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

Judgment Reserved on : 03.05.2013

Judgment Pronounced on: 10.05.2013

+ **LPA 38/2013 & CM 748/2013 (stay)**

TEK CHAND NARULA & ORS. Appellant

Through Mr.S.N.Choudhri, Advocate

versus

UCO BANK & ANR. Respondent

Through Mr.Rakesh Tikku, Senior Advocate
with Mr.Rajesh Rattan and Mr.Vivek
Ojha, Advocates for R-1
Mr.Rajiv Bansal, Ms.Swati Verma
and Mr. Parambir, Advocate for
DDA.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. By the present appeal, the appellants has challenged the order dated 23.11.2012 passed in W.P. (C) No. 7292/2012.
2. It is the case of the appellant that some time in 1958, respondent No.1-UCO Bank opened a Banking Branch as a tenant in the premises i.e. property No. 12/20, WEA, Arya Samaj Road, Karol Bagh, New Delhi owned by the original lessee-Sh. Daulat Ram Narula (father of the appellant).
3. In 1992, the landlord/appellant filed a suit for permanent injunction against the respondent-UCO Bank from using the premises situated on the

ground floor of the premises for commercial purpose as the property was residential in nature. On 29.01.1999, the respondent-Bank was restrained by an injunction order passed by the Trial Court from using the ground floor of the said premises till the disposal of the suit. The respondent No. 1 then filed an appeal before the Senior Civil Judge, Delhi against the said order of injunction. The said appeal was dismissed on 15.09.2000. The respondent-Bank preferred a Civil Revision Petition before this High Court against the said order dated 15.09.2000. The High Court on 30.11.2000 stayed the operation of the impugned order and DDA was restrained from taking over physical possession of the premises or recovery of misuser charges provided the appellant filed an undertaking to the effect that in case the landlord is made to pay any misuser charges then respondent No. 1 shall pay the same to the landlord within a week. Pursuant to the said order dated 30.11.2000, Mrs. Anju Mathur, Branch Manager of the respondent No. 1-Bank, Karol Bagh, New Delhi filed an affidavit before this Court dated 15.12.2000 giving such undertaking.

4. Various other proceedings have taken place in this case thereafter which may not be relevant for the purposes of disposal of the present matter. On 13.03.2007, the respondent No.1-Bank vacated the premises in question. On 20.12.2010, the DDA served a notice on the legal heirs of the landlord claiming outstanding dues of Rs.1,23,20,772/- as misuse charges. As respondent No. 1 did not respond, appellants herein the legal heir of the original landlord made the payment of misuse charges and thereafter served a legal notice dated 22.12.2010 on the respondent demanding a sum of Rs. 1,21,12,109/- paid by them to DDA on account of misuse by the Bank.

5. On 24.02.2011, respondent No. 1 Bank issued a notice calling upon

DDA to justify the misuser charges levied by putting various queries. Subsequently, respondent No.1-Bank has filed the present writ petition seeking the following reliefs.

“(a) A writ or order or direction in the nature of Mandamus thereby quashing/rejecting the DDA’s Demand Notice dated 20.12.2010 with regard to the payment of misuse charges for the period from 1.2.1958 to 31.08.1996 as the said demand is illegal, unlawful, barred by limitation and in clear violation of law laid down by this Hon’ble Court as well as by the Hon’ble Apex Court in a series of judgments as discussed hereinabove.”

6. The writ petition was disposed of vide impugned order whereby the respondent No. 2-DDA was directed to pass a speaking order based on the notice dated 24.02.2012 sent by the respondent No. 1-Bank to the DDA after an opportunity of hearing. It was also clarified that the present order in no way would interfere with the pending contempt proceedings filed by the appellant.

7. The present appeal has now been filed challenging the said order dated 23.11.2012. By order dated 26.02.2013 of this Court, respondent No. 1-UCO Bank was directed to deposit a sum of Rs.1,21,90,186/- with the Registrar General and a direction was issued to DDA to hear respondent No. 1-Bank and pass an order on its representation and file a report of compliance. DDA has now placed on record, in today’s hearing, an order dated 02.05.2013 passed by it where it has rejected the representation of respondent No. 1-UCO Bank and has held that the legal notice dated 24.02.2011 issued by the UCO Bank is baseless.

8. In view of the above, the appellants now contend that the amount deposited by respondent No. 1-UCO Bank in this Court be released to them as the same would be in accordance with the order passed by this Court on 30.11.2000 in CM No. 2997/2000 and also the affidavit filed by respondent No. 1 dated 15.12.2000 in the earlier proceedings.

9. Learned counsel for the appellant, further, contends that the appellants have made payment to DDA for the misuse charges long back. The misuse charges were levied by DDA on account of the act and conduct of respondent No.1. He further contends that despite several requests respondent No. 1 failed to pay the amount to the appellants. Counsel also states that in equities amount deposited by respondent No.1 should be released to the appellant.

10. It is also submitted that due to wilful default of order dated 30.11.2000 in CM No. 2997/2000 and of the undertaking dated 15.12.2000 filed by respondent No.1 the appellants have initiated contempt proceedings being 669/2011 which are pending before this Court. He further submits that respondent No.1 had been taking dates in the Contempt Petition on the ground that they had deposited the amount before this Court pursuant to Orders passed by us.

11. Learned senior counsel for respondent No. 1-UCO Bank contends that the present amount was directed to be deposited by this Court only to show bona fides by respondent No.1 UCO Bank. Learned senior counsel further contends that respondent No.1 UCO Bank intends to challenge the order passed by DDA dated 02.05.2013 before this High Court and that this Court may pass directions whereby the sum deposited by the said respondent is dealt with by the appropriate Court where respondent No.1 challenges the

said order of DDA dated 02.05.2013.

12. In view of the facts and circumstances of the case, in our opinion the stand of the appellant regarding money deposited in this Court being paid to them is justified. It is true that the writ proceedings do not deal with the issue of the dues of the appellants nor has the petition been filed by the appellants. However, the fact is that pursuant to Order dated 30.11.2000 in CM NO.2997/2000 passed by this High Court in earlier proceedings the respondent No.1 was directed to give an undertaking that in case the landlord is made to pay any misuse charges then respondent No.1 shall pay the same to the landlord within a week. Subject to this undertaking, the order that was impugned in CM No.2997/2000 was stayed. Subsequently, respondent No.1 filed an undertaking on 15.11.2000 which states as follows:-

“2.That in compliance with the Order dated 31.11.2000 of this Hon’ble Court, I on behalf of the petitioner Bank undertake to pay to the landlord within a week any misuser charges levied by the Delhi Development Authority in respect of the portion occupied by the petitioner Bank of property bearing no.12/20, W.E.A., Arya Samaj Road, Karol Bagh, New Delhi.”

13. Clearly an unconditional undertaking was given by UCO Bank to pay the demand of DDA. The amount that is deposited in this Court pursuant to the order of this Court dated 15.01.2013, represents what UCO Bank has to pay to the appellants pursuant to the said undertaking. In equity the appellants are entitled to receive the said amount. We, hence direct that the amount of Rs.1,21,90,186/- with interest, if any, which is deposited with the Registrar General of this Court by respondent No.1 pursuant to Order dated

15.01.2013 be released to the appellants. It is, however, clarified that in case respondent no.1 commences any proceedings to challenge the misuse charges, as upheld by DDA vide its order dated 2.5.2013, respondent No.1 if it gets any relief on this account, will be free to take steps to recover the said amounts from DDA .

14. The appeal and the pending application are disposed of as above.

JAYANT NATH, J.

CHIEF JUSTICE

MAY 10, 2013

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