

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 1st November, 2011
Judgment Delivered On: 15th November, 2011

+ RFA (OS) 47/2011

PAKISTAN INTERNATIONAL AIRLINES Appellant
Through: Mr.Pankaj Bhatia with Mr.Manoj Kumar
Rathi, Advocates

versus

ABASKAR CONSTRUCTIONS PVT. LTD. Respondent
Through: Mr.Jasmeet Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE S.P. GARG

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

PRADEEP NANDRAJOG, J.

1. Jural relationship between the appellant and the respondent came into existence when a registered lease deed dated 31.12.1996 was executed between the parties under which the respondent let out Flat No.102 in Kailash Building (hereinafter referred to as the 'Tenanted Premises') to the appellant with retrospective effect from 01.09.1996.
2. The dispute between the parties centers on the clauses of the lease deed which are the appellant's

obligations under the lease deed and thus we note the said clauses, which are as under:-

“NOW THEREFORE THE PARTIES HERETO HEREBY AGREE AND THIS DEED WITNESSETH AS FOLLOWS:

1. That in consideration of and subject to the aforesaid and the covenants on the part of the Lessor and the Lessee hereinafter contained and on the Lessee agreeing to pay the monthly rent ₹200.00 sq. ft. in respect of 1691 sq. ft. area and also in respect of the presently adjacent shop area of 65 sq. ft. which has been made into floor area (by removing the intervening wall) the Lessor do hereby grant unto the Lessee the Lessee of Flat No.102 comprising of total floor area of 1691 sq. ft. on the Floor No.1 and the said adjacent shop area and car parking space of two cars in the open compound as a composite promises of the multistoried building ‘Kailash’ situate at 26, Curzon Road, New Delhi now known as Kasturba Gandhi Marg, New Delhi (hereinafter called the “demised premises”) together with all fittings and fixtures, installed therein and fully set out in the Schedule ‘A’ hereto and belonging to the Lessor, and also together with water and electrical connections and toilet facilities as well as the use in common with the Lessor and other occupants of the building ‘Kailash’ in respect of the main electric switches, meters and electric fixtures, fittings, elevators and installations, including herein the entrances, landing stairs, passages, lifts and other common part or parts, passage ways and approaches, pathways approach roads, in and to building ‘Kailash’ to hold the demised premises, including the car parking spaces for a period of 5 years commencing from 1.09.1996 subject to the covenant for increase in rent as set out hereinafter and with one single option of renewal on the part of the Lessee subject always to the permission of the Reserve Bank of India under

the Foreign Exchange Regulation Act 1973, as also any other permission required statutorily to be obtained by either or both parties herein for a further period of 5 years on the same terms and conditions as provided herein.

PROVIDED ALWAYS the monthly rent for the demised premises which is payable for the first three years from 01.09.1996 that is to say ₹338200.00 (Rupees Three Lakh Thirty Eight Thousand Two Hundred only) per month calculated at the rate of ₹200.00 sq. ft. for 1691 sq. ft. area and the monthly rent of ₹13000.00 (Rupees Thirteen Thousand only) in respect of the said adjacent shop area as herein provided shall, after the expiry of first three years from 01.09.1996, and after each subsequent period of three years each, be increased by 21% of the monthly rent last paid immediately before the commencement of each such three year periods the first increase being effective from 01.09.1999 and in the event of renewal hereof, second increase shall be effective from 01.09.2002 and the third such increase shall be effective from 01.09.2005.

2. The aforementioned monthly rental of ₹338200.00 and of ₹13000.00 totaling ₹351,200.00 is inclusive of house tax, ground rent and other levies, taxes, rates, cesses, out goings etc. whatsoever imposed by the Government or any authority or local body whatsoever, subject to the terms and conditions contained in Clause 4 (ix) hereinafter.

X X X X

4. That the Lessee hereby covenants with the Lessor as follows:

X X X X

(ix) To pay to the Lessor for increase in the existing levies, rates, cesses that may be affected by the Government or any statutory authority including all out-goings that a Lessee is

liable to pay proportionate to the area of the Building 'Kailash' in occupation of the Lessee subject to the Lessee being satisfied about the payment of the same by the LESSOR.

