

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA No.370/2009

% ***Judgment Delivered on: 31.03.2011***

DENA BANK Appellant
Through : Mr.Pallav Saxena and Mr.Harshit
Tripathi, Advocates

versus

MS.KAMLESH RANI Respondent
Through : Mr.Jagdish Chandra, Advs.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

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 the Digest? **Yes**

G.S.SISTANI, J (ORAL)

1. Present appeal has been filed against the judgment and preliminary decree in a suit for possession and recovery dated 14.09.2009 passed by the trial court on an application filed by the respondent herein under Order XII Rule 6 of the Code of Civil Procedure.
2. The brief facts necessary to be noticed for disposal of the present appeal are that the respondent had filed a suit for possession, recovery of amount of ₹10,41,360/- as arrears of rent excluding all other charges, mesne profit along with the *pendente lite* interest @18% per annum against the appellant. The respondent is the absolute owner of the suit property bearing No.GL-16-A, Hari Nagar, Jail Road, New Delhi measuring

320 sq. yds., approximately, comprising of ground floor and the first floor. The property was purchased by the respondent from one Sh.R.L. Ratti vide sale deed dated 17.05.1979 duly registered with the Sub-Registrar –II, vide registration No.3616 additional book no.I, volume no.3417 at pages 82-83. The appellant Bank was inducted as a tenant vide lease deed dated 21.09.1984 for a period of five years in respect of part of portion of ground floor of the suit property measuring 2068 sq. fts. The lease has been renewed periodically and was last renewed vide lease deed dated 22.02.2003 duly registered with the Sub-Registrar-II vide registration no.3941 in additional book no.-I, volume no.10844 at pages 144-152 for the period 01.11.2002 to 31.10.2007, for a period of five years at a monthly rent of ₹41,360/- excluding all other charges. Invoking sub-clause (m) of clause B of the lease deed dated 22.02.2003 the respondent terminated the tenancy of the appellant vide a legal notice dated 07.06.2007 which was issued by registered AD post and under certificate of posting. The legal notice was duly served on the appellant, to which a reply was sent on 10.07.2007. Since the appellant failed to hand over possession of the suit premises despite the legal notice having been issued and served, the respondent was compelled to file a suit for recovery of possession and claimed other reliefs as well. The appellant filed its written statement wherein various objections were raised. As per the written statement the respondent had filed a suit only to exert undue pressure on the appellant with a

view to increase the rent; and that the appellant being a lawful tenant as per the terms of the registered lease deed dated 22.02.2003 for an initial period of 5 years from 01.11.2002 to 31.10.2007 with a stipulation that the lease could be further renewed for another period of five years from 01.11.2007 to 31.10.2012 at the option of the appellant herein, to be exercised not less than one calendar month before the expiry of the term of the lease i.e. 31.10.2007, subject only to increase in the rent by 25%. All other terms and conditions were to remain the same.

3. The appellant vide letter dated 27.09.2007 is stated to have exercised the right to extend the lease and requested the respondent to renew the lease w.e.f. 10.11.2007 for a further term of five years. In the written statement appellant also clarified that in fact the appellants were inducted as a tenant on 16.04.1997 vide lease deed dated 21.09.1984 and the lease was renewed from time to time. In the written statement the appellant has not denied the landlord-tenant relationship nor has it denied receipt of the legal notice, but it was denied that the lease could have been terminated by the respondent. The trial court while dealing with the application under Order XII Rule 6 of the Code of Civil Procedure filed by the respondent in its order of 14.09.2009, considered the admissions of the respondent and observed that the respondent is admittedly the landlord of the tenanted suit premises, the property is under tenancy of the appellant vide several registered lease deeds

