

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 7.2.2011
Judgment Pronounced on: 09.02.2011

+ **CS(OS) No. 1128/2006**

ABASKAR CONSTRUCTION PVT. LTD. PLAINTIFF

- versus -

PAKISTAN INTERNATIONAL AIRLINES DEFENDANT

Advocates who appeared in this case:

For the Plaintiff: Mr. Neeraj Kishan Kaul, Sr. Adv. with Mr. Jasmeet Singh, Mr. Saurabh Tiwari, Mr.Karan Luthra and Mr.K.D.Sengupta, , Advs.

For the Defendant: Mr. Sanjeev Kapoor, Ms.Shahana Farah and Mr.S.Patra, Advs.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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

V.K. JAIN, J

1. This is a suit for mandatory injunction and recovery of Rs.69,84,900/-. The defendant was a tenant under the plaintiff in respect of flat No.102, Kailash Building, 26 Kasturba Gandhi Marg, New Delhi-110001.

The premises to the defendant were let out vide lease deed dated 31st December, 1996, which was registered on 2nd January, 1997. The case of the plaintiff is that under the terms of the lease deed, particularly Clauses 4(ix) and 5(i) thereof, the increase, if any, in the house tax was to be borne by the defendant. On receipt of bills for the assessment years 1997-98, 1998-99 and 1999-2000 for Rs.93,936/-, 93,936/- and 1,17,420/- respectively, the plaintiff demanded the aforesaid amounts from the defendant. The increase in amount of house tax for the year 1999-2000 was duly paid by the defendant. However, the bills for the years 1997-98 and 1998-99 were forwarded by the defendant to its Head Office. For the year 2000-01, the plaintiff received a bill for Rs.1,17,400/- and accordingly it requested the defendant to reimburse the amount of Rs.46,948/- being increase in house tax payable by the defendant for the year 2000-01. The defendant made payment of the increase in house tax for the years 1997-98, 1998-99 and 2000-01 vide its cheque dated 24th January, 2001. The bills for the years 2001-02 and 2002-03 were also received by the plaintiff and the defendant was asked to reimburse the amount of Rs.70,416/- to the plaintiff being

the amount of increase in house tax for the years 2001-02 and 2002-03.

2. It is further alleged that the ratable value of the property was increased to Rs.45,89,400/- with effect from 1st September, 1999 and to Rs.55,53,200/- with effect from 1st September, 2002. Based on the above referred assessment order, the NDMC issued a bill to the plaintiff demanding a sum of Rs.60,83,958/- being the difference of tax for the period from 1st April, 1999 to 31st March, 2004. Being aggrieved, the plaintiff filed a suit for injunction against the NDMC and the demand was stayed by this Court, subject to the plaintiff depositing a sum of Rs.40,00,000/- with the NDMC. The plaintiff, in compliance of the order of the Court, deposited the aforesaid amount with NDMC. The plaintiff also asked the defendant to pay the amount of Rs.40,93,884/- being the difference in the amount of house tax for the period from 1st April, 1999 to 31st March, 2004. The defendant vide its letter dated 18th May, 2004 denied its liability to make payment of increase in house tax.

3. It is also alleged that for the year 2004-05, the plaintiff received a bill for Rs.15,15,960/- from the NDMC

and paid that amount on 21st November, 2004. The plaintiff, thereafter, asked the defendant to reimburse the amount of Rs.14,45,508/- along with earlier demanded sum of Rs.40,93,884/-. For the year 2005-06 also, the plaintiff received a bill for Rs.15,15,960/- and paid that amount to the NDMC. The increase in house tax which, according to the plaintiff, was payable by the defendant in terms of lease deed is claimed to be Rs.14,45,508/-. The plaintiff has now claimed the aforesaid three sums making a total sum of Rs.69,84,900/-.

