

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on: 18.3.2010*
Judgment Delivered on: 23.3.2010

+ **CS(OS) No. 549/2001**

M/S PAL SYNTHETICS PVT. LTD. Plaintiff
Through: Mr.Y.R.Grover & Mr.Rajesh Luthra,
Advocates.

Versus

BANK OF MAHARASHTRA Defendant
Through: Mr.Rajesh Kumar, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. Suit property is 50% portion of ground floor of property bearing no.5/67, W.E.A., Padam Singh Road, Karol Bagh, New Delhi measuring 1105 sq. feet. Plaintiff, the landlord of the suit property had vide registered lease deed dated 01.12.1983 leased out the suit property to the defendant bank for a period of nine years and ten months. Lease was for a fixed period; monthly rent was Rs.19,899/-; after the expiry of five years the defendant started paying the increased rental of Rs.22,883.85 i.e. 15% increase in

the rent in terms of the lease deed. The lease expired by efflux of time on 30.9.1993.

2. During the pendency of this lease on 1.1.2001 vide two registered sale deeds the plaintiff had become the owner of the suit property.

3. After the expiry of lease, several negotiations orally as also in writing were held interse between the parties for renewal of the lease at the market rate of rent. No material decision was taken. On 25.2.1995 plaintiff terminated/determined the tenancy of the defendant and the called upon him to handover the vacant physical possession of the suit property to him on or before 31.3.1995. Defendant did not vacate the property. He, however, continued to pay the admitted rate of rent. Present suit was filed on 12.3.2001 for possession and mesne profit/damages. During the pendency of the suit on 25.10.2001 the suit property was vacated. All these facts are admitted; they are not in dispute.

4. On 14.8.2003 the following issues were framed:-

1. Whether the plaint has been signed, verified and filed by a duly authorized person? (OPD)
2. Whether no valid notice under Section 106 of the Transfer of Property Act was served upon the defendant? If so, to what effect ? (OPD)
3. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? (OPD)
4. Whether the plaintiff is entitled to the arrears of rent/damages as prayed? (OPP)
5. Whether the plaintiff is entitled to mesne profits? If so, at what rate and for what period? (OPP)

6. Whether the plaintiff is entitled to interest? if so, at what rate and on what amount? (OPP)

7. Relief.

5. The plaintiff in support of his case has examined one witness namely Harmanjit, PW-1, Director of the plaintiff company. The defendant in support of his case has examined two witnesses namely Anil Kumar Manikar, DW-1, Senior Manager as also Om Prakash, DW-2, Manager of the defendant company.

6. Arguments have been heard. Record has been perused. Issue-wise findings are as follows:-

7. ISSUE NO.1:

PW-1 Harmanjit has on oath deposed that he being a director of the company was authorized to sign and verify the pleadings. Board resolution dated 2.2.2001 Ex.PW-1/1 had authorized him to do so. There is nothing in the cross-examination which could dislodge this version. Issue no.1 is decided in favour of the plaintiff and against the defendant.

8. ISSUE NO.2:

Onus to discharge this issue was on the defendant. Notice dated 25.2.1995 had been served upon the defendant by the plaintiff terminating his tenancy w.e.f. 31.3.1995 asking him to handover the vacant and physical possession of the property to the plaintiff. This document has been proved as Ex.PW-1/5. Damages @ Rs.100/- per sq. feet for the unauthorized use and occupation of the premises w.e.f. 1.10.1993 had also been claimed. This was a clear and unambiguous intention of the lessor to the lessee specifically notifying that since the tenancy had expired by efflux of time, he was liable to vacate the property and handover the vacant

and physical possession of the same to the lessor on the last date of the next calendar month i.e. by 31.3.1995. The twin requirements of a notice under Section 106 of the Transfer of Property Act (hereinafter referred to as the T.P.Act):

(i) a minimum period of 15 days time for the tenant to vacate the premises;

(ii) this time should expire with the end of the tenancy month;

are fulfilled.