entered into between the parties from time to time. The appellant Bank has been a tenant since 1989 and the last registered lease deed was duly executed on 22.02.2003 for a period of five years. While relying on clause B (m) of the registered lease deed, the lessor (respondent herein) was entitled to terminate the lease at any time by giving six months notice, and taking into consideration that respondent had issued a notice dated 07.06.2007 to the appellant calling upon the appellant to vacate the premises within six months, and the notice having admittedly been received by the bank which is evident from the reply filed by them dated 10.07.2007, the trial court allowed the application under Order XII Rule 6 of CPC and directed the appellant to deliver the vacant possession of the suit property to the respondent. The trial court has also considered the arguments raised by counsel for the appellant that clause (D) of the lease stipulates further extension of the lease for a period of five years after expiry of the current term and hence the suit was liable to be dismissed. The argument raised by counsel for the appellant did not find favour with the trial court and according to the trial court, clause (m) has an overriding effect over the subsequent terms of the lease. Aggrieved by the judgment of the trial court, the appellant has preferred the present appeal.

4. Counsel for the appellant submits that learned trial court has erroneously passed a decree on the basis of the admissions made by the appellant, whereas the appellant in its written

statement had categorically raised an objection to the respondent's entitlement to determination of the lease, which objection was rejected on merits. It is also contended that the trial court has lost sight of the fact that the admissions must be unambiguous, equivocal and unqualified. It is contended by counsel for the appellant that the order was passed by learned trial court in undue haste and that the trial court has failed to consider the objections of the appellant and also has failed to read the provisions of the lease in harmony and in entirety.

5. Counsel next contends that in view of clause 'D' of the lease deed dated 22.2.2003 it was agreed that the lessor (respondent herein) shall on the request of the appellant within one month before expiration of the lease grant a renewal for another period of five years. It is strongly urged before this court that in view of clause 'D' of the Registered lease deed, the respondent, landlord could not have terminated the tenancy prior to one month of the expiration of the lease; and by a communication dated 10.07.2007, the appellant exercised the option for renewal of lease for another period of five years. It is thus contended that once this option was exercised, the respondent was legally bound to extend the lease for another term of five years. Counsel for the appellant has also submitted that clause 'D' overrides all other clauses of the lease and thus, the trial court has fallen in error in passing the impugned judgment and decree.

6. Counsel further submits that in this case issues were framed on the basis of the pleadings of the parties on 13.02.2009 and once the issues were framed it was not appropriate for the Court to have considered the application of the respondent under Order XII Rule 6 of the Code of Civil Procedure. It is also argued by counsel for the appellant that the respondent has been receiving the enhanced rent since 1.11.2007.
7. Counsel for the respondent submits that while considering an application under Order XII Rule 6 of the Code of Civil Procedure in matters relating to tenancy, the Court must consider unequivocal admission of three important constituents: (i) the relationship of landlord and tenant, (ii) receipt of a valid notice to quit, and (iii) the rate of rent of the premises being more than ₹3,500/- per month. Counsel also contends that no dispute has been raised by the appellant with regard to the relationship of landlord and tenant neither has the appellant denied receipt of legal notice dated 07.06.2007 and in fact the appellant has duly replied to the said legal notice and that the rate of rent is more than ₹3,500/-, which has also not been disputed. Counsel for the respondent further submits that the aforesaid admissions are evident from the written statement which has been filed; and that the admissions are clear, unambiguous, unqualified and unequivocal. Thus the trial court has rightly allowed the application under Order XII Rule 6 of the Code of Civil Procedure and passed the decree.

8. Counsel for respondent has also relied upon clause B (m) of the lease deed. In support of his submission that clause B (m) overrides other clauses of the lease, counsel for respondent submits that in case there is conflict between the two clauses in a document, the earlier clause must override the latter clause and has relied upon **Radha Sundar Dutta v. Mohd. Jahadur Rahim**, reported in AIR 1959 SC 24 and **Ramkishore Lal v. Kamal Narain**, reported in 1963 (Suppl.) 2 SCR 417. Counsel for respondent while relying upon **The Central Bank of India Ltd. v. The Hartford Fire Insurance Co. Ltd.**, reported at AIR 1965 SC 1288 submits that the objections raised by the appellant is not bona fide and are only raised with a purpose to delay the proceedings. It is further submitted by the counsel that mere reading of clause B(m) of the said lease deed would make it abundantly clear that the landlord was entitled to terminate the lease of the suit premises at any time by giving a six months' notice to the lessee. It is contended that since the termination could have taken place at any point of time a term of six months notice was agreed upon only with a view to give the appellant substantial time, to look for an alternate premise.
9. I have heard counsel for the parties and carefully perused the registered lease deed relied upon by both the parties and the judgment of the trial court. In the case of **Uttam Singh Duggal and Company Ltd. Vs. United Bank of India & Ors**, reported at (2000) 7 SCC 120. The Apex Court observed as under:

12. As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that “where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled”. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.”