4. The defendant has contested the suit. It has taken preliminary objection that the suit is barred by limitation. It is also alleged that the claim of the plaintiff for the amount of Rs.40,00,000/- deposited in compliance of the order passed by this Court in CS(OS) No.387/2004 having not attained finality, it cannot recover the aforesaid amount from the plaintiff and to this extent the suit is premature. On merits, referring to Clause 4(ix) of the lease deed, it has been stated that the aforesaid clause applies only in case of increase in levies or rates other than the rates of house tax and ground rent. It is also stated by the defendant that since what has been increased is ratable value and not the

rate of house tax, no liability in respect of house tax can be imposed it. As regards payment of Rs.46,948/- to the plaintiff with respect to increase in house tax for the year 1999-2000, it has been claimed that the letter dated 22nd February, 2000 enclosing cheque for the aforesaid amount was written under a bona fide mistake and misunderstanding. Similar stand has been taken by the defendant with respect to payment of Rs.93,916/- for the years 1997-98, 1998-99 and 2000-01.

5. The following issues were framed on the pleadings of the parties:-

- (i) Whether the suit is within limitation? OPP.
- (ii) Whether the increased house tax was to be borne by the defendant? OPP.
- (iii) Whether the plaintiff is entitled to interest? If so, at what rate and to what amount? OPP.
- (iv) Relief.

ISSUE NO.(i)

6. It is not in dispute that amount of Rs.40,00,000/-, which the plaintiff deposited in compliance with the interim order passed by this Court in CS(OS) No.387/2004 was deposited with NDMC vide cheque dated 26th April, 2004. The plaintiff had absolutely no cause of action to claim this

amount from the defendant without first paying it to NDMC. Computed from 26th April, 2004, the suit, having been filed on 23rd May, 2006, is well within time. The payment of Rs.15,15,960/- for the year 2004-05 was made by the plaintiff on 20th November, 2004 whereas payment for the year 2005-06 was made on 13th January, 2006. The suit with respect to both these payments is also well within time. The issue is, accordingly, decided against the defendant and in favour of the plaintiff.

ISSUE NO.(ii)

7. There is no dispute between the parties with respect to facts and the parties agreed not to lead evidence. The lease deed executed between the parties is exhibit D-1 and is an admitted document. Clause 2, 4(ix) and 5(i) of the lease deed to which the parties have referred during arguments read as under:-

“ 2. The aforementioned monthly rental of Rs.338200.00 and of Rs.13000.00 totaling Rs.351200.00 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.

4(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(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."*

8. It would be seen from a perusal of Clause 2 above that the monthly rent of Rs.3,51,200/- agreed between the parties was inclusive of house tax and ground rent besides other levies, taxes etc. and out goings, to the extent they were imposed by the Government or any local body, which

in this case would be NDMC. This, of course, has been made subject to Clause 4(ix) of the lease deed. A lease deed, in which it is specifically stated that the agreed rent was inclusive of house tax, would be different from the lease deed, which provides that it will be the responsibility of the lessor. In the former case, it becomes the contractual liability of the lessee, whereas in the later case it does not form part of the rent and therefore does not become a component of his contractual obligation to the lessor. Though in its letter dated 18th May, 2004, which is Exhibit P-6, the defendant claimed that to expect a lessee to contribute towards payment of house tax on the same being enhanced in future would be an unconscionable and illegal term of agreement, not enforceable in a Court of law, my attention has not been drawn to any legal provision, which would render such an agreement illegal or unenforceable in law. There is no illegality in the tenant agreeing to bear increase in house tax of the premises taken by him on rent. Section 23 of the Indian Contract Act, 1872, to the extent it is relevant, provides that the consideration or object of an agreement is lawful, unless (a) it is forbidden by law; or (b) is of such a nature that, if permitted, it would defeat the

provisions of any law; or (c) is fraudulent; or (d) involves or implies, injury to the person or property of another; or (e) the Court regards it as immoral, or opposed to public policy. None of the above referred elements are present in an agreement by a tenant to agree to pay increase in the amount of house tax, so long as he is in occupation of the tenanted premises. Since, none of the clauses contained in Section 23 of the Indian Contract Act, 1872 are attracted to such an agreement, the agreement is perfectly legal and binding on the parties.

