

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA 887/2003**

% **3<sup>rd</sup> February, 2012**

PUNJAB AND SINDH BANK ..... Appellant  
Through : Mr. Puneet Verma and Mr.Gyanender  
Gangwar, Advocates.

versus

SATWANT SINGH KOCHHAR AND ANR. .... Respondents  
Through : Mr. P.S. Bindra, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 28.8.2003 decreeing the suit for recovery of money filed by respondent No.1/plaintiff. The suit was filed for recovery of Rs.3,30,000/- however, the same was decreed for Rs.1,54,000/- with pendente lite and future interest @ 12% per annum simple. Out of the amount decreed of Rs.1,54,000/-, an amount of Rs.1,29,050/- is towards the

value of missing articles which were given to the appellant/defendant No.1 at the time when the premises were let out by respondent No.1/plaintiff.

2. There are two issues which are argued on behalf of the appellant/defendant No.1 before this Court. The first aspect is that the missing items were handed over back to the receiver and, therefore, the appellant/plaintiff is not liable. The second aspect is with respect to the value which is fixed by the trial court at Rs.50,000/- of the missing articles of furniture.

3. Before considering the issues, let me mention herein the articles which were missing when the possession of the premises were taken back by the plaintiff/landlord/respondent No.1. These missing articles are as under:-

**MISSING ITEMS AT 124, GROUND FLOOR, SUNDER NAGAR, NEW DELHI.**

| S. No.                 | Name of the item/quantity        | Rate (Rs.) | Approximate value (Rs.) |
|------------------------|----------------------------------|------------|-------------------------|
| <u>Drawing /Dining</u> |                                  |            |                         |
| 1.                     | wall bracket                     | One        | 300.00                  |
| 2.                     | Ceiling Fans (GEC)               | Two        | 550.00                  |
| <u>GALLERY</u>         |                                  |            |                         |
| 1.                     | Glass hangings                   | Two        | 300.00                  |
| <u>Bed Room No. 2</u>  |                                  |            |                         |
| 1.                     | Hanging globe lights             | Two        | 300.00                  |
| 2.                     | Wall Brackets                    | One        | 300.00                  |
| <u>Bed Room No. 1</u>  |                                  |            |                         |
| 1.                     | 15" Diameter Glass plates Shades | Two        | 500.00                  |

|    |                    |     |        |        |
|----|--------------------|-----|--------|--------|
| 2. | Wall Globe bracket | One | 300.00 | 300.00 |
|----|--------------------|-----|--------|--------|

Outer Varandha

|    |                      |     |        |        |
|----|----------------------|-----|--------|--------|
| 1. | Hanging Globe lights | Two | 300.00 | 600.00 |
|----|----------------------|-----|--------|--------|

Bed Room No. 3

|    |                    |     |        |         |
|----|--------------------|-----|--------|---------|
| 1. | 15" Dia. Shades    | Two | 500.00 | 1000.00 |
| 2. | Globe Wall bracket | One | 300.00 | 300.00  |

Bed Room No. 4

|    |                      |     |        |        |
|----|----------------------|-----|--------|--------|
| 1. | Globe hanging lights | Two | 300.00 | 600.00 |
| 2. | Globe Wall bracket   | One | 300.00 | 300.00 |

Bath Room No. 4

|    |                                  |     |        |        |
|----|----------------------------------|-----|--------|--------|
| 1. | Globe light of ceiling verandha. | One | 300.00 | 300.00 |
| 2. | One complete ceiling light       | One | 300.00 | 300.00 |
| 3. | One light without shade ceiling  | One | 150.00 | 150.00 |

Mezzanine Floor

|     |                                               |      |          |          |
|-----|-----------------------------------------------|------|----------|----------|
| 1.  | Locked trunk with 25 curtains:                | One  | 100.00   | 100.00   |
|     | Trunk                                         | 25   | 200.00   | 5000.00  |
|     | Curtains                                      |      |          |          |
| 2.  | Dressing table without mirror                 | One  | 1500.00  | 1500.00  |
| 3.  | Bed side tables                               | 13   | 1200.00  | 26000.00 |
| 4.  | Dressing table                                | One  | 3000.00  | 3000.00  |
| 5.  | Safa Chair round                              | One  | 2000.00  | 2000.00  |
| 6.  | Packed Sofa Chair                             | One  | 2500.00  | 2500.00  |
| 7.  | Cushioned Chair                               | One  | 1000.00  | 1000.00  |
| 8.  | Corner tables                                 | Two  | 1500.00  | 3000.00  |
| 9.  | Arm Sofas                                     | Two  | 3000.00  | 6000.00  |
| 10. | Bed with side table                           | Two  | 12000.00 | 24000.00 |
| 11. | Beds with cupboards                           | Two  | 12000.00 | 24000.00 |
| 12. | Sofas                                         | Two  | 2500.00  | 5000.00  |
| 13. | Puffee packed                                 | One  | 1000.00  | 1000.00  |
| 14. | Writing Table                                 | One  | 3500.00  | 3500.00  |
| 15. | Shishas                                       | Four | 300.00   | 1200.00  |
| 16. | Dressing Table                                | One  | 3000.00  | 3000.00  |
| 17. | Round Chair                                   | One  | 1500.00  | 1500.00  |
| 18. | Chairs without arms<br>(broken & irreparable) | 20   | 400.00   | 8000.00  |