10. It was observed in the case of **Rajiv Sharma and Another Vs. Rajiv Gupta**, reported at (2004) 72 DRJ 540, that the purpose of Order XII Rule 6 of the CPC is to enable the party to obtain speedy justice to the extent of relevant admission, which according to the admission, if the other party is entitled for. Admission on which judgment can be claimed must be clear and unequivocal. In the case of **Ms. Rohini V R.B.Singh**, reported at **155 (2008) DLT 440** it has been held as under; *“it is trite to say that in order to obtain judgment on admission, the admissions must be clear and unequivocal. In the matter of landlord and tenant there are only three aspects which are required to be examined – (i) Relationship of landlord and tenant; (ii) expiry of tenancy by efflux of time or determination of valid notice to quit; and (iii) the rent of the premises being more than Rs.3500/-, per month, in view of the Act”*.
11. The bone of contention between the parties revolves around clause B (m) and clause ‘D’ of the lease deed. It would be useful to reproduce clauses ‘B(m)’ and ‘D’ of the lease deed:

“B. m) That the lessor shall be entitled to terminate the lease of demised premises at any time by giving to the lessee six months notice of her intention to do so, terminating the tenancy on the last day of the month.”

“D. PROVIDED ALWAYS AND IT IS HEREBY agreed and declared that the Lessor SHALL, on the request of the Lessee may not less than one calendar month before the expiration of the terms hereby created, grant to the Lessee a renewal of the Lease of the demised premises for one further period of five years from the expiration of the term hereby granted with 25% increase in the rent after the expiration of the present term and containing the same covenants and the provisions as are herein contained including/ excluding the present covenants for renewals.”

12. No doubt clause ‘D’ gives the appellant an option to seek renewal for another term of five years one month before expiration of the lease, which option has been exercised by the appellant but on receipt of the legal notice dated 7.6.2007 the lease stood terminated as per Clause B(m) of the lease deed. In the case of **Radha Sundar Dutta (Supra)**, the Apex Court has held that if there is a conflict between two clauses and it is not possible to give effect to all of them, then as per rule of construction it is the earlier clause that must override the latter. In the case of **Ramkishore Lal (Supra)**, it was held as under:

“The golden rule of construction, it has been said, is to ascertain the intention of the parties to the instrument after considering all the words, in their ordinary, natural sense. To ascertain this intention the Court has to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. Very often the status and the training of the parties using the words have to be taken into consideration. It has to be borne in mind that very many words are used in more than one sense and

that sense differs in different circumstances. Again, even where a particular word has, to a trained conveyancer, a clear and definite significance and one can be sure about the sense in which such conveyancer would use it, it may not be reasonable and proper to give the same strict interpretation of the word when used by one who is not so equally skilled in the art of conveyancing. Sometimes it happens in the case of documents as regards disposition of properties, whether they are testamentary or non-testamentary instruments, that there is a clear conflict between what is said in one part of the document and in another. A familiar instance of this is where in an earlier part of the document some property is given absolutely to one person but later on, other directions about the same property are given which conflict with and take away from the absolute title given in the earlier portion. What is to be done where this happens? It is well settled that in case of such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded as unsuccessful attempts to restrict the title already given. (*See Sahebzada Mohd. Kamgar Shah v. Jagdish Chandra Deo Dhabal Deo*) [1960] 3 SCR 604, 611. It is clear, however, that an attempt should always be made to read the two parts of the document harmoniously, if possible. It is only when this is not possible, e.g., where an absolute title is given in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be void."

