* **IN THE HIGH COURT OF DELHI**

Judgment reserved on : October 01, 2008

% Judgment delivered on : October 20, 2008

+ RFA 170/2007

STATE BANK OF INDIA ..... Appellant

Through: Mr.Sanjiv Kakra, Advocate

VERSUS

AMAN SURI & ORS. ..... Respondents

Through: Mr.Harish Malhotra, Sr. Advocate
with Mr. Tanuj Khurana, Advocate

+ RFA 171/2007

STATE BANK OF INDIA ..... Appellant

Through: Mr.Sanjiv Kakra, Advocate

VERSUS

JOGINDER PAUL SURI & SONS HUF ..... Respondent

Through: Mr.Harish Malhotra, Sr. Advocate
with Mr. Tanuj Khurana, Advocate

RFA 173/2007

STATE BANK OF INDIA ..... Appellant

Through: Mr.Sanjiv Kakra, Advocate

VERSUS

JOGINDER PAUL SURI & ORS. ..... Respondents

Through: Mr.Harish Malhotra, Sr. Advocate
with Mr. Tanuj Khurana, Advocate

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog
Hon'ble Mr.Justice J.R. Midha

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. Vide common judgment and decree dated 23.1.2007, three suits filed by the respondents against the appellant in respect of the claim for damages/mesne profits have been decreed awarding the plaintiffs of the respective suits damages @ Rs.45/- per sq. ft. per month for the period 1.4.2001 to 30.4.2003 and @ Rs.80/- per sq. ft. per month for the period 1.5.2003 till 30.4.2004, i.e. the date when the appellant vacated the tenanted premises.

2. Vide three separate lease deeds dated 21.9.1989 the three tenanted premises being flat No.4, 4A and 4B on the 9th floor of a building popularly known as Vijaya building 17, Barakhamba Road, New Delhi was leased to the appellant on the terms contained in the three lease deeds proved in the three suits as Ex.PW-1/1. The three lease deeds were renewed twice, vide Ex.PW-1/2 dated 30.5.1995 and Ex.PW-1/3 dated 27.8.1999.

3. Under the last extended lease deed Ex.PW-1/3 proved in all the three suits, the tenancy was extended up to 31.3.2001. Needless to state the leases being duly registered, with efflux of time, tenancy having expired on 31.3.2001, the

appellant became a tenant at sufferance liable for being ejected after the mid-night of 31.3.2001.

4. Parties were not at variance with each other that w.e.f. 1.4.2001 the possession of the appellant qua the three flats being unauthorized, the appellant was liable to pay use and occupation charges as per prevailing market rent till possession was surrendered on 30.4.2004. Learned Trial Judge has awarded mesne profits as aforenoted from 1.4.2001 to 30.4.2003 in view of Ex.PW-1/6 a letter written by the appellant to the landlords as under:-

> "M/s.Sh.Joginder Pal Suri, Aman Suri
> & Others
> 202, Akashdeep Building,
> 26, Barakhamba Road, New Delhi-110001
>
> Dear Sir/Madam,
>
> Your Flat No.4, 4-A & 4-B on 9th Floor measuring 1125, 1025 and 1098 sq.ft.
>
> This has reference to the meeting, we had with some of your representatives in the Chamber of our General Manager (Commercial) on the 6th December, 2001. As discussed during the course of meeting and in various other for a Bank would be pleased to renew lease of your captioned flat in Vijaya Building, Barakhamba Road, New Delhi on Bank's usual terms and conditions some of which are enumerated below-
>
> a) Lease would be renewed for a period of 11 years 11 months, on more or less same usual terms as contained in the existing lease deed.
>
> b) Initially lease would be for a period of 3 years/5 years or any period mutually agreed upon with an escalation clause of 15% every three years.
>
> c) Lease would be registered and cost of stamp

duty would be shared on 50:50 basis.

d) The lease will bear Bank's usual clause with option of vacating the premises after giving 3 months notice.

Rentals, as discussed during various meetings and in the meeting referred to above would be as follows:

1) Rs.45/- per sq.ft. for upper floors and Rs.85/- per sq.ft. for ground floor on as-is-where-is basis of the premises w.e.f. 1.4.2001.

