

\$~5

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 24<sup>th</sup> November, 2011

+

RFA(OS) 46/2010

STATE BANK OF INDORE  
(SINCE MERGED WITH STATE  
BANK OF INDIA)

..... Appellant

Through : Mr.Jai Mohan, Advocate.

versus

UMESH MEDIRATTA AND ANR.

..... Respondents

Through : Mr.Rajiv Bansal, Advocate and  
Mr.Rahul Bhandari, 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. (Oral)**

**CM No.8857/2010 and CM No.8860/2010**

79 days delay in filing the appeal and 90 days delay in refilling the appeal, prayed to be condoned for in the above captioned two applications, is condoned for the reasons stated in the applications.

**CM No.12856/2011 and CM No.17936/2011**

1. Vide CM No.12856/2011, the appellant/judgment debtor, seeks leave of this Court to deposit a sum of ₹49,52,858/- i.e. the decretal amount in this Court. The amount has already been deposited. The amount has been invested in a fixed deposit. Vide CM No.17936/2011 the decree holders i.e. the respondents seek liberty to withdraw the amount upon furnishing security.

2. Since learned counsel for the parties have agreed to argue the appeal today itself, we dispose of both applications holding that they have been rendered infructuous.

**CM No.8859/2010**

1. The appellant desires to place on record two documents : (i) A letter dated 26.04.2001 written to the Chief Manager, State Bank of Indore. The letter has been signed by Umesh Mahandiratta and Ruby Mahandiratta i.e. the respondents. (ii) Photographs of the suit property taken on 02.05.2003.

2. The relevance of the two documents, as guided to us by learned counsel for the appellant, is that the first document would establish the fact that post July 2001 the rental of the subject property had fallen by 25% of the existing. In turn, this would impact the damages awarded by the learned Trial Judge to the respondents, for the reason the measure of the damages adopted by the learned Single Judge is the lease agreement between the parties which envisaged that if lease period is extended, upon expiry of the existing lease period

of three years, for the extended term of the lease, the rent shall stand enhanced by 25%. The stated relevance of the photographs is to establish that even after the property was repaired by the appellant, the respondents were not able to rent out the same till May 2003.

3. We find the photographs irrelevant on the subject of the dispute. Since learned counsel for the respondents does not dispute that the respondents wrote the letter dated 26.4.2001; holding the same to be relevant, we dispose of the application taking on record the letter dated 26.4.2001 and since the same is an admitted document, we exhibit it as Ex.Appeal-1.

RFA(OS) 46/2010

1. Heard learned counsel for the parties.
2. Vide four registered lease deeds Ex.PW-1/1, Ex.PW-1/2, Ex.PW-1/3 and Ex.PW-1/4, different portions of property bearing Municipal No.L-7, Green Park Extension (Market), New Delhi were let out to the State Bank of Indore which has since been merged with the State Bank of India. The lessors were the predecessors-in-interest of the respondents.
3. The duration of the lease was three years, commencing from 25.06.1998 and ending on the midnight of 24.06.2001.
4. The lease rental, pertaining to two leases relatable to the basement of the building was ₹47,500/- (Rupees Forty

Seven Thousand Five Hundred only) per month (each deed) and for the remainder building consisting of a ground floor it was let out under the other two lease deeds and the lease rental was ₹90,000/- (Rupees Ninety Thousand only) per month (each deed). In other words, the total lease rental was ₹2,75,000/- (Rupees Two Lakhs Seventy Five Thousand only) per month.

5. Vide clause A.2 of the four lease deeds, an interest free security deposit equivalent to one month rent was paid to the predecessors-in-interest of the respondents. Thus, under the four lease deeds, the predecessors-in-interest of the respondents received, by way of security, a sum of ₹2,75,000/- (Rupees Two Lakhs Seventy Five Thousand only).

6. The respondents purchased the subject property along with the encumbrance thereon i.e. the lease of the same as noted herein above, and thus stepped into the shoes of the lessors.

7. Since the four lease deeds gave an option to the appellant to have the lease renewed for a further period of three years and for which it was pre-agreed that rent would stand enhanced by 25% of the existing, the parties entered into a dialogue to renew the lease, but evidenced by Ex.Appeal-1, the rents had fallen by June 2001 when the lease expired by efflux of time on the midnight of 24<sup>th</sup> June 2001. Even the 25% discount in the existing rental was

found to be on the higher side by the bank and thus the negotiations broke.

8. However, the bank continued to occupy the leased premises till 24<sup>th</sup> August 2001, when possession was handed over.