5. That the Lessor hereby covenants with the Lessee as follows:

(i) To pay all house taxes, ground rents and other municipal levies, cesses and taxes, out goings whatsoever etc., imposed from time to time by the Government, local authority or any other statutory body, including the Municipal Authority, Land and Development Officer, Delhi Development Authority as well as any increase therein imposed in respect of the building 'Kailash' or the demised premises, subject to the provisions of clause (ix) of Para 4 herein before, it being further agreed that in case of reduction in any existing levies, rates cesses referred to in Clause (ix) of Para 4 herein before which the Lessee is liable to pay, the Lessee shall have the benefit thereof proportionate to the area of the building 'Kailash' in occupation of the Lessee." *(Emphasis Supplied)*

3. Needless to state the tenant i.e. the appellant agreed to pay rent in sum of ₹3,51,200/- for a period of 3 years which consisted of two elements i.e. ₹3,38,200/- which had to flow to the pocket of the landlord i.e. respondent and ₹13,000/- to the NDMC as this was the house tax payable at the time of the lease. The appellant also agreed that the rent would be increased by 21% after 3 years and that increased house tax as a result of it being inducted as a tenant would be paid to the landlord i.e. the respondent.

4. Undisputably, pertaining to the assessment years 1997-98 till 2000-01 NDMC enhanced the ratable value with

reference to the rent being paid and received and the appellant paid the same without demur.

5. Under the registered lease deed dated 31.12.1996, lease rental had to be increased by 21% after the third year and the period of lease being 5 years, on the third year of the lease commencing, the appellant started paying rent enhanced by 21%.

6. The lease being for a period of 5 years, lease period expired on 31.08.2001. Admittedly, no fresh lease deed, in writing, was executed between the parties upon the expiry of the lease period as per the lease deed dated 31.12.1996. However, the appellant continued to occupy the tenanted premises on payment of rent, which as noted hereinabove stood enhanced by 21% with effect from 01.09.1999 i.e. by the time the lease period expired on 31.8.2001 rent being paid was ₹3,38,200/- as enhanced by 21% and in addition the enhanced house tax claimed by NDMC was also being paid.

7. In the year 2004 the NDMC passed an assessment order increasing the ratable value of the tenanted premises for the period from 01.04.1999 to 01.09.2002 and because of such enhancement in the ratable value of the tenanted premises the house tax levied on the tenanted premises increased by a sum of ₹69,84,000/- for the assessment years 1999-2000 to 2005-2006. The respondent wrote various letters to the appellant calling upon it to pay the sum of ₹69,84,000/- to it, being the increase in the house tax levied on the tenanted premises. On 18.05.2004 the

appellant wrote a letter to the respondent refusing to pay the sum of ₹69,84,000/- demanded by the respondent. In the said letter, it was stated by the appellant, that clause 4(ix) of the lease deed dated 31.12.1996 enjoined upon it to pay the amount of increase in the house tax levied on the tenanted premises only when such increase was caused due to upward revision of 'rate' of tax and that since the demand raised by NDMC was not on account of revision of 'rate' of tax, it would not pay the amount.

8. On 17.05.2006 the appellant vacated the tenanted premises.

9. The respondent insisted that the appellant should pay it ₹69,84,000/- and filed a suit claiming said sum since the appellant did not pay the said sum.

10. In the suit filed by the respondent it was pleaded in the plaint that clause 4(ix) of the lease deed dated 31.12.1996 executed between the parties enjoined upon the appellant to pay the amount of increase in the house tax levied on the tenanted premises and thus the appellant is liable to pay the sum of ₹69,84,000/-, being the sum of increase in the house tax levied on the suit property.

11. In the written statement filed by the appellant, it reiterated the stand taken by it in the letter dated 18.05.2004 written by it to the respondent. With respect to amount of increase in house tax levied on the tenanted premises, paid by the appellant to the respondent for the assessment years 1997-1998, 1998-1999, 1999-2000 and

2000-2001 it was pleaded that the appellant had paid the said amounts under mistaken legal advice.

12. Since the controversy involved in the suit centered around the interpretation of clauses 2, 4(ix) and 5 of the lease deed dated 31.12.1996 and there was no requirement to lead any evidence, the learned Single Judge proceeded to decide the suit after pleadings were completed.

13. On behalf of the respondent it was argued that clause 4(ix) of the lease deed dated 31.12.1996 executed between the parties enjoined upon the appellant to pay to the respondent the amount of increase in the house tax levied on the tenanted premises. Per contra, it was argued on behalf of the appellant that:- (i) that the lease deed dated 31.12.1996 executed between the parties expired by efflux of time on 31.08.2001 and thus the terms and conditions embodied in the said lease deed could not be looked into beyond 31.08.2001 for the reasons:- (a) the appellant who had become a tenant holding over after the determination of the lease as per lease deed dated 31.12.1996 was not bound by the terms and conditions embodied in the said lease deed for the reason a tenancy holding over is not governed by the terms and conditions contained in the original lease inasmuch as when an indenture of lease comes to an end by efflux of time the terms and conditions of the said lease do not subsist and perish with the lease; and (b) since the period of lease as per lease deed dated 31.12.1996 was 5 years, the registered lease deed will be in effect only till 31.08.2001, and such being the position the