9. These averments in the plaint have been reiterated by PW-1 on oath in Court. Nothing contrary has been elicited in his cross-examination. Notice Ex.PW-1/5 in fact is not disputed; it is an admitted document. In the written statement, the defendant has admitted these documents and the relevant extract reads as *“the plaintiffs through their counsel, vide registered AD notice dated 25.02.1995 terminated/determind the tenancy of the Defendant-bank and called upon it to vacate and hand over the physical vacant possession of the suit property to the plaintiffs on or before 31.3.1995”*.

10. This was a valid notice under Section 106 of the T.P. Act. Issue no.2 is decided in favour of the plaintiff and against the defendant.

11. ISSUE NO.3:

The onus to discharge this issue was on the defendant. No evidence has been led on this score. Plaintiff in para no.30 of the plaint has stated that the suit has been valued for the purposes of court fee and jurisdiction for Rs.2,74,606.20 being the last paid rent/use and occupation charges for one year on which ad valorem

court fees of Rs.5,028.60 has been paid. For the recovery of damages valuation of suit has been fixed at Rs.31,54,200/- on which ad valorem court fees of Rs.33,137/- has been paid. Total court fees of Rs. 38,166/- has been paid. Further the plaintiff has undertaken to pay the additional court fee, if so, directed in terms of the mesne profits/damages if awarded at a higher rate.

12. Issue no.3 is decided in favour of the plaintiff and against the defendant.

13. ISSUES NO.4 & 5:

These issues shall be decided by a common discussion. It is not in dispute that the property has been vacated on 25.10.2001. This finds mention in the deposition of both PW-1 and DW-1. It is also not in dispute that the rate of rent first agreed between the parties in terms of the lease deed dated 1.12.1983 has been paid by the defendant to the plaintiff up to 30.9.1993. The lease has been determined by efflux of time on 30.9.1993. Thereafter admittedly no document has been executed between the parties renewing their lease. Tenancy has become month to month. The plaintiff vide Ex.PW-1/5 has validly terminated the tenancy of the defendant w.e.f. 31.3.1995. After 1.4.1995 defendant had become became an unauthorized occupant and liable to pay mesne profit/damages for his unathorised use and occupation.

14. Question is what is the amount which is payable by the defendant?

15. PW-1 on oath has placed on record a lease dated 30.9.1998 executed between the defendant bank and Gagan Sachdeva in respect of the mezzanine floor of the same property i.e. the property bearing no.5/67, Ajmal Khan Road, Karol Bagh. This

document has been proved as Ex. PW-1/11. In the mezzanine floor of the same property the rate of rent was Rs.39/- per sq. feet i.e. w.e.f. 1.10.1996 to 30.9.1999 thereafter w.e.f. 1.10.1999 to 30.9.2002 @ Rs.51/- per sq. feet. The pro rata increase in the rate of rent has also been detailed in para no.26 of the affidavit of PW-1.

16. Defendant to counter this evidence has on oath deposed that during the year 1998 to 2001 rate of rent in the locality where the suit property is situated was not more Rs.30/- to Rs.40/- sq. per feet per month. The present rate of rent is Rs.30/- to Rs.35/- per sq. feet per month. Witness has deposed in December 2003. He has further deposed that from inquiry it has been revealed that Bank of Baroda has been paying rent @ Rs.55/- per sq. feet per month in respect of ground floor, Oriental Bank of Commerce has been paying the rent @ Rs.40/- per sq. feet per month, South Indian Bank has been paying the rent @ Rs.42.50/- per sq. feet per month, Andhra Bank has been paying the rent @ Rs.21/- per sq. feet per month, Bank of Baroda (Ajmal Khan Road Branch) has been paying the rent @ Rs.17/- per sq. feet per month, Corporation Bank has been paying the rent @ Rs.45/- per sq. feet per month in respect of ground floor and the Indian Bank has been paying the rent @ Rs.36/- per sq. feet per month.

17. However, no document has been produced to substantiate these averments. In his cross-examination, DW-1 has admitted that he has no documents to show what was the prevailing rate of rent as has been deposed by him in his examination-in-chief. DW-2 has deposed that the defendant is not liable to pay any use and occupation charges as defendant has paid up to date rent up to 30.9.2001.