Or

2) Rs.50/- per sq.ft. for upper floors and Rs.90/- per sq.ft. for ground floor if the premises are made available with new air-conditioning plant on central A/c basis and/or on package unit basis w.e.f. from the date plant is provided.

3) Rs.70/- per sq.ft. for upper floors only from the date the premises are made available duly renovated, on international standards, inter alia bearing amenities like new flooring, cabins, cabling, ducting, false ceiling, wiring, carpeting, KTS with world class furnitures i.e. chairs, tables, sofas, visitor chairs, storage, new A/C plant, 100% power back-up etc. as per Bank's specifications and under Bank's supervision but at your cost and to be done up at your end.

The above terms are illustrative and not exhaustive. Please confirm immediately but not later than 7 days from date of this letter, which of the above options is acceptable to you (the same option should be accepted by all the landlords) and that Bank's usual terms and conditions and the ones stated above are acceptable to you in order that lease could be renewed.

Yours faithfully,

Sd/-

DY. GENERAL MANAGER

5. The learned Trial Judge has also referred to and relied

upon Ex.PW-1/11 and Ex.PW-1/12 being registered lease deeds dated 18.10.2001 and 16.4.2005 respectively pertaining to a flat in a building at Barakhamba Road wherein a ground floor flat was let out at a monthly rent of Rs.194/- per sq. ft. and another flat on the fourth floor at a building on plot No.25, Barakhamba Road which was let out w.e.f. 16.4.2005 at a monthly rent of Rs.103/- per sq. ft.

6. The reasoning of the learned Trial Judge is that Ex.PW-1/6 shows the fair rental value assessed by the appellant itself. Since appellant had offered to pay Rs.45/- per sq. ft. per month for the three flats in question the conclusion drawn is that w.e.f. 1.4.2001 the fair rental could not be less than Rs.45/- per sq. ft.

7. Rs.80/- per sq. ft. per month has been awarded from 1.5.2003 till 30.4.2004 holding that the Court could take judicial notice of rents increasing as held by this Court in the decision reported as *Sakshi Sachdev (since deceased) through LRs vs. Concord*, **(1) 1994 RCR 101**. The learned Trial Judge has additionally referred to Ex.PW-1/11 and Ex.PW-1/12 to draw sustenance for the said finding i.e. rents increasing in Delhi; holding that the said two lease deeds show that rentals at Barakhamba Road had increased substantially.

8. Learned counsel for the appellant at the hearing held on 1.10.2008 urged that learned Trial Judge erred in not appreciating that the offer made by the appellant as contained

in Ex.PW-1/6 was not accepted by the landlords and thus the appellant was not bound by the same. Learned counsel further urged that the learned Trial Judge ignored Ex.DW-2/3 to Ex.DW-2/7, Ex.DW-2/12 to Ex.DW-2/32. It was urged that said documents were the lease deeds of flats in Vijaya building i.e. the building in which the three flats in question were situated and that the rentals shown therein as of the year 2002 to the year 2005 ranged between Rs.30/- per sq. ft. per month to Rs.32/- per sq. ft. per month. Contention of learned counsel for the appellant was that flats in the same building would be a better guide to determine the rent as said flats are more likely to be comparable than the flats in other buildings.

9. Learned counsel for the respondent countered the submissions made by learned counsel for the appellant by referring to the lease deeds relied upon by the appellant and urged that the said lease deeds fixed the rent excluding maintenance of the central air conditioning units, for which, learned counsel urged, that the tenant of the said lease had entered into separate agreements with the landlords for maintenance of the central air conditioning. Whereas in the instant case i.e. the leases between the appellant and the respondents, the landlord(s) were obliged to maintain the central air conditioning units without any extra charges. Further, it was pointed out that in the lease deeds between the parties, the landlords had provided dedicated car parking

space and had also ensured that two lifts in the building exclusively cater from the ground floor to the floor in question where the flats were situated, meaning thereby the qualitative benefit under the leases was brought into aid to urge that the appellant enjoyed benefit of better facilities for use of the flats and hence could not compare, for purpose of ascertainment of rent, the leases pertaining to other flats where similar benefits were not given to the tenant by the landlord.