9. The next contention of the learned counsel for the defendant was that the defendant can be made liable only if there is an increase in the rate on which the house tax is levied and will not be liable in case there has been increase in the ratable value, without any change in the rate of tax. This was also the stand taken by the defendant in its letter dated 18th May, 2004. I, however, find no merit in the contention. There can be no logic behind agreeing to pay increase in the amount of house tax as a result of increase in rate at which tax is levied on the ratable value and not paying in case the increase is due to enhancement of ratable value. What is material to the parties is the net outgo

towards house tax, irrespective of whether it increases/decreases due to revision of ratable value or due to revision of rates. It is important to note in this regard that the words used in Clause 4(ix) of the lease deed refer not only to rates but also to 'all out goings', which the lessee (defendant) was liable to pay, proportionate to the area of the building 'Kailash' which it had taken on rent and the outgoing would be the amount of house tax, irrespective of the ratable value or the rate on which it is calculated. Clause 2 of the lease deed is quite clear in this regard and there can be no dispute that the amount of Rs.3,51,200/- per month, which the defendant had agreed to pay as monthly rent was inclusive of house tax meaning thereby that house tax was a contractual liability of the defendant in terms of Clause 2 of lease deed though it was included in the monthly rent agreed between the parties. In fact, there would be 'outgoings' agreed to be paid by the defendant, if house tax and ground rent are kept out of its ambit and, therefore, would form part of the 'outgoings', which the defendant was liable to pay. In fact the word 'out goings', which has been used not only in Clause 2 but also in Clause 4(ix), leaves no scope for any dispute in this regard.

Hence, the amount of house tax irrespective of ratable value fixed by the NDMC or the rate of tax decided by it for a particular, which the plaintiff was required to pay the NDMC would be covered under the expression out goings used in Clause 4(ix) of the lease deed.

In fact, even the term 'levies', in the context the word has been used in Clause 4(ix) of the lease deed when read with Clause 2 thereof would also include the house tax, payable to NDMC. The term 'levy' as defined in Shorter Oxford English Dictionary includes the collection of an assessment, duty or tax and since house tax is collected on assessment and is also a tax, there is no scope for disputing that the term 'levy' would include the amount of house tax, payable to a local/statutory body such as NDMC, which imposes this levy in exercise of the statutory powers conferred on it by the NDMC Act.

10. Clause 5 of the lease deed, to the extent it is relevant, to my mind, means that the plaintiff was required to pay, to the concerned Statutory Authority, the house tax imposed from time to time as well as any increase thereon, in respect of the tenanted premises and subjecting it to the provisions of Clause 4(ix) of the lease deed mean that the

increase in house tax, once paid by the plaintiff, was to be borne by the defendant, to the extent it pertained to the premises let out to the defendant. Another noteworthy feature of Clause 5(i) of the lease deed is that any reduction in the existing levies/rates, which to my mind would include house tax and which the defendant had agreed to pay to the plaintiff, was to be passed on by the plaintiff to the defendant. Moreover, the contention that the increase in house tax, irrespective of whether it was on account of revision of retable value or revision of rates was not to be reimbursed by the defendant to the plaintiff, runs contract to the stand taken by the defendant in its letter dated 18th May, 2004.

11. It was also the contention of the learned counsel for the defendant that the terms of the lease deed do not indicate that increase in the house tax was to be reimbursed by the defendant. In this regard, his submission was that omission of house tax and ground rent in Clause 4(ix) and the later part of Clause 5(i) of the lease deed cannot be lost sight of and that had the parties agreed for reimbursement of increase in house tax by the defendant to the plaintiff, there could be no reason for them to omit the

words 'house tax and ground rent', particularly from Clause 4(ix) of the lease deed. I, however, do not find myself in agreement with the learned counsel for the defendant, for three reasons. Firstly, the term 'all out goings', which has been used in Clause 4(ix) of the lease deed, would include the liability towards house tax, which under Clause 2(i) of the lease deed was a part of the rent agreed between the parties and was an out go from the pocket of the plaintiff. There could have been no reason for the parties to use a general expression such as 'out goings', which is a word of wide amplitude, if the intention was to exclude house tax and ground rent from the scope of the sub-clause. Secondly, as I have said earlier, the term 'levy' would include the house tax, which NDMC can recover in exercise of statutory powers conferred upon it by NDMC Act and this expression has been used in Clause 4(ix) as also in the later part of Clause 5(i) of the lease deed. Thirdly, my attention has not been drawn to any other levy or cess imposed by a statutory authority on a commercial building. When the parties agreed vide clause 4(ix) that any increase in the existing levies will be paid by the lessee to the lessor, in proportionate to the area building Kailash in occupation of

