

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6142-6143 OF 2009
(Arising out of SLP(C) Nos. 1591-1592/2008)

M/s. Commercial Auto Sales (P) Ltd. ...Appellant

Versus

M/s. Auto Sales (Properties) ...Respondent

JUDGEMENT

R.M. Lodha, J.

Leave granted.

2. These two appeals by special leave are directed against the judgment and order dated December 10, 2007 passed by the High Court of Judicature at Allahabad whereby it dismissed revision petition of the present appellant preferred under Section 25 of the Provincial Small Causes Courts Act, 1887 and affirmed the judgment and decree for eviction dated February 5, 2003.

3. M/s. Auto Sales (Properties) through Smt. Manju Gupta – respondent herein filed a suit for eviction and recovery

of arrears of rent against M/s. Commercial Auto Sales (P) Ltd., through its Director Brij Mohan Gupta - appellant in the Court of Small Causes, Allahabad with regard to portion of premises on the ground floor of building at 18, Kanpur Road, Allahabad. The respondent averred in the plaint that the subject premises were under the tenancy of the appellant for rent of Rs.11,000/- per month; that tenancy commenced from the first day of every English calendar month and ended on the last day of each month; that vide notice dated March 14, 1997 the balance rent was demanded and tenancy of the appellant was terminated and despite notice of demand and termination of tenancy, the appellant neither paid the rent nor vacated the premises necessitating filing of the suit.

4. The appellant traversed the plaint and denied the relationship of landlord and tenant between the parties. The appellant set up a specific case that the subject premises were not let out to him but in the family settlement dated August 23, 1993 these premises came to the share of the husband of the respondent (Smt. Manju Gupta) but were given to the appellant (Brij Mohan Gupta) to carry on business of M/s. Commercial

Auto Sales (P) Ltd. and the appellant was to pay Rs.10,000/- per month by way of compensation for use and occupation of the premises for carrying on business of M/s. Commercial Auto Sales (P) Ltd. although compensation of Rs.10,000/- was designated as rent with increase every three years at the rate of 10%.

5. The Small Causes Court (ADJ-II), Allahabad, after recording evidence and hearing the parties, decreed the suit for eviction and arrears of rent on February, 2003. The Small Causes Court considered the evidence and the family settlement thus :

“.....I perused the statement of this witness thoroughly. A Memorandum of Understanding between the parties regarding the property in dispute (Paper No. 68Ga Exhibit-1) has been filed by the defendant in the court. This settlement deed is proved by DW-1 Sanskar Gupta. I perused the statement of DW-1 Sanskar Gupta with respect to settlement deed. This witness for the defendant said in his statement that I am working at the post of Director in Commercial Auto Sales Pvt. Ltd. My mother was partner in M/s. Auto Sales, My mother and father and I were partners in Auto Sales. These, Commercial Auto Sales and M/s. Auto Sales, both are our family firms. The business of these both the firms is being carried on at 18 Kanpur Road. After it a family settlement amongst us was arrived on 23.8.1993. This deed is paper no. 60Ga/1 to 60Ga/7. There are signatures of my father B.M. Gupta, Smt. Madhu Gupta, Sri Anil Gupta, Smt. Manju Gupta and Sanskar Gupta on this deed, Smt. Madhu Gupta and B.M. Gupta are my mother and father. Sri Anil Gupta and Smt. Manju Gupta are my chacha chachi (Uncle and Auntie). This witness in examination in chief also said that the property was given to Anil Gupta by virtue of this settlement