terms and conditions embodied in the said lease could not have been looked into after the determination of the lease in view of the provisions contained in Section 49 of the Indian Registration Act. (In support of said submissions, reliance was placed by the appellant on the decisions of the Supreme Court reported as State of U.P. V Lalji Tandon (dead) through LRs (2004) 1 SCC 1, Burmah Shell Oil Distribution Now Known As Bharat Petroleum Corporation Ltd v Khaja Midhat Noor & Ors (1998) 3 SCC 44 and K.B. Saha & Sons Private Limited v Development Consultant Limited (2008) 2 SCC 564); (ii) the use of word 'house tax' in clauses 2 and 5(i) of the lease deed and the omission of the said word 'house tax' in clause 4(ix) of the lease deed implies that the increase in house tax levied on the tenanted premises does not fall within the ambit of clause 4(ix) for the reason where the parties intended to include house tax within the ambit of a particular clause they have clearly made a reference to the word house tax in such clauses; and (iii) in alternative to point No.(ii), it was argued that use of word 'rate' in clause 4(ix) of the lease deed dated 31.12.1996 implies that the appellant was required to pay the amount of increase in the house tax levied on the tenanted premises only when such increase was caused due to upward revision of 'rate' of tax, which was not the position in the instant case as the house tax levied on the tenanted premises had increased due to upward revision of ratable value of the tenanted premises.

14. Vide impugned judgment and decree dated 09.02.2011 the learned Single Judge has decreed the suit in

sum of ₹69,84,000/-. In so holding, it has been held by the learned Single Judge that:- (i) words 'levies' and 'outgoings' occurring in clause 4(ix) of the lease deed dated 31.12.1996 are wide enough to include 'house tax' within their ambit, consequently the appellant was liable to pay sum of increase in the house tax levied on the tenanted premises; (ii) the conduct of the appellant of having paid the sum of increase in the house tax levied on the tenanted premises for the assessment years 1997-1998 to 2000-2001 raises a very strong inference that clause 4(ix) of the lease deed dated 31.12.1996 enjoined upon the appellant to pay the sum of increase in the house tax levied on the tenanted premises and the same evidenced how the parties understood their obligation; and (iii) the use of the expression 'renewal' in Section 116 of the Transfer of Property Act 1882, implies that the tenancy which is created by reason of the landlord allowing the tenant to hold over in the tenanted premises after the determination of the original lease is governed by the terms and conditions of the determined lease, unless the parties enter into a fresh agreement contrary to the terms and conditions of the determined lease. Thus, it was held that the terms and conditions embodied in lease deed dated 31.12.1996 could be looked into even after the determination of the said lease by efflux of time.

15. In appeal, the contentions urged before the learned Single Judge have been reiterated by the appellant before us.

16. The facts are not in dispute. Relationship of landlord and tenant between the parties is admitted. The lease deed dated 31.12.1996 is admittedly a registered document and as per which the lease period was 5 years and since the lease commenced w.e.f. 01.09.1996, it expired efflux of time on 31.8.2001. Admittedly, no fresh lease deed in writing was executed between the parties upon the expiry of the lease period of 5 years. Further, it is not in dispute that as per the terms of the registered lease deed, during subsistence of the period of lease i.e. 5 years, after 3 years the rent was enhanced by 21% and during this period the house tax which was increased by NDMC was also paid by the appellant to the respondent. It is also not in dispute that after expiry, by efflux of time, of the period of lease, the appellant paid increased rent; increasing it by 21% for 3 years up to 31.8.2002 and thereafter by further the same by 21% till it vacated the tenanted premises and that the respondent accepted the increase rent by treating the same as rent and consequently the status of the appellant was admittedly that of a tenant holding over in view of Section 116 of the Transfer of Property Act 1882.

17. The controversy arose when NDMC increased the house tax reimbursement whereof was sought by the respondent and for which the respondent places reliance upon the terms of the registered lease deed and the appellant interpreting the terms of the lease deed as aforesaid and additionally taking the stand that beyond the period of the lease as per the registered lease deed, qua

the period when it occupied the premises as a tenant holding over, said lease deed could not be looked into.

18. Section 105 of the Transfer of Property Act 1882, defines a lease of an immovable property as a transfer of a right to enjoy immovable property for a certain time, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee who accepts the transfer on such terms. The transferor is called the lessor and the transferee is called the lessee. The price is called the premium and the money, share, service or other thing to be so rendered is called the rent.