the lessee and further agreed vide later part of clause 5(i) that in case of reduction in any existing levies referred to clause 4(ix), the lessee shall have the benefit thereof, proportionate to the aforesaid area, there must have been some levy existing at the time the lease deed was executed. Use of the expression 'existing' in clause 4(ix) and later part of clause 5(i) cannot be meaningless and, therefore, this expression could have been intended only in respect of house tax. It is difficult to accept that the defendant agreed to pay increase in 'existing' levies, imposed by the Government or statutory authority without there being any existing at that time. Since no existing levy other than house tax has been brought to my notice, the obvious inference is that the parties, while referring to increase or decrees in existing levies, had the house tax payable in respect of the tenancy premises, in their mind.

12. It is settled rule of interpretation of document that the intention of the parties has to be gathered by reading the document as a whole and as far as possible, the Court, while construing the terms and conditions contained in an document, should try to construe them in such a manner so as to give effect to all of them and not to make any of them

nugatory or superfluous.

In **DDA vs. Durga Chand Kaushish**, AIR 1973 (2) SCC 825, the Supreme Court reiterated the following propositions of law laid down by it in **Radha Sunder Dutta vs. Mohd. Jahadur Rahim and Ors.** AIR 1959 SC 24

“Now, it is a settled rule of interpretation that if there be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim ‘ut res magis valeat quam pereat’”.

It was observed by a Division Bench of this Court in **Sharda Nath vs. Delhi Administration and Ors.** 149 (2008) DLT 1 that where two clauses of a document disclose some conflict and contradiction, but the clauses can be reconciled, one should give effect to all the clauses rather than render one or more of them as nugatory.

If the interpretation given by learned counsel for the defendant is accepted, Clause 4(ix) of the lease deed would be rendered superfluous since no levy other than house tax or ground rent was either applicable or even in contemplation of parties, at the time when the lease deed was executed.

13. The admitted facts also clearly show that the defendant had understood the terms and conditions of the lease deed to mean that any increase in the quantum of house tax was to be paid by it to the plaintiff to the extent the increase pertained to the premises let out to it in Kailash building. Admittedly, the defendant paid increase in house tax in the year 1997-98 to 2000-01. Had the intention of the parties been to the contrary, the defendant would not have reimbursed the increase in house tax for the aforesaid years to the plaintiff.

It was contended by the learned counsel for the defendant that these payments were made under a mistake. However, the written statement does not specify how and in what circumstances the alleged mistake came to be committed by the defendant. In the absence of any such explanation, the plea taken by the defendant in this regard, cannot be considered to be a genuine plea and needs to be out rightly rejected.

14. It was also contended by the learned counsel for the defendant that the suit is premature since the demand of house tax has been challenged by the plaintiff in a civil suit and in the event of the suit being decided in its father,

the amount deposited by the plaintiff with NDMC would be refunded to it. In my view, the contention is misconceived. NDMC has already raised demand on the plaintiff. The demand was stayed by this Court subject to deposit of Rs 40 lakhs with NDMC. Therefore, the money has gone out of the pocket of the plaintiff to the pocket of NDMC. Once the plaintiff has made payment to NDMC, whether of its own or under an order of the Court, it is entitled to recover the increase in house tax to the extent it pertains to the premises which was let out to the defendant from the defendant. Of course, in the event of the Court deciding in favour of the plaintiff and directing NDMC to either refund or adjust the whole or part of the amount of Rs 40 lakhs deposited by it with NDMC, the defendant would be entitled to immediate refund of that amount from the plaintiff. In the event of NDMC paying any interest to the plaintiff on the aforesaid amount, the defendant will also be entitled to payment of that amount from the plaintiff. As far as demands for the years 2004-2005, 2005-2006 is concerned, the plaintiff having already deposited the same with the NDMC is entitled to recover that amount from the defendant. The issue is decided against the defendant and

in favour of the plaintiff.

Issue No. 3

15. The plaintiff has not claimed any interest for the pre-suit period. The pendente lite and future interest, however, it is in the discretion of the Court, as provided in Section 34 of the Code of Civil Procedure. The issue is decided accordingly.

