

IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA No.761/2006

Judgment delivered on: 06.09.2010

State Bank of India Appellant
Through: Mr. Aditya Madan, Advocate

Versus

Jagdish Prasad Jain Respondent
Through: Mr. Suman Doval, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

KAILASH GAMBHIR, J. Oral:

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1. By this appeal filed under Order 41 of the Code of Civil Procedure, 1908 the appellant seeks to set aside the judgment and decree dated 11.08.2006 passed by the court of Ld. ADJ, Delhi in suit bearing No. 132/2005 wherein the suit has

been decreed in favour of the respondent for a sum of Rs.6, 79,197/- with interest @ 9% per annum from the date of filing of the suit till realization.

2. Brief facts of the case relevant for deciding the present appeal are that the respondent was allotted a plot bearing no. E-155 , Kalkaji, New Delhi on lease basis by L& DO in the year 1971 and the ground floor of the said premises was let out to the appellant by the respondent in the same year. The premises were misused at the hands of the appellant and on representation, the appellant agreed to pay the misuser charges on a 50-50 sharing basis upto December 1976 and thereafter agreed to bear the same exclusively. However, the appellant failed to deposit the same and the respondent paid the requisite amount to the L& DO. Hence a suit for recovery of a sum of Rs. 8,71,550 was filed by the respondent and which vide judgment dated 11.8.2006 was decreed in his favour for a sum of Rs. 6,79,197/- with interest @ 9% per annum from the date of filing of the suit till realization. Feeling aggrieved with the same, the appellant has preferred the present appeal.

3. Primarily two contentions have been raised by the counsel for the appellant challenging the judgment and decree dated 11.08.2006 passed by the Ld. Trial Court. The first contention of the counsel for the appellant is that the suit filed by the respondent was barred by limitation as the respondent has filed the suit for recovery of Rs.8,71,550/- beyond the prescribed period of limitation which is three years. The second contention of the counsel is that the appellant was liable to pay the regularization charges and not conversion charges in terms of clause II (d) of the lease deed.

4. Refuting the said submissions of the counsel for the appellant, counsel for the respondent states that under Article 112 of the Limitation Act, the period of limitation prescribed is 30 years so far any recovery by the Government is concerned and thus states that the suit filed by the respondent was not barred by limitation. Counsel also submits that the suit was filed by the respondent within three years from the date of deposit made by the respondent with the L & DO. On the second contention counsel for the respondent states that the

respondent has paid the misuser charges in terms of the demand raised by the L& DO. Counsel also submits that it was the liability of the appellant to pay the entire misuser charges in terms of clause II (d) of the lease deed but the said amount was not paid by the appellant. Counsel also submits that the appellant did not vacate the tenanted premises even despite the eviction order dated 4.6.1997 passed against the appellant. Counsel thus submits that the respondent was within his right to claim the said amount paid by him which was the sole liability of the appellant in terms of the lease deed.

5. I have heard learned counsel for the parties.

6. The premises in question were let out to the appellant by the respondent in the year 1971. It is an admitted fact between the parties that the premises were misused by the appellant and hence misuser charges were levied by the L& DO. A perusal of the letters dated 9.3.1981 and 19.12.1982 show that the appellant had conveyed to the respondent that it is ready and willing to pay the regularisation charges from January, 1977 onwards and whereas upto December, 1976 they

shall share with the respondent the payment of the charges on a 50-50 basis. It will be useful to reproduce the relevant portions of the abovesaid two letters here:

“Sh.J P Jain,
DRO/RI/NO.18/1106

Date 9th March 1981

**Your premises housing our Kalkaji Branch :
Payment of misuse charges.**

Please refer to your letter dated 23rd Nov. 1979.

2. In this connection, we advise that in order to have the use of the premises housing our Kalkaji branch regularized, it has been decided to pay the regularization charges to the Land & Developments Office, Ministry of Works & Housing (Lessors). While we have agreed to pay the full amount of regularization charges from Jan 1977 onwards, upto Dec. 1976 these charges will be shared by you and us on 50/50 basis. In view of this, please take up with the Lessors and arrange to obtain the demand notice so that the charges can be paid.