19. Section 106 of the Transfer of Property Act 1882, concerns itself with the duration of a lease and states that in the absence of a contract, or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable on the part of either lessor or lessee, by six months' notice and a lease of immovable property for any other purpose shall be deemed to be lease from month to month, terminable, on the part of either lessor or lessee by 15 days' notice.

20. Section 107 of the Transfer of Property Act 1882, stipulates that a lease of immovable property from year to year, or for any term exceeding one year can be made only by and under a registered instrument.

21. Law is clear. If a lease is evidence by a contract in writing, as in the instant case, the duration of the lease would be as per the contract and at the expiry of the lease period, as per contract the lease expires by efflux of time. Expiry of lease by efflux of time results in the determination of the relationship between the lessor and the lessee and since the lease expires under the contract by efflux of time, no notice of determination of the lease is required.

22. The mandate of Clause 'q' of Section 108 of the Transfer of Property Act 1882 is that on the expiry of the lease the lessee is bound to hand over possession of the leased premises to the lessor and therefore the lessor would be entitled to maintain an action to compel the lessees to abide by the mandate of Clause 'q' of Section 108 of the Transfer of Property Act 1882.

23. A person who enters upon the property of another without authority of law is a trespasser. It could be argued that the very next moment after the period of lease stands expired, the act of entering upon property by the tenant is an act of trespass. But law says 'No'. A lessee who continues in possession after expiry of the lease, without the consent of the lessor or without any agreement between the parties or in disagreement with the lessor, is treated in law as a tenant by sufferance. But where the lessor consents to the continued possession of the lessee qua the leased premises, a tenancy by holding over comes

into operation by virtue of the provisions of Section 116 of the Transfer of Property Act 1882, which reads as under:-

“116. Effect of holding over - If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106.”

24. The words '*accepts rent or otherwise assents to his continuing in possession*' in Section 116 of the Transfer of Property Act contemplate that from the side of the lessee there should be an offer to take a new lease and on the side of the lessor there must be a definite consent to the continuation of possession. In other words, there must be a bilateral contract. Such a bilateral contract could be express or implied.

25. Now, the question which arises for consideration in the instant case is: What would be the rent payable by a tenant holding over, as was the appellant.

26. Neither Section 116 nor any other provision in the Transfer of Property Act 1882, prescribes that what would be the rent payable by a tenant holding over.

27. The question whether the terms of the registered lease deed could be looked into to find out the rent payable by a tenant holding over came up for

consideration before a Division Bench of the Allahabad High Court in the decision reported as AIR 1965 All 326 Zahoor Ahmad Abdul Sattar v State of U.P.. In the said case, the respondent had let out a rice mill to the appellant at a rent of ₹1,000/- per annum. After the expiry of the lease, the appellant continued to occupy the tenanted premises on payment of rent in sum of ₹1,000/- per annum and consequently became a tenant holding over. The respondent filed a suit claiming rent in sum of ₹3,000/- per annum from the appellant qua the period it remained a tenant holding over. The appellant argued that the lease deed between the parties could be looked into to determine the rent payable when it was occupying the tenanted premises as a tenant holding over and the stand taken by the respondent was that beyond the period of lease as per a written lease, the terms thereof could not be looked into.

28. The Division Bench of the Allahabad High Court held that the terms of the lease deed could be so looked into. The contra-verdict was set aside.

29. The correctness of the aforesaid decision of the Allahabad High Court in Zahoor's case (supra) came up for consideration before the Supreme Court in the decision reported as (1973) 2 SCC 547 State of U.P. v Zahoor Ahmad. It was the State of Uttar Pradesh which was in appeal before the Supreme Court against the decision of the Division Bench of the Allahabad High Court.

Concurring with the view taken by the Allahabad High Court, the Supreme Court spoke in the following terms:-

“With regard to the amount of rent payable the provisions of Section 116 of the Transfer of Property Act indicate that the renewal of the lease would mean that the terms and conditions would be the same as of the previous lease. The High Court, therefore, correctly found that in the absence of any agreement to pay ₹3,000/- as annual rent or in the absence of any agreement and undertaking that the respondent would accept the amount fixed by the appellant as that rent (*sic*). The appellant was not entitled to anything more than ₹1,000/- a year which was the amount of rent for the year 1949 to 1950.”

30. In view of the aforesaid authoritative pronouncement by the Supreme Court in Zahoor's case (*supra*), there remains no scope for any further debate.

31. There is an alternative route in favour of the respondent in the instant case. As per the lease deed dated 31.12.1996 rent had to be increased by 21% every three years and we find that it was so enhanced every three years. The increased rent paid stands established by the payments tendered by the appellant to the respondent and thus there is extrinsic evidence of the rent being so increased voluntarily and paid voluntarily.

