sq. ft.

5. The lease deed executed on 10.9.1990 between the Lessors and the appellant bank (lessees) stated that the lease is for 10 years commencing from 1.7.1986 i.e. ending on 30.6.1996. There was a clause in the lease deed which stated that the

lessee shall have the right to renew the lease of the premises for another period of five years after 30.6.1996 on the same terms and conditions except increase of rent by 20%. The initial rate of rent was Rs. 47520/- per month. The tenancy of the appellant bank was to expire on 30.6.1996, but the defendant bank (the appellant) exercised its option of renewal beyond 30.6.1996 for five years vide letter dated 14.6.1996.

6. The plaintiff/respondent had by letters dated 6.10.2000 and 25.1.2001 informed the defendant bank about the expiry of the lease and called upon the bank to hand over peaceful and vacant possession of the suit property on 30.6.2001.

7. The defendant filed a written statement in the suit stating that the lease was for 10 years from 1.7.1986 which expired on 30.6.1996. Thereafter no registered lease deed was executed and the tenancy became a monthly tenancy. The defendant took the plea that notices dated 6.10.2000 and 25.1.2001 were never served upon it. They further stated that these notices did not conform to Section 106 Transfer of Property Act.

8. The plaintiff in their replication stated that the extended terms of the lease expired on 30.6.1996 and no further lease deed was executed. However, by letter dated 14.6.1996 the bank opted for renewal of the lease for another five years, as per the lease deed. It was further stated that after the letters dated 6.10.2000 and 25.1.2001 another letter dated 31.5.2001 was addressed to the defendant bank categorically stating that the tenancy was to expire at the end of June 2001 and the bank was called upon to hand over possession of the premises on the expiry of 30.6.2001. Yet another letter dated 20.6.2001 was addressed to the bank again stating that the tenancy was coming to an end on 30.6.2001 and pointing out that thereafter remittance of any rent would be on account of compensation for overstay. By letter dated 20.6.2001 the defendant acknowledged the receipt of letters dated 31.5.2001 and 20.6.2001 but insisted that it was a lawful tenancy and refused to vacate the premises even after 30.6.2001.

9. The plaintiff filed documents in support of the case, but the defendant did not file any documents. The defendant during admission/denial admitted the letters dated 31.5.2001 and 20.6.2001 of the plaintiff which were marked as Exhibit P5 and P6. The defendant also admitted its own reply dated 27.6.2001 which was marked as Exhibit P7.

10. Issues were framed and the case was fixed for evidence. The plaintiff filed an application under Order 12 Rule 6 CPC which was contested by the defendant but the court vide judgment and order dated 25.7.2005 passed a decree in favor of the plaintiff.

11. Learned counsel for the appellant submitted that the case does not fall within the ambit of Order 12 Rule 6 CPC. However the trial court referred to the provisions of Order 12 Rule 6 CPC and has also referred to the judgment of the Supreme Court

in [Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Others,](#) . A Division Bench of this Court in [Rajiv Srivastava Vs. Sanjiv Tuli and Another,](#) while dealing with the suit for possession has relied on the aforesaid judgment of the Supreme Court in Uttam Singh's case (supra) and has held that the expression "otherwise" allows the court to pass judgment on the basis of the statement made by the parties not only in the pleadings but also de hors the pleadings i.e. either in any document or even in the statement in the court. Admittedly in the present case the defendant during admission/denial of documents admitted the documents in question. In our opinion, Therefore Order 12 Rule 6 CPC does apply in this case. At any event, the defendant has not disputed that notice dated 31.5.2001 was received by the bank on 31.5.2001 itself.

12. In our opinion even if it is assumed that there existed a contractual tenancy in favor of the bank it expired with efflux of time on 30.6.2001 and as such no notice in law was necessary. The present suit was filed on 2.7.2001 (first day of the re-opening of the court) and hence in our opinion the concept of holding over cannot apply.

13. Moreover, even assuming that the contention of the learned counsel for the appellant that notice u/s 106 was necessary giving 15 days clear notice, admittedly the notice dated 31.5.2001 was received by the defendant on 31.5.2001 itself. This notice called upon defendant to hand over the possession of the suit premises on the expiry of 30th June, 2001. This is a clear 30 days period which is more than 15 days.

14. In law the object of a notice is to inform the other party as to the intention of the person issuing the notice i.e. that he wants the premises back. In our opinion, this intention was clearly communicated to the defendant bank. This is evident from the bank's letter which stated "it (bank) does not intend to vacate the same at your whims: ". nor the bank is liable to pay any compensation." This is also obvious from the reply of the bank dated 27.6.2001 Exhibit P7 that the defendant clearly understood that the landlord wanted it to vacate the premises and hand over peaceful vacant possession on the expiry of 30th June, 2001. Thus the intention was clearly conveyed by the notice. It is settled position of law that notice u/s 106 Transfer of Property Act is not to be scrutinized by hair splitting precision. It is not a pleading but a mere communication of the intention to the recipient.

15. A Division Bench of this court in [Capital Boot House and Others Vs. Intercraft Limited,](#) while dealing with a similar notice held that the idea of a notice is only to communicate the intention of the owner and the object of the notice is to give sufficient time to vacate. Such notice is to be liberally construed. The court further held that the real point in such cases was that the person on whom the notice is served should understand that his tenancy has been terminated and he should vacate at the end of the period of tenancy.

16. Similarly in [V. Kamalaksha Pai Vs. Keshava Bhatta](#), it was held that as long as the notice does not mislead it is valid in law.

17. Moreover in this appeal the appellant's contention is that it was a tenant holding over within the meaning of Section 116 of Transfer of Property Act. No such plea was ever taken before the trial court and it was not even pleaded in the written statement. The only pleas in the written statement are that the tenancy was never terminated and that the notices dated 6.10.2001 and 25.6.2001 was not received and that the plaintiff continued to accept rent without objection and hence the notice was waived.

18. The defendant bank vide letter dated 14.6.1996 had exercised its option of renewal beyond 30.6.1996 for five years and had started to pay enhanced rent. Hence in our opinion Section 116 of the Transfer of Property Act which provides for holding over does not apply at all. The lease continued till 30.6.2001 and the suit was filed immediately thereafter on 2.7.2001. Hence in our opinion there is no question of holding over.

19. Learned counsel for the appellant has relied on a decision of the Supreme Court in [Satish Chand Makhan and Others Vs. Govardhan Das Byas and Others](#), . In our opinion that decision is clearly distinguishable.

20. A perusal of the facts of that case shows that in that case the lease was executed for five years from 8.1.1965 and on the expiry of that period the parties entered into an agreement to renew monthly lease for a further period of nine years w.e.f. 1.6.1971. The plaintiffs in that case served a notice dated 1.2.1976 upon the defendant determining the tenancy on the ground of forfeiture u/s 111(g) of the Act complaining of the breach of the terms of the lease, and on 27.3.1976 the plaintiff filed a suit for ejectment and mesne profits. The defendant filed a reply that they were tenant holding over from month to month u/s 116 of the Transfer of Property Act and since there had been no determination of the lease by service of a notice u/s 106 of the Transfer of Property Act , the suit as framed was not maintainable.

21. A perusal of the facts of that case show that the facts were very different from the present case. In the present case the lease was initially from 1986 to 30.6.1996 and there was a provision for renewal for five years which was exercised by the tenant. Hence the lease expired on 30.6.2001. The suit was filed on 2.7.2001. Hence there is no question of holding over in the present case and the decision in Satish Chand Makhan (supra) has no application to the facts of the present case.

22. There is no force in this appeal and it is accordingly dismissed.