9. The event of handing over possession was not smooth. The respondents took over possession under protest for the reason they took the stand that under the four lease deeds the appellant was obliged to give a six months' prior notice if intention was to vacate the premises prior to nine years of the letting; and the basis of said stand taken by the respondents was that the four lease deeds envisaged two renewals for a period of three years each and in this manner the lease period was alleged to be nine years. The bank took the stand that the lease was for a period of three years and the clause in the lease deeds enabling extension of the lease period could not be read as fixing the lease period for nine years. The second issue of dispute was that the premises were required to be restored to the original condition, subject to normal wear and tear as per the four lease deeds; but were found to be subjected to an excessive damage as recorded in Ex.P-15 and Ex.P-16 which are a part of the possession letter Ex.P-8 and as per which in respect of the basement it stands recorded that the flooring is damaged in the front. The granite flooring needs replacement. The roof and ceiling is damaged in the front. Walls need plastering. Strong room walls and ceiling were damaged. Granite

flooring of the staircase descending into the basement was damaged and needed replacement. Pertaining to the electrical works it stands recorded that five split units (probably of air-conditioners), required repair/replacement and several electric points and fittings as also conduits were missing and lastly one fan was missing. In respect of the ground floor it stands recorded that the granite flooring in the front portion was damaged as also the false ceiling above. It is recorded that the walls need extensive repairs as also the granite flooring at the entrance. For the AC not working it is recorded that the same needs repairs and for the switches and light points it is recorded that many of them require replacement.

10. The dialogue continued. The respondents could not put the premises to use till they were brought back in a habitable condition. The bank re-entered the premises as a licensee to carry out repairs and completed the same to the satisfaction of the respondents on 31.01.2002 and thus it was only thereafter that the respondents were in a position to meaningfully use the premises owned by them.

11. Alleging that rent for the month of August 2001 was not paid and claiming rent to be enhanced by 25% with effect from 26.06.2001 and accepting that rent up to 31.07.2001 was paid but at the previous rate, suit was filed claiming ₹1,37,500/- (Rupees One Lakhs Thirty Seven Thousand Five Hundred Only) being the difference in the rent payable for the months of June and July 2001; ₹3,43,750/- (Rupees Three

Lakhs Forty Three Thousand Seven Hundred Fifty Only) as rent for the month of August 2001; ₹24,06,250/- (Rupees Twenty Four Lakhs Six Thousand Two Hundred and Fifty Only) as rent for further six months.

12. The suit was resisted by the bank alleging that since it never opted for the lease period to be extended and it never terminated the lease thus the term of the lease deed of giving six months prior notice was not applicable. Liability to pay rent enhanced by 25% was denied. Rent for the month of August 2001 was offered to be paid, but at the existing rate.

13. Vide impugned judgment and decree dated 23.08.2008 the learned Single Judge has held that the appellant was not to give any prior notice of six months for the reason the duration of the lease was three years and hence it was not a case where the duration of the lease was curtailed. The learned Single Judge held that since the bank continued to occupy the premises beyond 25.06.2001 it would be liable to damages and since as per the lease deeds the rent was to be enhanced by 25% on expiry of the lease period, held respondents entitled to a sum of ₹1,37,500/-; being the 25% difference in the rent paid and held payable for the lease month commencing 25.06.2001 till 24.07.2001. The learned Single Judge also held respondents entitled to ₹3,43,750/- for use and occupation from 25.7.2001 up till 24<sup>th</sup> August 2001 and this amount has been calculated on the

basis of the previous agreed rent of ₹2,75,000/- per month for the entire property being enhanced by 25%.

14. Negating the claim for six months rent to be paid on the premise rested by the respondents that they were entitled to a six months notice, the learned Single Judge has recompensed respondents a sum of ₹20,62,500/- (Rupees Twenty Lakhs Sixty Two Thousand Five Hundred only) holding that under the lease deeds it was the responsibility of the bank to have restored the premises to its original condition which the bank did only by 31<sup>st</sup> January 2002. Holding that this has deprived the respondents the benefit to use the property and lease out the same, recompense has been effected by granting damages for said period and the measure of the damages adopted is the rent which the respondents could have obtained.

15. To put it pithily, though on an entirely different process of reasoning, the learned Trial Judge has reached the destination as was desired by the respondents.

16. The appellant had admittedly informed the respondents that it would be vacating the tenanted premises before the lease period expired. In fact, when a lease is for a fixed term, neither party needs to inform the other party that upon expiry of the period of lease, possession should be restored. The two letters Ex.P-5 and Ex.P-6 dated 30.04.2001 written by the appellant duly informed the respondents that they should take possession of the property the day next

after the lease expired. However, the offer to hand over possession was not absolute inasmuch as in the same letters the appellant sought some time to vacate the premises, informing the respondents that it was in the process of identifying a property where the branch would shift.

17. If a tenant knows that he has to vacate a premises by a fixed date, it is his duty to find an alternative accommodation within the time by which he has to vacate. It is not a relay race where for a small segment of the lap, when the baton changes hand, there are two runners on the track.

18. The appellant became a tenant at sufferance on the midnight of the day when the lease expired and thus it became liable to pay damages for use and occupation for the extended duration for which the appellant continued to occupy the premises, which date we note is 25.8.2001, unless the parties extended the lease period by mutual consent.

19. Since Ex.Appeal-1 was not before the learned Single Judge, the learned Single Judge was justified in holding that the measure of damages could be the four lease agreements as per which there was a pre-agreement that if the lease was extended the same would be at a rent increased by 25%.