13. In the case of **Central Bank of India Ltd (Supra)** it was held that the plain language of a document cannot be changed by surrounding circumstances. Relevant portion of the judgment reads as under:

"(5). The contention of the appellant is based on the interpretation of Clause 10. Now it is common place that it is the court's duty to give effect to the bargain of the parties according to their intention and when that bargain is in writing the intention is to be looked for in the words used unless they are such that one may suspect that they do not convey the intention correctly. If those words are clear, there is very little that the court has to do. The court must give effect to the plain meaning of the words, however it may dislike the result. We have earlier set out

Clause 10 and we find no difficulty or doubt as to the meaning of the language there used. Indeed the language is the plainest. The clause says " This insurance may be terminated at any time at the request of the insured ", and " the insurance may also at any time be terminated at the instance of the company. " These are all the words of the clause that matter for the present purpose. The words " at any time " can only mean " at any time the party concerned likes. " Shortly put, Clause 10 says "either party may at its will terminate the policy. " No other meaning of the words used is conceivable.

(6) None the less learned counsel for the appellant referred us to various authorities which, according to him, showed that it was a fit case for implying a term in the clause and to these we now turn. We were first referred to Halsbury's Laws of England, 3rd edition, volume 11, paragraph 640, page 391, where it is said that:

" In order to give effect to a contract according to what appears to have been the intention of the parties, the court may imply a term or condition or a qualification of a clause which is not inconsistent with the general tenor of the document."

It was said that it was the intention of the parties that the policy would be liable to termination only for a reasonable cause and that this appeared when the contract, as it had to be, was, "read in the light of the material circumstances of the parties in view of which the contract is made". The quotation is from the judgment of Lord Wright in *Luxor v. Cooper*, [1941] A.C. 108 at page 130 and as to the correctness of the proposition contained in it there is no question. The learned counsel then said that here the insurance was effected and undertaken at a time when riot was raging and, therefore, the parties must have intended that the policy could be terminated only for a reasonable cause. We are unable to agree. The prevailing riots do not indicate what the intention of the parties, that is, of both of them, was. There is no question of reading the policy in the riotous conditions for they throw no certain light. Further, the riot risk cover agreement expressly provided that " all the conditions of the policy shall apply " to it and this agreement had been made in the light of the prevailing riot conditions. Obviously, the parties intended that Clause 10 of the conditions of the policy would be applicable to the riot risk cover also. We also think that plain and categorical language cannot be radically changed by relying upon the surrounding circumstances ; a right to terminate at will cannot, by reason of the circumstances, be read as a right to terminate for a reasonable cause.

(7) The rule read from Halsbury does not assist the appellant either, for it does not permit a court to speculate. The court must be able to say with certainty what the intention was, in order that it may add something to the language used by the parties. We venture to think that it would be difficult to imagine what would be a reasonable cause for terminating the policy. Obviously the parties would be poles apart on that question and could not, therefore, have both intended, as suggested, that the policy would be terminable for a reasonable cause only. There is nothing here to show that the parties did not intend what they said.

(8) Another passage from the same paragraph in Halsbury's Laws of England was read which stated that if the intention of the parties could be ascertained from the written instrument, the court would give effect to that intention notwithstanding ambiguities in the words used or defects in the operation of the instrument. This statement of the law is based on the principle that a deed shall never be void where the words may be applied to any intent to make it good. This rule also affords no assistance to the appellant for here, as we have already stated, there is no ambiguity in the words used or defect in the operation of the instrument. It is also plain to us that the policy is by no means void.

(9) Next we were referred to Halsbury's Laws of England, volume 22, and the proposition from that book on which reliance was placed appears in paragraph 424 at page 225 where it has been said, :

" It has been suggested that a stipulation in a policy may be so capricious or unreasonable as to be unenforceable as a fundamental term of a contract."