4. Learned counsel for the appellant argued that in terms of the orders

dated 30.10.1991 and 22.4.1992, passed in the suit, it becomes clear that the missing items were returned to the respondent No.1/landlord/plaintiff.

These orders read as under:-

**“30.10.91**

Present: Mr. S.S. Bindra with Ms.Indermeet Kaur,  
for the plaintiff.  
Mr. Ajit Singh, for the defendant No.1  
Defendant No.2/Receiver in person.

I.A. 1407/91 in S.No. 375/90

Learned counsel for defendant No.1 states that certain items of furniture have been traced out. Learned counsel for the plaintiff will inspect these items of furniture. The defendant No.1-bank will give inspection of the furniture to the plaintiff on 12<sup>th</sup> November, 1991 at 10:00 A.M. at 12-Rajindra Place, New Delhi. Learned counsel for defendant No.1 says that some pieces of furniture were handed-over to the Receiver on 23.11.1987. The Receiver will file his report on this aspect of the matter. The Receiver will be paid a further sum of Rs.1500/- to be borne by the parties in equal proportionate.

Learned counsel for defendant No.1 has fairly conceded that a sum of Rs.9000/- will be deposited for the damage caused to the property during the occupancy of the bank. He says that the said amount will be deposited in the Court within two weeks. This will be without prejudice to the rights and contentions of the parties.

List the matter on 28<sup>th</sup> January, 1992.

October 30, 1991.

ANIL DEV SINGH, J.”

“**22.4.92**

Present: Ms. Indermeet Kaur for the plaintiff.  
Mr. Ajit Singh for defendant No.1.  
Mr. S.S. Bindra, Receiver in person.

IA 974/92 & 1407/91

Mr. Bindra, learned receiver states that he has already inspected the property which was lying in the basement of the premises, namely, 21, Rajendra Place, New Delhi. Learned counsel for the plaintiff states that inspection was conducted in her absence and without notice. This fact is disputed by the receiver. The receiver will re-inspect the property in presence of the plaintiff. Let the inspection be carried out by the receiver on May 8, 1992 at 3:30 P.M. The receiver will submit his report within four weeks. List the matter on August 10, 1992.

April 22, 1992  
dkb”

ANIL DEV SINGH, J.

5. A reference to the order dated 30.10.1991 shows that it pertains to missing articles in two parts. The first part is with respect to the articles which were allegedly handed over to the receiver on 23.11.1987. The second part is with respect to the articles which were lying with the appellant/defendant No.1 and for which inspection was to be done. So far as

the first part of the order is concerned, admittedly, there is absolutely nothing on record, much less any report of the receiver filed pursuant to the order dated 30.10.1991, that the appellant/defendant No.1 had in fact handed over the missing articles to the receiver on 23.11.1987. In the absence of any proof, the trial Court, therefore held that it cannot be said that any missing articles were handed over back to the receiver on 23.11.1987 as alleged by the appellant/defendant No.1.

6. So far as the order dated 22.4.1992 is concerned, it is clear that pursuant to the said order, there never took place any inspection of the materials which were lying with the appellant/defendant No.1. There is no proof challenging that the so called materials which were admittedly with the appellant/defendant no.1 were ever handed over to the landlord/plaintiff. Accordingly, the trial Court has rightly held that the appellant/defendant No.1 failed to prove that the missing articles were handed over to the respondent No.1/landlord. The relevant findings of the trial Court in this regard, and with which I agree, are contained in para 8 of the impugned judgment which reads as under:-

“ISSUE No. I

8. This is an admitted case of the parties that  
*RFA No.887/2003*

defendant no.1 was the tenant under the plaintiff and at the time of inception of the tenancy certain furniture and other fittings and fixtures were received by the defendant no.1 from the plaintiff through the receiver appointed by the Hon'ble High Court of Delhi. Admittedly defendant no. 1 vacated the said premises on 30.1.87 in pursuance of the Court orders and that at the time of handing over the possession a list of missing articles of furniture etc. was prepared and the same is Ex.PW1/3.