Regional Manager.”

“Sh.J P Jain,
E-155, Kalkaji,
New Delhi.

STATE BANK OF INDIA,
KALKAJI, NEW DELHI

19.12.1982.

NO.D.NO.82/

Dear Sir,

Office Premises at E-155, Kalkaji, New Delhi.

With reference to the discussions the Bank's Committee had with you at our head office of the 16th Oct., 1982, it has been decided by the Bank to renew the lease in respect of the premises occupied at present on the following terms and conditions :-

(i).-----

(ii).-----

(iii). The Bank would pay all regularization charges, penalties etc. if levied by any of the civic authorities i.e. either by the Municipal Corporation of Delhi or Delhi Development

Authority. The Bank would also pay all the regularization charges to the Land and Development Office, Ministry of Works and Housing (lessors) from January, 1977 onwards, while upto December, 1976 these charges will be shared by you and the Bank on 50/50 basis.

(iv).-----

(v).-----

2. -----

3. Please acknowledge receipt.

Yours faithfully,

Sd/- (G. Ramakrishnan)

Branch Manager. ”

7. Consequently, a lease agreement dated 29.12.1983 was executed between the parties where the premises were let out for a period of five years to the appellant by the respondent on a monthly rent of Rs. 2700/-. Reliance has been placed by the counsel for the appellant on clause II (d) of the said lease agreement and it would be useful to refer to the same here:

“II. The Lessor/Lessors hereby covenant with the Bank in manner following :

d). The Bank shall pay all regularization charges, penalties etc. for the non-conforming use of the premises for commercial purposes levied by any of the civic authorities i.e. by the Municipal Corporation of Delhi and Delhi Development Authority. The Bank shall also pay all the regularization charges to the Land and Development Office, Ministry of Works and Housing, from January, 1977 onwards, while upto December, 1976, these charges will be shared by the Lessor/Lessors and the Bank on 50/50 basis.”

8. This lease agreement was duly proved in the court of the Additional Rent Controller and hence there can be no dispute regarding the same. The L & DO did not condone the breaches and hence an eviction order dated 4.6.1997 was also passed against the appellant. The possession of the premises was handed over to the respondent by the appellant on 14.12.2002 but it failed to pay the misuser charges. Through a letter dated 15.12.2003 served upon the respondent , the L& DO directed the respondent to pay the misuser charges within a period of 30 days, which fact was communicated to the appellant by the respondent vide letter dated 29.12.2003 (Ex PW1/9) and further subsequent communications.

9. Now coming to the argument raised by the counsel for the appellant, the counsel has raised the contention that the suit filed for recovery was barred by limitation. The learned trial court framed issue No. 2 in this regard where it has observed that the suit was instituted by the respondent on 10.10.2005 and the last letter sent by the respondent to the appellant demanding the payment of the amount was sent on

4.10.2004 and the same is proved on record as Ex. PW 1/26. After receipt of the letter dated 15.12.2003 by the L& DO, the respondent communicated to the appellant the payment of the charges vide letters dated 29.12.2003 (Ex.PW 1/9), 12.1.2004 (Ex.PW1/14), 16.2.2004 (ExPW 1/17), 18.5.2004 (Ex. PW 1/19), 17.7.2004 (Ex. PW 1/23) and the last reminder dated 4.10.2004 is also proved on record as Ex. PW1/26. Calculated from the first letter sent to the appellant i.e from 29.12.2003 or even from the last letter dated 4.10.2004, the suit was filed on 10.10.2005 which is within three years period of limitation. Hence, the learned trial court has rightly decided the issue in favour of the respondent and I do not find any perversity in the said finding arrived at by the trial court below.

10. Clause II(d) of the lease deed and the two letters dated 9.3.1981 and 19.12.1982 clearly establish the liability of the appellant. It is crystal clear from the above said clause and the two letters that the appellant had taken upon them the liability to pay the charges with effect from January, 1977.

11. Hence, no illegality or perversity can be found in the impugned judgment.

12. There is no merit in the present appeal and the same is hereby dismissed.

KAILASH GAMBHIR, J

September 06, 2010
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