

Radhakrishnan Temple Trust vs Hindco Rotatron Pvt. Ltd. And Ors. on 1 March, 1999

Equivalent citations: 78(1999)DLT761

Author: M.S.A. Siddiqui

Bench: M.S.A. Siddiqui

JUDGMENT

M.S.A. Siddiqui, J.

1. By this order I propose to dispose of the application under Order 12 Rule 6, CP.C(LA.No. 1927/97) filed by the plaintiff.

2. Facts relevant and requisite for the purpose of deciding the present application lie in a narrow compass. Plaintiff filed the present suit for eviction of the defendants from the suit premises and for recovery of Rs. 1,92,000/- as mesne profits. According to the case set up by the plaintiff, the defendant No. 1 took the suit premises on rent for a fixed period of 3 years with a covenant of two renewals of 3 years each, with effect from 22.1.1985 vide registered lease deed dated 22.1.1985. Thereafter, the defendant No. 1 inducted the defendant No. 2 in the suit premises as a sub-tenant for a fixed period of 5 years. This contract of sub-tenancy expired on 3.11.1995 by efflux of time. The contract of tenancy between the plaintiff and the defendant No. 1 also expired on 21.1.1994 by efflux of time. By the letter dated 7.3.1994 the plaintiff asked the defendant No. 1 to vacate the suit premises as the contract of tenancy came to an end under the indenture of lease dated 22.1.1985 but the defendants did not vacate the suit premises.

3. After service of summons, the defendant No. 1 filed an application under Order 7, Rule 11, C.P.C. (IA No. 6311/96) for rejection of the plaint on the ground that the suit is barred under Section 50 of the Delhi Rent Control Act. It is this application (IA.No. 6311/96), which gave rise to the present application under Order 12, Rule 6, C.P.C.

4. At the outset, I must make it clear that the rule embodied under Order 12, Rule 6, C.P.C. is wide enough to afford relief not only in case of admissions made in the pleadings but also in the case of admissions de hors the pleadings. It is also well settled that an admission in the written statement should be taken as a whole and it is not permissible to rel (sic) a part of the admission ignoring the other. *Dudh Nath Pandey v. Suresh Chandra Bhattasali*, . It is undisputed that on 22.1.1995, the suit premises were let out to the defendant No. 1 for a term of 3 years with a covenant for renewal for two

terms of three years each vide registered lease deed dated 22.1.1985. It is also undisputed that by the indenture of lease dated 4.11.1985, the defendant No. 1 had sub-let the suit premises to the defendant No. 2 for a fixed period of 5 years with a covenant of one renewal of 5 years.

5. It has to be borne in mind that lease of immovable property represents a contract between the lessor and lessee. If the contract of tenancy is to be put to an end it has to be determined by one of the modes prescribed by Section 111 of the Transfer of Property Act (hereinafter called 'the Act'). If the lease is a lease for a definite term, it expires by efflux of time by reason of Section 111(a) of the Act. There is, therefore, no question of giving a notice to quit under Section 106 of the Act to such a lessee who continued in possession after the determination of lease, i.e., after the contract came to an end under the indenture of lease. If the contract of tenancy once came to an end, there is no question of terminating the contract again by a fresh notice under Section 106 of the Act. It is significant to mention that the tenor of the plaint shows that the plaintiff brought the present suit for ejectment on the ground that the contract of lease dated 22.1.1985 had expired by efflux of time. Surprisingly, learned Counsel for the plaintiff has abandoned the aforesaid plea during the course of arguments. On the contrary, he has attempted to set up a case of termination of tenancy by the notice to quit dated 7.3.1994. Plaintiff has nowhere pleaded in the alternative that he had sent a notice dated 7.3.1994 to the defendant No. 1 determining the tenancy as required by Section 106 of the Act.

6. Assuming for the sake of arguments that the letter dated 7.3.1994 can be treated as a notice under Section 106 of the Act, the question which arises for determination is whether the notice was duly served on the defendant No. 1 and if so, whether it is in conformity with the requirements of Section 106 of the Act. In the written statement, the defendant No. 1 has denied service of the said notice. In this view of the matter, it would not be appropriate at this stage of the suit to comment on the validity of the said notice.

7. Learned Counsel for the plaintiff contended that the letter dated 7.3.1994 was sent to the defendant No. 1 by registered post and the A.D. card bears the signature of the defendant No. 1. According to the learned Counsel, since the defendant No. 1 has not denied signature on the said A.D. card, receipt of the letter dated 7.3.1994 has therefore to be deemed to have been admitted by the defendant No. 1. Strong reliance was placed on the decision rendered by this Court in *Surjit Sachdev v. Kazakhstan Investment Services Pvt. Ltd.*, 1997 (11) A.D. 518 in support of the said contention. As noticed earlier, the defendant No. 1 has denied service of the letter dated 7.3.1994 and that being so the doctrine of constructive admission cannot be pressed into service to record a finding in favour of the plaintiff regarding service of the said letter on the defendant No. 1. Consequently, the plaintiff is not entitled to a judgment on admissions.

8. For the foregoing reasons, the application under Order 12, Rule 6, C.P.C. filed by the plaintiff is dismissed.