10. It may be true that the landlords did not accept the rent offered by the appellant vide Ex.PW-1/6 but that does not mean that the said document has no evidentiary value.

11. The circumstances under which Ex.PW-1/6 was written is relevant and material. The duration of the extended lease had expired on 31.3.2001. The landlords had written that possession be returned. The parties were discussing the terms on which the leases could be extended and in said context the appellant made the offer to pay Rs.45/- per sq. ft. as a term for extending the lease by a further period of three years. The landlords responded on 7.1.2002 vide Ex.PW-1/7 and stated that they were agreeable to extend the lease for a period of three years provided the rent was paid @ Rs.50/- per sq. ft. per month. The negotiations finally broke down.

12. A reasonable presumption can be drawn that the appellant had conducted inquiries as to what would be the fair market rent and instructed by the said knowledge made the

offer in question. Thus, we find no infirmity conducted by the learned Trial Judge who has concluded that Ex.PW-1/6 is good evidence of fair market rents prevailing as of the year 2001 in Barakhamba Road. Thus mesne profit awarded @ Rs.45/- per sq. ft. per month upto 31.3.2003 is justified.

13. It is settled law that when a fair rent of a property has to be determined the same has to be in relation to the rents realized of similar and comparable properties which necessarily would include the qualitative benefits conferred upon a tenant by the landlord.

14. It is not in dispute that the three flats which were let out to the appellant had central air conditioning and that under the lease granted to the appellant the landlords were to maintain the air conditioning units without charging extra money and apart from the three flats being let out, without any extra charges, free parking space was made available in the building and two dedicated lifts were also made available.

15. The leases relied upon by the appellant though relate to the building Vijaya show that the landlords of the said flats were not obliged to maintain central air conditioning free of cost and had not made available any free parking space or dedicated lifts. Thus, the leases relied upon by the appellants gave less qualitative benefits to the lessee and hence would not be reflective of the fair rent of the three flats in question where qualitative add on benefits were given to the appellant.

16. Further, it has to be noted that the 32 leases relied upon by the appellant relate to flats taken on bulk by a single tenant namely, Reliance Infocom Ltd. It is settled law that transactions in bulk quantities result in price concessions.

17. As noted above, the appellant offered to pay rent @ Rs.45/- per sq. ft. per month w.e.f. 1.4.2001. The respondents wanted Rs.50/- per sq. ft. per month. Thus we have intrinsic evidence that for the three flats, a fair rent as of 1.4.2001 was between Rs.45/- to Rs.50/- per sq. ft. per month. The lease deed Ex.PW-1/11 is dated 18.10.2001. The rent per month per sq. ft. is Rs.194/-. Obviously said flat had features distinct vis-à-vis the three flats in question. Thus rent reflected in Ex.PW-1/11 cannot afford a good measure to determine the rent for the flats. Ex.PW-1/12 is again a solitary instance.

18. We prefer to follow the conventional route. Rents had been increasing by 10% to 15% each year. If Rs.45/- per sq. ft. per month is a fair rent as of 1.4.2001, the same could not be more than 30% after two years. Thus by May 2003 the best what could fetch would be Rs.58.50 per sq. ft. per month. We fix the same as mesne profits w.e.f. 1.5.2003 till 30.4.2004.

19. The appeals are partly allowed. Impugned decrees are modified as per para 18 above. No cost.

20. We note that the appellant has obtained a stay of the execution of the decree on depositing the decretal amount

in this Court.

21. Since the appeals are disposed of we direct the learned Registrar General of this Court to release the amounts deposited by the appellants to the respective respondents in the three appeals as per the present judgment. Balance, if any, be returned to the appellant.

22. We note that in RFA No.170/2007 and RFA No.173/2007, there are three respondents. The amount deposited in said appeals shall be disbursed 1/3rd each to the three respondents in both the cases.

23. We note that in RFA No.171/2007 there is only one respondent and hence we direct that the entire amount deposited in said appeal shall be paid to the said respondent.

PRADEEP NANDRAJOG, J.

J.R. MIDHA, J.

October 20, 2008
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