18. Defendant has submitted that the plaintiff has without any demur or protest admittedly accepted this rent up to 30.9.2001. This does not now entitle him for any claim of damages or mesne profit.

19. In C. Albert Morris v. K.Chandrasekaran & Ors. 2005(2) RCJ 148 (SC), the Supreme Court has held:

“ We are, therefore, of the opinion that a mere acceptance of rent by the landlord-1st respondent herein from the tenant in possession after the lease has been determined either by efflux of time or by notice to quit would not create a tenancy so as to confer the erstwhile tenant the status of a tenant or a right to be in possession.”

20. In Punjab National Bank v. Riviera Apartments Pvt. Ltd. 140(2007) DLT 649(DB), it has been held by a coordinate Bench of this Court that a acceptance of rent would not amount to a waiver of the notice under Section 113 of the T.P.Act.

21. This argument of the learned defence counsel is thus negatived.

22. Reliance has also been placed on the provisions of Section 116 of T.P.Act to advance the submission that after the expiry of the lease deed defendant has become a tenant on month to month basis. Reliance has been placed upon Burmah Shell Oil Distributing vs. Khaja Midhat Noor & Ors. AIR 1988 SC 1470. There is no doubt to this proposition. The registered lease deed has admittedly expired by efflux of time. There has been no extension of the same; a lease for a period of exceeding one year could have been extended only by a registered instrument. In the absence of such a registered instrument a lease should be deemed to be a lease from month to month. In terms of Section 107 of the T.P.Act a lease in the absence of registered instrument becomes a

monthly lease. This proposition is not disputed. However, the subsequent termination of the tenancy in terms of Ex.PW-1/5 is a valid termination and the monthly lease has been terminated by the plaintiff w.e.f. 31.3.1995 after which the defendant has become a tenant at sufferance and liable to pay charges for his unauthorized use and occupation.

23. Attention has been drawn to the inter se communications between the parties. On 06.7.1997 vide Ex.PW-1/6 defendants wrote to the plaintiff conveying to them that they have received a sanction for renewal of the lease deed of the 50% of the ground floor portion let out to them by the plaintiff. In terms of this letter the enhanced rent would be Rs.50/- per sq. feet per month which would be effective from 1.4.1997 with a revision of 25% after five years; this lease period would be 10 years commencing from 1.10.1993. On 1.8.1997 vide Ex.PW-1/7 the plaintiff making a reference to the letter Ex.PW-1/6 wrote to the defendant that the prevailing market rent is Rs.100/- per sq. feet per month and the offer of Rs.50/- per sq. feet per month is not acceptable. On 14.7.1998 the plaintiff wrote to the defendant bank informing them that since the past one year the rent is not being accepted as the same requires escalation and in spite of reminders it has not been revised. This was reiterated by the plaintiff in his letter dated 21.7.1998. In this letter the demand draft of Rs.18,306.85 encashed by the plaintiff was returned to the defendant stating that the same has been encashed due to oversight; it was reiterated that the rent is not being accepted as it has not been escalated.

24. Legal notice dated 10.2.2001 had been served upon the defendants by the plaintiff making a demand of Rs.100/- per sq. feet per month as damages w.e.f. 1.10.1993; receipt of this legal notice is not disputed. On 28.2.2001 vide Ex.P-2 the defendant had replied to the legal notice of the plaintiff. It was stated that the plea of the plaintiff to enhance the rent was only a harassment on the defendant. He denied his liability to pay enhanced rent.

25. It is not in dispute that 50% of the remaining portion of the ground floor of the suit property had also been let out to the bank by its co-owner namely Man Mohan Singh. The said Man Mohan Singh had filed a suit for possession for recovery of mesne profits. The said suit had been decreed on 29.4.2000; mesne profit/damages for use and occupation had been awarded @ Rs.90/- per sq. feet per month which had been modified in appeal to Rs.60/- per sq. feet per month with direction to the trial court to conduct inquiry. Trial court on inquiry had concluded that the rate of Rs.60/- per sq. feet per month for use and occupation was just and fair. This was for the adjoining portion of the present suit property.

