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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No. 355/2001

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18th February, 2011

UNION BANK OF INDIA & ORS.

..... Appellants

Through: None.

VERSUS

SHRI A.K. SEHGAL & ANOTHER

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. This matter is on the 'Regular Board' of this Court since 3.1.2011. Today this matter is effective item No.9 on the 'Regular Board'. It is 3.20 P.M. and no one has chosen to appear for the parties. I have therefore perused the record and am proceeding to dispose of the appeal.

2. The challenge by means of the present Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 23.5.2001 whereby the suit of the respondents-plaintiffs for recovery of Rs.4,83,656.25 was decreed against

the appellants on account of difference of the agreed rate of rent and market rate of rent.

3. The facts of the case are that the respondents were owners/ landlords of the premises bearing No.BJ-129 (West), Shalimar Bagh, Delhi and a portion of which on the ground floor and basement, was let out to the appellants for five years from 1985. After the period of five years expired on 16.9.1990 the respondents asked the appellants to increase the rent which was however not increased in spite of writing various letters dated 5.12.1990, 15.10.1991, 16.12.1991, 12.3.1992, 5.5.1993 and 14.12.1993. On 27.6.1994, the appellants in response to the letter of the respondents dated 15.6.1994 stated that the matter was under consideration. The respondents thereafter sent another reminder on 9.1.1996 and one more on 23.4.1996. The premises were then vacated by the appellants on 30.5.1996 whereafter the respondents filed a suit for difference of the admitted rate of rent and market rate of rent for a period of six years and 15 days till 30.5.1996. The appellants appeared in the suit and contended that the suit was liable to be dismissed because there was no agreed figure of rent for period for which it was claimed and in fact the respondents had given a letter dated 30.5.1996 when the premises were vacated that they have received the entire rent and there was no claim pending at all against the appellants.

4. The trial Court by the impugned judgment has decreed the suit firstly by holding that the appellants were liable to pay the market rent for the disputed property. The trial Court has relied upon various

letters written by the respondents which are exhibited as Ex.PW1/5 to Ex.PW1/10 for their claim of increase of rent and by relying upon Section 70 of the Contract Act, 1872 has granted the difference in rent. The trial Court also granted charges of Rs.6.50/- per square feet for the ground floor and Rs.5.50/- per square feet for the basement portion referring to the internal correspondence of the bank.

Trial Court also held that there was pressure and coercion on behalf of the appellants in procuring from the respondents the letter dated 30.5.1996 wherein the respondents said that no amount was due from the appellants allegedly because the bank had given a threat that they would not vacate the premises till the subject letter, Ex.PW1/D1 also exhibited as Ex.DW1/2, was signed.

5. I am of the opinion that the impugned judgment and decree is completely illegal and perverse. Rent is an agreed figure between two parties namely the landlord and the tenant. Either the tenant is liable to pay rent or the tenant becomes a trespasser and has to pay mesne profits. Admittedly, even after expiry of the first period of tenancy on 16.9.1990, the bank continued to occupy the tenanted premises for a very very long period of six years and for which period the admitted rate of rent was paid. Merely by writing letters cannot mean that the respondents were entitled to market rate of rent in the absence of any agreement with the appellants. If the respondents were interested in keeping the appellants as tenant they were entitled to terminate the tenancy and claim mesne profits but the respondents cannot on the one

hand enjoy the rent taking the appellants as a tenant and yet claim a higher rate of rent which is not agreed allegedly on the ground that the appellants enjoyed the premises in question during the period after expiry of the first lease period on 16.9.1990. Of course, after expiry of the tenancy if for a reasonable period, no eviction suit is filed the landlord is entitled to receive the charges from the tenant, whose tenancy has expired by efflux of time, as charges towards use and occupation, however, in the facts and circumstances of the case a period of over six years can by no stretch of imagination be said to be an unauthorized occupation of the appellants so as to entitle the respondents to claim market rate of rent for the subject premises. The conduct of the respondents in not seeking to evict the appellants for this long period, leads to the conclusion that the bank was a month to month tenant in the premises and once it is a month to month tenant, only the admitted rate of rent is to be paid, unless, the tenancy is terminated by a specific notice and which is not the position in the present case.

6. Further, the trial Court has most illegally held that the letter dated 30.5.1996 was given under coercion that the bank will not vacate the premises otherwise. The very fact that after writing this letter, no complaint was filed before any authority that this letter was got written under threat or coercion clearly shows that there were in fact no dues of the appellants towards the respondents when the premises were vacated on 30.5.1996. The reasoning and conclusion of the trial Court are very strained and lack legal conviction.