Plea of the plaintiff is that those missing items of furniture etc. were never handed over by the defendant no.1 to the plaintiff at a later date and so, the defendant no.1 is liable to pay a sum equivalent to the value of those goods which is estimated at Rs.1,29,050/-. The plea of the defendant no. 1 is that the said articles/items of the furniture were traced out later on and were handed over to the Receiver Sh. Bhupinder Singh Performa defendant no. 2. So, the onus is on the defendant to prove that plea. DW.1 Sardar Mohan Singh has deposed that some of the articles of furniture which were missing at the time of vacating the premises on 30.1.87 were traced out subsequently and were handed over to the Receiver Bhupinder Singh on 23.11.87 as per the list Ex.DW.1/1. It is noticed that Ex.DW.1/1 does not bear signatures the said Receiver Sh. Bhupinder Singh. The defendant should have examined the said Bhupinder Singh Receiver to prove their plea. However, neither the list bearing acknowledgment of receipt of articles traced out subsequently is proved nor Sh. Bhupinder Singh Receiver is examined by defendant no.1. Perusal of the order sheet dated 30.10.91 recorded by their Lordships shows that on that day defendant no.1 had stated before their Lordships that certain items of furniture etc. had been traced out and had been handed over to the Receiver Bhupinder Singh on 23.11.87. The Receiver was asked to file his report on that aspect of the matter. However, it

is noticed that no such report is proved on the record. DW.1/1 does not bear any date nor it is signed by Receiver Bhupinder Singh, in token of having received the missing items of furniture etc. So, Ex.DW.1/1 is not a authentic document and does not help the defendant no.1 in any manner.

On 30.10.91 defendant no. 1 had informed their Lordships that certain items of furniture etc. had been traced out. Their Lordships passed an order that the Ld. counsel for the plaintiff shall inspect those items of furniture etc. on 12.11.91 at 10:00AM at 12, Rajendra Place, New Delhi and that Receiver Bhupinder Singh shall submit his report in that regard as mentioned in order dated 22.4.92 by their Lordships. The Receiver Bhupinder Singh has done the inspection of the said items of furniture etc. in the absence of plaintiff and without notice to the plaintiff and so, their Lordships and directed the Receiver to re-inspect the same in the presence of the plaintiff on 3.5.92 at 3:30 PM and to submit his report within four weeks. There is nothing on record by the defendant that Receiver had done the inspection of those items of furniture allegedly traced out by defendant no.1 at a later date and that the any report was filed by the Receiver. There is also no evidence that any such items out of the missing items of furniture mentioned in Ex.PW1/3 were handed over by the defendant no. 1 to the plaintiff or to Sh.Bhupinder Singh Receiver. So, it is proved that defendant no. 1 did not returned the admitted missing items of furniture etc. as mentioned in the list Ex.PW1/3 and as such defendant no. 1 is liable to pay money in lieu of missing items of furnitures etc.” (underlining added).

I, therefore, uphold and sustain the findings of the trial Court that the

missing articles were never returned by appellant/defendant No.1/tenant to the respondent No.1/plaintiff/landlord.

7. On the second aspect of value of the missing articles, the plaintiff/respondent No.1 had claimed the value of the missing items of furniture at Rs.1,29,050/-. I have already reproduced the missing articles in detail as above. The trial Court has made an honest guess work of the value of the items at Rs.50,000/- instead of Rs.1,29,050/- as claimed by respondent No.1/plaintiff/landlord. Considering that the missing articles, which have been detailed as above, include various substantive items of wood such as beds, reading table, chairs of different types, sofa sets, and so on, surely the honest guess work of the trial Court by fixing the value of the missing articles at Rs.50,000/- cannot be faulted with and with which I completely agree.

8. A civil case is decided on balance of probabilities. The preponderance of probabilities in the present case has established beyond doubt that the missing articles were never returned back to the respondent/landlord. The value has also been very fairly fixed of the missing articles by the trial Court. There is therefore no ground for me to interfere with the impugned judgment and decree.

9. In view of the aforesaid, the present appeal is dismissed, leaving the parties to bear their own costs. Trial Court record be sent back. As the present appeal is dismissed, the amount deposited in this Court by the appellant be released to respondent No.1 in appropriate satisfaction of the impugned judgment and decree. The cheque with respect to the amount payable to the respondent No.1 be handed over to respondent No.1 through counsel.

**VALMIKI J. MEHTA, J.**

**FEBRUARY 03, 2012**

AK