26. Mesne profits have been claimed for the preceding three years i.e. three years prior to the filing of the suit which would be from 11.3.1998. This is specifically averred in the plaint. Plaintiff has staked his claim only from 11.3.1998 to 12.3.2001.

27. On record, it has been proved that the adjoining property i.e. 50% of the share which is co-owned by Man Mohan Singh had been decreed for the mesne profits/damages @ Rs.60/- per sq.feet per month w.e.f. 20.11.1997 up to 30.9.2001. Order of District Judge dated 29.4.2000 on the application under Order 20 Rule 12 of the

CPC in the said suit is on record. In the present case there is a further positive evidence to substantiate the averment of the plaintiff that rent of the adjoining property i.e. for the mezzanine floor in the same building was @ Rs.39/- per sq. feet per month from the October 1996 up to September 1999 and thereafter at Rs.51/- per sq. feet per month from October 1999 to September 2002. These are the relevant periods for which the plaintiff is entitled to make his claim. Admittedly, this rate of rent is for the mezzanine floor. Judicial notice is taken of the fact that the rent of the ground floor has to be higher in comparison to the rent being paid for the mezzanine floor. A pro rata increase in the rental of the mezzanine floor qua the ground floor has been tabulated in a chart and finds mention in para no.26 of the evidence by way of affidavit of PW-1. The rate of Rs.39/- for the mezzanine floor would pro rata increase to Rs.90.71 for the period 1.10.1996 to 30.9.1999 and for the period 1.10.1999 to 30.9.2002 corresponding rate of Rs.51/- would be enhanced to Rs.118.92 for the ground floor. This pro rate revision has not been challenged in the cross-examination of PW-1. The rental of the ground floor is by and large double the amount of the rental of the mezzanine floor. This calculation is accepted.

28. Plaintiff is thus entitled to damages/mesne profits for 18 months @ 80/- per sq. feet per month (double of Rs.39/- per sq. feet per month for the mezzanine floor) and from the period 12.9.1999 up to the date of filing of suit i.e. 12.3.2001 for the balance 18 months @ Rs.100/- per sq. feet per month (double of Rs.51/- per sq. feet per month for the mezzanine floor). Plaintiff would accordingly be entitled to damages/mesne profits for 18 months @

Rs.80/- per sq. feet per month and for the next 18 months @ Rs.100/- per sq. feet per month; this would be minus the “rental” which had already been paid by the defendant to the plaintiff i.e. up to 1.10.2001. The amount calculated for the first 18 months @ Rs.80/- per sq. feet per month would be Rs.15,91,200/- and for the next 18 months @ Rs.100/- per sq. feet per month would be Rs.19,89,000/- i.e. a total sum of Rs.35,80,200/-.

29. For the period from 1.4.2001 up to 25.10.2001 i.e. the seven months intervening period when the possession was finally handed over by the defendant to the plaintiff, plaintiff is entitled to damages/mesne profits @ Rs.100/- per month which is calculated in the sum of Rs.7,73,500/-.

30. Total amount thus due and payable is Rs.43,53,700/-. The “rental” as paid by the defendant to the plaintiff has to be deducted which is calculated Rs.9,84,005/-; balance amount due and payable to the plaintiff is Rs.33,69,695/-.

31. Issues no.4 and 5 are decided accordingly in favour of the plaintiff and against the defendant.

32. ISSUE NO.6:

Although there is no stipulated rate of interest which has been carved out and there is no document to the said effect yet DW-1 has admitted that the defendant bank is liable to pay interest. Being a commercial transaction; rate of interest @ 12% per is fair and just. Decree will carry interest @ 12% per annum which will be calculated from the date of filing of the suit till realization.

33. ISSUE NO.7: RELIEF:

Suit is decreed in the sum of Rs.33,69,695/- with interest @ 12% per annum to be paid from the date of filing of the suit till realization. Subject to the plaintiff depositing the additional court fee, decree sheet be drawn. File be consigned to record room.

(INDERMEET KAUR)
JUDGE

MARCH 23, 2010
nandan