20. However, since Ex.Appeal-1 has been admitted in evidence today, we need to reflect upon the same.

21. The lease month was from the 25<sup>th</sup> of each calendar month and was to end on the 24<sup>th</sup> of the next calendar month. The lease being for a period of a three years and commencing from 25.6.1998 would come to an end on the midnight of 24.6.2001. Possession was handed over on 25.8.2001 and admittedly rent was paid only for one month. Thus, damages would in any case be payable for one month, as also for the previous month but after adjusting the sum of ₹2,75,000/- paid by the appellant.

22. It is not in dispute that when the bank vacated the premises it did not discharge its obligation to restore the premises to the original position, subject to the usual wear and tear. Ex.P-8 and its two enclosures Ex.P-15 and Ex.P-16, to which we have referred to herein above, clearly evidence substantial repairs required to be executed and we have evidence that with a recalcitrant attitude the bank finally agreed to carry out the repairs which were carried out and completed by 31<sup>st</sup> January 2002. Thus, with effect from 25<sup>th</sup> August 2001 till 31<sup>st</sup> January 2002, the bank prevented the property to be put to meaningful use i.e. the property could not be meaningfully used by the landlords for five months. Thus, the learned Single Judge was justified in recompensing the landlords on said account, but not for a period of six months. The period has to be five months.

23. On the measure of damages, it is true that Ex.Appeal-1 would evidence that the respondents offered to reduce the existing rent by 25% and this throws light of the rents being

depressed during the relevant time, but not with proof that the rent was depressed by 25% for the reason, as urged by Sh.Rajiv Bansal Advocate, on behalf of the respondents, where an existing tenant is occupying the property there is always an inducement to the landlord to let him occupy the premises even at a lesser rent vis-à-vis the existing market rent for the reason by the time a new tenant is found, though the new tenant would pay a higher rent, but the gain would be more than lost due to the rent lost for the period spent in finding a new tenant.

24. Under the circumstances, we balance the equities by holding that the evidence on record probablizes that the rent in the area had increased, not by 25%, but by half-figure thereof i.e. by 12.5%.

25. Thus, damages payable by the bank for the two months it overstayed would be @₹3,09,375/- for each month and noting that for one month the pre-existing rent was paid we hold that for the period commencing from 25<sup>th</sup> June 2001 till 24<sup>th</sup> July 2001, further amount payable would be ₹34,375/- and for the period 25<sup>th</sup> July 2001 till 24<sup>th</sup> August 2001 the damages payable would be ₹3,09,375/- and for further five months for which the bank is responsible in not restoring the suit premises, damages payable would be ₹15,46,875/-. Total damages payable would be ₹18,90,625/- (Rupees Eighteen Lakhs Ninety Thousand Six Hundred Twenty Five Only).

26. It is not in dispute that the predecessor-in-interest of the respondents were given one month rent as interest fee security deposit under each lease deed and thus a sum of ₹2,75,000/- was received as interest fee security deposit. On the issue of adjustment of the said amount, learned counsel for the respondents urges that since the bank had not claimed any adjustment, this Court cannot adjust said amount from out of the amount due to the respondents.

27. We reject the argument for the reason receipt of said amount by the predecessor-in-interest of the respondents is not in dispute. From the damages held payable by the appellant to the respondents, said amount can always be adjusted. In the instant case there is one additional reason to do so. The basis on which respondents have been recompensed damages is not the basis on which damages were claimed. It would be a very powerful argument for the bank to urge that law does not permit variance between pleading and proof. If damages are claimed in a particular manner, proof thereof cannot be on a different basis. Thus, we hold that from out of the damages held payable, the bank would be entitled to adjust ₹2,75,000/-.

28. The learned Single Judge has awarded interest @10% per annum with effect from 24<sup>th</sup> January 2002, which date should actually be 31<sup>st</sup> January 2002.

29. The appeal is partially allowed. The impugned judgment and decree dated 23<sup>rd</sup> October 2008 is modified

and the suit filed by the respondents is decreed in sum of ₹34,375/- + ₹3,09,375/- + ₹15,46,875/- minus ₹2,75,000/- = ₹16,15,625/- (Rupees Sixteen Lakhs Fifteen Thousand Six Hundred Twenty Five Only) with interest payable thereon with effect from 1<sup>st</sup> February 2002 till today; proportionate costs in the suit as also counsel fee decreed by the learned Single Judge is also held payable by the appellant to the respondents; leaving the parties to bear their own costs in the appeal.

30. The appellant has deposited ₹49,52,858/- in this Court. Interest which has accrued thereon is directed to be credited to the account of the appellant. The Registry is directed to prepare a cheque in the name of the respondents as per the decree passed today i.e. on the principal sum being ₹16,15,625/- (Rupees Sixteen Lakhs Fifteen Thousand Six Hundred Twenty Five Only) on which interest would be calculated @ 10% per annum with effect from 1<sup>st</sup> February 2002 till today as also such costs and counsel fee as have been held payable to the respondents as per para 29 above. The remainder money would be returned to the appellant.

**PRADEEP NANDRAJOG, J.**

**S.P.GARG, J.**

**NOVEMBER 24, 2011**  
**dk**