7. In order to appreciate the illegality and perversity in the impugned judgment and decree, I am reproducing below certain paragraphs of the impugned judgment and decree as per which it is held that the appellants were liable to pay enhanced charges for the disputed period and that there was in fact coercion when the respondents wrote their letter Ex.PW1/D1, dated 30.5.1996, to the appellants. These paragraphs read as under:

"22. At the same time, it may also be added that it is also not disputed by the plaintiffs that vacant and physical possession of the premises was handed over by the Defendant on 30.5.96. It is also admitted by the plaintiffs that they had written letter Ex.PW1/D1 to the Defendant in which, they had acknowledged to have received the vacant possession of the premises in question and had also acknowledged that they had received all the rent till date and no claim whatsoever was left against the Defendant. Now, the question arises as to why the Plaintiffs of sudden had abandoned their claim which earlier, they were hotly pursuing for enhancement of rent and why they had given in writing all of sudden on 30.5.96 to the Defendant that there was no claim whatsoever against the Defendants towards the Plaintiffs? Why a sudden change had taken place in their attitude with regard to the claiming of the enhanced rent from the Defendant? The only answer to this question appears to be that the Plaintiffs were eager and anxious to get the premises in question vacated from the Defendant, who were occupying the premises and enjoying the same at the old rates even after the termination of lease on 16.09.90. Under these circumstances, it can not be held that the said letter was written by the Plaintiffs voluntarily and without any pressure exercised over them. To my mind, the said letter was written by the Plaintiffs under duress and under coercion in their anxiety to get their premises vacated from the Defendant Bank with whom, they were finding it quite difficult to fight a legal battle. Consequently, the testimony of PW1 A.K.Sehgal that the letter Ex.PW1/D1 was got signed by the Defendant bank under the threat that they will not Vacate the premises until the said letter was signed by him and his wife appears to be convincing. In these circumstances, in my opinion, when the said

letter was written under duress and coercion the said letter was not binding upon the Plaintiffs. As such, it is, therefore, held that the letter dt.30.5.96 was written by the Plaintiffs under duress and accordingly, this issue is decided in favour of the Plaintiffs and against the Defendants.

23. Findings on issue No.5:- Now, the question arises whether the Plaintiffs are entitled to recover the suit amount as has been claimed by them. In this connection, it will be pertinent to add that admittedly, the Defendant No.3 have enjoyed the premises and have continued to use and occupy the same despite of the fact that their initial terms of rent had come to an end on 16.09.90. It is also not disputed that the Plaintiffs had written time and again to be Defendant by means of letter Ex.PW1/5 to Ex.PW1/10, in which, they had time and again reiterated that the rate of rent should be revised which show that the Plaintiffs were eager and anxious to renew the lease of the premises in question at the enhanced rate. The Defendants neither enhanced the rent nor had vacated the premises till 30.5.96. It is also quite relevant to add that Defendant No.3 was a commercial bank and had been using the premises commercially and had been earning profits by making use of the premises by doing banking activities. As such, it was expected from the bank, which was a public undertaking that it should have readdressed the grievances of the Plaintiffs who have been time and again requesting them either to vacate the premises or to enhance the rent. All these circumstances clearly suggest that the Plaintiffs never intended that the said premises would be used by the Defendants by paying the old rent. In these circumstances, I am also of the opinion that since the Defendants had enjoyed the benefit of premises in question for about 5 years at the old rate of rent, when they were supposed to pay the rent at the enhanced rent after expiry of the initial period of lease, in my opinion, the Plaintiffs were entitled to be compensated. In fact, the Section 70 lays down that:-

“Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered”.

26. Now, applying the said well settled law to the facts in hands, it may be stated that since the Defendants have enjoyed the benefits, they can not be allowed “unjust enrichment” and they are bound to compensate the Plaintiffs who have been deprived of the enhanced rates, which they were illegally entitled and which they failed to get inspite of writing repeated letters to the Defendant for enhancement of the rent on 5.12.90, 12.10.91, 16.12.91, 12.3.92, 5.5.93, 14.12.93.”

8. The findings and conclusions in the aforesaid paragraphs of the trial Court are totally illegal and perverse and which cause grave injustice by fastening unjustified monetary liability upon the appellants. The impugned judgment and decree therefore is set aside by accepting the appeal and dismissing the suit of the respondents/plaintiffs. Interim orders are vacated. The appellants are held entitled to release of the amount paid under the impugned judgment and decree, which has been set aside today including from the security furnished by the respondents. Parties are left to bear their own costs. Decree sheet be prepared. Trial Court record be sent back.

FEBRUARY 18, 2011
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VALMIKI J. MEHTA, J.