32. It is settled legal position that ‘rent’ is the consideration given by the tenant to the landlord for the use and occupation of the tenanted premises be described in any form. See the decision of the Supreme Court reported

as 2000 (7) SCALE 607 Ishwar Swaroop Sharma Vs. Jagmohan Lal.

33. Now, coming to the interpretation of the terms of the lease deed, clause 2 of the lease deed dated 31.12.1996 stipulates that the rent of the tenanted premises is ₹3,51,000/- per month, which is inclusive of house tax, ground rent and other levies, taxes, rates, cesses, out goings etc. whatsoever imposed by the Government or any authority or local body whatsoever, subject to the provisions of clause 4(ix) of the lease. Clause 4(ix) stipulates that the lessee shall pay to the lessor the increase in the existing levies, rates, cesses that may be affected by the Government or any statutory authority including all out-goings that the lessor is liable to pay. Clause 5(i) of the lease deed dated 31.12.1996 provides that the lessor shall pay all house taxes, ground rents and other municipal levies, cesses and taxes, out goings whatsoever etc., imposed from time to time by the Government, local authority or any other statutory body, including the Municipal Authority, Land and Development Officer, Delhi Development Authority as well as any increase therein imposed in respect of the building 'Kailash' or the tenanted premises, subject to the provisions of clause (ix) of Para 4 herein before.

34. The cumulative effect of clause 4(ix) and 5(i) of the lease deed dated 31.12.1996 is that the lessor/respondent was liable to pay house taxes, ground rents and other municipal levies, cesses and taxes, out goings whatsoever

etc., imposed from time to time by the Government, local authority or any other statutory body including increase therein imposed in respect of the building 'Kailash' or the tenanted premises to the concerned authority and that the lessee/appellant was to reimburse the lessor/respondent for the increase in the levies, rates and cesses etc paid by him.

35. The question whether 'house tax' falls within the ambit of clause 4(ix) of the lease deed dated 31.12.1996 is the last question which needs to be answered.

36. The answer to the aforesaid question lies in clause 5(i) of the lease deed dated 31.12.1996. The use of expression '*subject to the provisions of clause (ix) of Para 4 herein before*' in clause 5(i) of the lease deed dated 31.12.1996 makes it clear that house tax falls within the ambit of clause 4(ix) for the reason had the house tax not to fall within the ambit of clause 4(ix) there was no occasion for the parties to have made the payment of the house tax by the lessor/respondent subject to the provisions of clause 4(ix) of the lease deed dated 31.12.1996.

37. Furthermore, as rightly held by the learned Single Judge the conduct of the appellant of having paid the sum of increase in the house tax levied on the tenanted premises for the assessment years 1997-1998 to 2000-2001 is a very strong pointer to the fact that the intention of the parties was to include house tax within the ambit of clause 4(ix) of the lease deed dated 31.12.1996.

38. There is yet another way in which the problem can be approached. The lease commenced with effect from 1.9.1996 and was for a period of five years under the registered lease deed. It was a term of the registered lease deed that the rent had to enhance by 21% on the expiry of the third year and thus with effect from 1.9.1999 enhanced rent was paid and remained payable till the midnight of 31.8.2002 i.e. when the three years period came to an end. But, since the duration of the lease was five years, it is apparent that as a contractual tenant the appellant was paying the enhanced rent and qua liability thereof the registered lease deed could be looked into. Thus, with effect from 1.9.2001 i.e. the date with respect wherefrom the status of the appellant became that of a tenant holding over one could safely say that the rent payable was the same which was being paid for the previous month. Since rent includes the entire consideration which the appellant had to pay, the liability till 31.8.2001 could be determined with respect to the registered lease deed and needless to state the increased house tax demanded by NDMC in the year 2004 related to the period 01.04.1999 to 01.09.2002. The only period beyond the term of the registered lease deed is 01.09.2001 till 01.09.2002 and for this period the liability has to be the same as it was for the previous period inasmuch as, as a tenant holding over the rent payable would be the same as was payable as a contractual tenant for the reason the appellant had led no evidence that there was an agreement between the parties to change the rent.

39. In view of above discussion, no infirmity is found in the impugned judgment and decree dated 09.02.2011 passed by the learned Single Judge. Consequently, the same is upheld and the appeal is dismissed with costs against the appellant and in favour of the respondent.

(PRADEEP NANDRAJOG)
JUDGE

(S.P. GARG)
JUDGE

NOVEMBER 15, 2011
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