The learned counsel said that we should, therefore, treat Clause 10 as unenforceable. This principle of law, whatever its merits, has no application to the present case for it was stated in connection with the ascertainment of a fundamental condition of the policy, that is, a condition a breach of which entitled the insurer to repudiate his liability under it. We have nothing to do with the interpretation of such a clause and the principle would have no application to the present case. Clause 10 sanctions no repudiation of liability already incurred but only terminates a contract as to the future; it prevents liability arising in future which is not a fundamental term of the variety to which the rule was applied in the passage read from Halsbury."

14. Applying the law laid down by the Apex Court to the facts of this case and a complete and harmonious reading of the registered lease deed dated 22.02.2003 executed between the parties, leaves no room for any doubt that it was the intention of the parties that the lessor would be entitled to terminate the lease at any time by giving a six months notice to the lessee (emphasis added). Clause 'D' giving an option to the lessee (the appellant herein) to renew the lease, is an option available to the lessee provided the landlord (respondent herein) does not choose to exercise its option to terminate the lease in the meanwhile. Since the execution of the lease has not been denied, the Court has to harmoniously read the terms of the lease deed dated 22.02.2003. Reading the terms of the lease deed, I am of the view that there is no doubt that clause (m) has an overriding effect on all other terms of the lease, as suggested by the language of clause (m) which is "at any time by giving to the lessee six months notice". In the present case, the respondent-landlord vide notice dated 07.06.2007 terminated the lease deed and since the offer of renewal by appellant-Bank was subsequent to the said notice terminating the lease and was not acceptable to the respondent –landlord, I am of the view that the lease deed was validly terminated vide said notice.

15. Applying the settled proposition of law to the facts of this case the words "any time" have to be construed in a manner so as not to defeat the intention of the parties. The plain reading of

the agreement suggest that the lessor was given the unequivocal right to terminate the lease at any time subject to giving a notice of six months. The lease could only be extended if there is a consensus between the landlord and the tenant bank. The ambiguity that exists in the document necessitates the interference of this court in interpreting the same. It is trite law that a document cannot be interpreted in a manner so as to give a benefit to the grantee which was never intended. It has been held in the case of Ibrahimpattanam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy, (2003) 7 SCC 667, as under:

10. This Court in a recent decision in *D. Saibaba v. Bar Council of India* after referring and quoting passages from Justice G.P. Singh's *Principles of Statutory Interpretation* observed that: (SCC p. 193, para 18)

“18. Reading word for word and assigning a literal meaning to Section 48-AA would lead to absurdity, futility and to such consequences as Parliament could have never intended. The provision has an ambiguity and is capable of being read in more ways than one. We must, therefore, assign the provision a meaning — and so read it — as would give life to an otherwise lifeless letter and enable the power of review conferred thereby being meaningfully availed and effectively exercised.”

16. As held in Ramkishore Lal (Supra) the golden rule of construction is to ascertain the intention of the parties, on reading the entire instrument and considering all the words, in the ordinary natural sense. A careful reading of the terms of the lease would show that the lessor was given the right to terminate the lease at any time by giving six months notice, although in a subsequent clause, the tenant was given the right to seek renewal of the lease for another period of five years, with 25% increase in the rent, by giving one months notice

before expiry of the lease. The words at any point of time give a clear and definite indication that the landlord could terminate the tenancy by giving six months notice and not usual 15 days notice, as envisaged in Section 106 of the Transfer of Property Act. The parties also intended that the tenant could seek extension of another period of five years by giving one month notice before expiration of the terms, subject to 25% increase in the rent. To accept the argument of counsel for the appellant would amount to making earlier clause of the lease i.e. clause B(m), redundant and in effect the lease executed would be a lease in perpetuity which was not the intention, which can be gathered upon an harmonious reading of the lease deed.

17. In view of the settled position of law and after perusal of the clauses of the lease deed, it cannot be inferred that the intention of the landlord was to enter into an agreement that would incapacitate him from terminating the lease. Having considered the rival contentions of both the parties and the judgment of learned trial court, I am of the view that there is no infirmity in the judgment of the trial court and the trial court has rightly passed a decree under Order XII Rule 6 CPC in view of the admission made in the written statement. Accordingly, the present appeal is dismissed.

G.S. SISTANI, J.

March 31, 2011
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