and the business of Commercial Auto Sales was given to Shri Brij Mohan Gupta the business of Auto Sales was given to Anil Gupta. This witness also said in his statement that we are doing business in the aforesaid premises by virtue of the family settlement. No tenancy was created between me and Anil Gupta. We are paying Rs.10,000/- monthly as compensation. It was settled in the family settlement that there will be an enhancement of 10% after three years on this amount of ten thousand. After three years I enhanced 10% on the amount of compensation. Two notices were given to me on behalf of Auto Sales. No rent was due on me at the time of aforesaid notices. This witness has admitted on page no. 13 of his statement that there is a provision according to the terms of settlement for enhancement of rent of 10% after expiry of each three years period. The rent was enhanced by 10% from August 1996 on the basis of this settlement. No enhancement of 10% was done in the year 1999. This witness in his cross-examination at page 14 has admitted that it is true that I am depositing Rs.11,000/- less in rent from August 1999. The plaintiff gave notice for arrears of rent before filing of the suit. This notice was received by me. There was no rent due on me therefore I did not deposit. I thoroughly examined the statements of aforesaid both the witnesses. From these witnesses it is clearly proved that a family settlement was written between both the parties on 23/8/1993. On the basis of which the premises in dispute was let out to the defendant Commercial Auto Sales on rent at the rate of Rs.10,000/- per month.....”

6. Before the High Court, in the revision application preferred by the present appellant under Section 25 of the Provincial Small Causes Courts Act, 1887 against the judgment and decree for eviction and the arrears of rent, it was urged that there was no relationship of landlord and tenant between the parties and that the appellant was in occupation of the subject premises pursuant to the family settlement. The learned single

Judge of the High Court, however, was not persuaded by the contention of the appellant and held that there was no illegality in the judgment of the trial court. He held that there was relationship of landlord and tenant between the parties and consequently dismissed the revision application on December 10, 2007.

7. Mr. Altaf Ahmed, learned senior counsel for the appellant took us through the various clauses of family settlement and submitted that the intention of the parties was not to create a relationship of landlord and tenant. He would submit that even if it be assumed that the said settlement created lease, such lease was not determinable. He would also urge that Small Causes Court had no jurisdiction and competence to try the suit.

8. Mr. Jaideep Gupta, learned senior counsel for the respondent stoutly defended the judgment of the High Court.

9. That there was a family settlement reduced into writing on August 23, 1993 between Brij Mohan Gupta, Smt. Madhu Gupta and Sanskar Gupta as parties of the 'first part' and Anil Gupta and Smt. Manju Gupta as parties of the 'second

part' is not in dispute. Some of the clauses of the said family settlement, which are relevant, read thus :-

“4. It is specifically agreed that the management and ownership of the property situated at 18-P.D. Tandon Road, Allahabad as was earlier jointly owned by Shri Brij Mohan Gupta and Anil Gupta shall exclusively vest in the Parties of the SECOND PART free from all charges and encumbrances and PARTIES of the FIRST PART or any other Persons claiming for or under trust shall not have any kind of right, title or interest in the same.

5. M/s. Commercial Auto Sales (P) Ltd. which will be taken over by Shri Brij Mohan Gupta shall have an option to carry on its business activities from the show room which is presently in its possession as per the site plan enclose herewith, on his agreeing to pay a monthly rent of Rs.10,000/- with a provision for increase at the rate of 10% after the expiry of every period of 3 years and for the purpose of calculating increase of 10% the rent paid for the immediately preceding block of 3 years will be relevant. For this purpose a forma agreement, if so desired by the PARTIES hereunto, shall be drawn up and executed.

6. M/s. Commercial Auto Sales (P) Ltd. shall withdraw its business from the shop situated at 37, Sheo Charan Lal Road, Allahabad and the possession of the same together with all rights therein shall belong to and vest in exclusively in the Parties of the SECOND PART.

7. The account of the parties hereto and the concerns in which they shall have exclusive rights after implementation of the MEMORANDUM OF UNDERSTANDING shall be settled on the basis of reconciliation statement as would be prepared by M/s. S.K. Garg & Co., Chartered Accountants, Allahabad, who are hereby authorized specifically for this purpose and whose finding shall be conclusive and binding on the PARTIES hereto.