16. It was contended by the learned counsel for the defendant that since no registered sale deed was executed after the lease deed dated 31st December, 1996 expired by efflux of time, the terms and conditions contained in clause 4(ix) of the lease deed are not binding on the defendant and consequently, the house tax for the period after expiry of the agreed term of the lease cannot be recovered from the defendant. In this regard, he placed reliance on Section 49 of Registration Act, which provides that no document, required by Section 17 or by any provisions of Transfer of Property Act, 1982 to be registered shall affect any immovable property comprised therein, or be received as evidence of any transaction affecting such property unless it has been registered. I, however, find no merit in this contention. The reliance on Section 49 of Registration Act,

in my view, is wholly misplaced for the simple reason that the lease deed dated 31st December, 1996 was duly registered on 02nd January, 1997 and, therefore, the disability attached to a document, which is required to be compulsorily registered and is not registered, is not attracted to this document.

The relevant statutory provision in this regard would be Section 116 of Transfer of Property Act which, to the extent it is relevant, provides that if a lessee remains in possession of the tenancy premises after the determination of the lease granted to him, and the lessor or his legal representative accepts rent from the 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. Section 106 of Transfer of Property Act, to the extent it is relevant, provides that in the absence of a contract or local law or usage to the contrary, a lease of immoveable property for other than agricultural or manufacturing purposes shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

Therefore, since the plaintiff allowed the defendant to continue in possession of the tenancy premises and also accepted rent from it, even after the term of the lease had expired by efflux of time, the lease came to be renewed from month to month being a lease for commercial purpose. The use of the expression 'renewed' in Section 116 of Transfer of Property Act clearly implies that the parties in the event of a tenant holding over the property on determination of the lease, would be governed by the terms and conditions of the lease which stands determined, unless they enter into a fresh agreement contrary to the terms and conditions of the lease which stand determined.

This was the view taken by the Division Bench of Calcutta High Court in **Krishna Char an Sukladas vs. Nitya Sundari Devi** AIR 1926 Calcutta 1239 as well as by a Division Bench of Allahabad High Court in **Zahoor Ahmad Abdul Sattar vs. State of Uttar Pradesh and Anr.** AIR 1965, Allahabad 326 and by Madras High Court in **K. Gnanadesikam Pillai and Ors. vs. Antony Benathu Boopalarayar** AIR 1934 Madras 458. The decision of the Allahabad High Court in the case of **Zahoor Ahmad** (supra) was affirmed by Supreme Court in **The State of U.P. vs.**

Zahoor Ahmad and Anr. AIR 1973 SC 2520. This was also the view of the Federal Court in **Kai Khushroo Bezonjee Capadia vs. Bai Jerbai Hirjibhoy Warden and Anr.** AIR 1949 FC 124, where the Court agreed with the following statement contained in Woodfall's "Law of Landlord and Tenant"

"Where a tenant for a term of years holds over after the expiration of his lease he becomes a tenant on sufferance, but when he pays or expressly agrees to pay any subsequent rent at the previous rate a new tenancy from year to year is thereby created upon the same terms and conditions as those contained in the expired lease so far as the same are applicable to and not inconsistent with an yearly tenancy."

I, therefore, hold that even on expiry of the terms of the lease, the terms and conditions contained in the lease deed continued to bind the parties, so long as the defendant was holding over the tenancy premises.

Issue No. 4

17. In view of my findings on the issues 1 to 3, the plaintiff is entitled to a decree for Rs.69,84,900/- against the defendant.

ORDER

In view of my findings on the issue, a decree for Rs.69,84,900/- with costs and pendente lite and future interest at the rate of 6% per annum is hereby passed in favour of the plaintiff and against the defendant, subject to the plaintiff filing an undertaking, in the form of an affidavit, stating therein that if any part of the amount, paid by it to the NDMC, towards payment of increase in house tax, in respect of the premises which was let out to the defendant is refunded to it, or is adjusted against any other dues/liability, it will refund that amount to the defendant, without demand from it within four weeks of getting the refund/adjustment. The plaintiff will further undertake that if any interest is paid or allowed to be adjusted to it by NDMC, in respect of aforesaid amount that also will be refunded to the defendant.

Decree sheet be prepared accordingly.

(V.K. JAIN)
JUDGE

FEBRUARY 09, 2011
Vk/bg