8. The understanding arrive at amongst the PARTIES of the FIRST PART and SECOND PART on its further implementation shall be irrevocable and binding on them and none of them and/or any other persons claiming for or under trust shall be entitled to re-open the same.”

10. When we turn to the judgment of the High Court, in the first place, we find that the High Court proceeded on absolutely erroneous premise that there is no specific denial of relationship of landlord and tenant between the parties in the written statement. The learned single Judge does not seem to have fully adverted to the written statement. In the written statement, it is stated, :

“2.....The accommodations in dispute was not let out to the defendant but in the family settlement this premises was allotted in the share of Sri Anil Gupta and the business of the defendant went into the share of Sri Brij Mohan Gupta, Smt. Madhu Gupta and Sri Sanskar Gupta and at the time of family settlement it was settled that the business of defendant shall be carried out in this premises and in lieu of the use of the premises Sri B.M. Gupta will pay Rs.10,000/- (Rs. Ten Thousands per month) rent.....

5.....It is hereby also asserted that in view of the family settlement dated 18.12.1993 this rent was fixed by way of compensation for the use of premises by the defendant but it was designated as a rent. The alleged notice does not terminate the alleged tenancy of the defendant. Moreover the tenancy of the defendant cannot be terminated and it will be treated as a permanent tenancy.”

Again in para 6 of the written statement it has been stated thus;

“6. That the premises in question was already in possession and occupation of M/s. Commercial Auto Sales and its business was being carried on there in which Sri Anil Gupta the husband of Smt. Manju Gupta was also a partner and a director by family settlement. When this business came in to the share of Sri Brij Mohan Gupta, Smt. Madhu

Gupta and Sri Sanskar Gupta and premises went to the share of the plaintiff it was thought in the settlement that the business should be carried in the same premises and in lieu of the use and occupation the defendant is to pay Rs.10,000/- per month as rent with increase of 10% after every year. It is absolutely baseless to allege that it was let out on rent to the defendant but in fact it was given in the family settlement to the defendant to carry on business.”

How could on the face of the averments in the written statement, as aforequoted, it be said that there is no specific denial of relationship of landlord and tenant between the parties? It seems that the learned single Judge did not advert to the written statement fully and properly.

11. Secondly, and very importantly, the High Court failed to find out what was the real intention of the parties in the family settlement with regard to retention of subject premises by Brij Mohan Gupta for carrying on business of M/s. Commercial Auto Sales (P) Ltd. It is well settled that the intention of the parties to an instrument must be gathered from the terms thereof in the light of surrounding circumstances. In *Union of India vs. Millenium Mumbai Broadcast (P) Ltd.*¹, this Court said that a document must be construed having regard to the terms and conditions as well as nature thereof.

¹ (2006) 10 SCC 510

12. The true nature of relationship between the parties concerning the occupation of subject premises by the appellant was required to be ascertained from the family arrangement which the High Court failed to do and thereby committed grave error in not considering the matter in right perspective. As a matter of fact, a material clause like clause 8 of the family settlement has been overlooked altogether affecting decision in the matter.

13. We do not intend to deal with the matter elaborately as, in our considered judgment, the matter needs to be reconsidered by the High Court, inter alia, on the aspects as to whether under the family settlement dated August 23, 1993, a relationship of lessor or lessee (or for that matter landlord and tenant) came into existence between the parties and, if answer to the said question is in the affirmative, whether such lease is determinable.

14. In what we have discussed above, appeals are allowed to the aforesaid extent and judgment of the High Court dated December 10, 2007 is set aside. Civil Revision No. 275 of 2003 is restored to the file of the High Court for fresh

decision as indicated above and in accordance with law. We request the High Court to expedite the hearing of revision petition and dispose of the same as expeditiously as may be possible and preferably within four months. Parties will bear their own costs.

.....J
(Tarun Chatterjee)

.....J
(R. M. Lodha)

New Delhi
September 9, 2009.