

* **HIGH COURT OF DELHI AT NEW DELHI**
+ **F.A.O. No.58/2013 & C.M. Nos.2264-2265/2013**

Decided on : 29th April, 2014

GURUBACHAN SINGH SODHI Appellant
Through: Mr. Sameer Dewan, Advocate.

Versus

M/S. HDFC STANDARD LIFE INSURANCE CO. LTD.
..... Respondent
Through: Mr. Joy Dip Bhattacharya, Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is an appeal under Section 104 read with Order XLIII CPC against the order dated 19.12.2012 passed by the learned Additional District Judge-6 (West), Tis Hazari Courts, Delhi, rejecting the application of the appellant herein filed under Order 39 Rule 10 read with Order 12 Rule 1 and Section 151 CPC, seeking direction to the respondent herein to pay or deposit the rent @ Rs.2,31,525/- per month for the period for which it is in occupation of the suit premises and continue to pay the same till the vacant possession is handed over to him

2. Briefly stated the facts of the case leading to the filing of the present appeal are that the respondent, a private financial institution, had taken the premises, on the first and the second floor, at property bearing plot No.6, Block B, DDA Local Shopping Complex, Dilshad Garden, New Delhi-110095, on rent from the present appellant vide lease agreement dated 12.4.2007. The period of lease was commencing from 3.5.2007 to 2.5.2010 and the monthly rent was Rs.2 lacs. It was alleged by the respondent that the lease was further renewed by a letter dated 24.5.2010 for a further period of three years starting from 3.5.2010 till 2.5.2013 in terms of the lease agreement. The rent was also increased to Rs.2,31,525/- per month. It was alleged in the plaint that the respondent vide letter dated 18.10.2010 had intimated to the appellant its intention to vacate the premises and hand over the vacant and peaceful possession to him on 31.12.2010 and accordingly, demanded the refund of security amount purported to have been deposited by the respondent with the appellant/landlord. It was alleged that a sum of Rs.6 lacs was refunded to the respondent/tenant vide cheque dated 1.7.2009 drawn on SBI. Since the respondent/tenant could not vacate the premises with effect from 31.12.2010, it could not do so as the present appellant/landlord had

refused to refund the security amount. The respondent/tenant filed a suit for recovery of Rs.10,11,331/- along with *pendente lite* and future interest by way of refund of security.

3. The appellant/landlord contested the claim of the respondent/tenant and setup a counter-claim for a sum of Rs.19,52,200/- on account of arrears of rent, miscellaneous payments as well as for removal of defects and damages caused to the leased property. A direction was also sought to hand over the possession of the leased property to the appellant/landlord. During the pendency of the suit, the appellant/landlord also filed an application seeking a direction to the respondent/tenant that it must be directed to pay arrears of rent amounting to Rs.41,67,525/-, that is, at the rate of Rs.2,31,525/- multiplied by 18 months which will cover rent upto 31.5.2012 and continue to pay rent thereafter @ Rs.2,31,525/- per month till the vacant possession of the suit premises is restored to the appellant/landlord.

4. The respondent/tenant contested the application of the appellant/landlord by raising a preliminary objection that the application under Order 39 Rule 10 CPC was not maintainable on the ground that there was no admission with regard to the payment of rent by the

respondent/tenant. On merits also, it disputed the obligation of the respondent/tenant to pay the rent as it had terminated the tenancy and had asked the appellant/landlord to take the possession of the premises back which he had failed to do. It was stated that so far as the question of refund of security amount is concerned, that could not be setup as a defence by the appellant/landlord in not taking the possession and the respondent/tenant was discharged of its obligation to pay the rentals once it had expressed its intention to vacate the premises. It had also taken the plea that in terms of Clause 8 of the lease deed, in the event of termination of the lease by the tenant and the default on the part of the lessor, that is, the appellant/landlord, in refunding the security deposit, the respondent/tenant was entitled to remain in possession of the demised premises without payment of rent and other charges and, therefore, on this ground also, the appellant/landlord was not entitled to any rentals.

5. So far as the appellant/landlord is concerned, he raised the question with regard to the validity of the notice of termination of tenancy by contending that in terms of the agreement between the parties, a six months' notice was required to be given while as only two months' notice was given and, therefore, the notice of termination was not valid. It had

also contended that till the physical possession of the premises is not actually handed over to the appellant/landlord by the respondent/tenant, the liability of the respondent/tenant to pay the rentals did not cease to exist.

6. *Per contra* the learned counsel for the respondent/tenant had relied upon three judgments, namely, AIR 1988 Rajasthan 44, AIR 1953 Madras 1996 and a judgment of our own High Court in *Associated Journal Ltd. vs. ICRA Ltd.* to buttress his point that once a tenancy has been terminated and he has expressed his intention to the appellant/landlord to take back the possession of the premises in question, he was relieved of the obligation to pay the rentals and thereby, in the instant case also, the respondent/tenant was relieved of the obligation to pay the rentals to the appellant/landlord in terms of the agreement between the parties.

7. The appellant/landlord had placed reliance on AIR 1965 Madras 417 to contend that it was essentially on the respondent/tenant to have discharged the onus of proving that the delivery of possession of the property has been restored back to the appellant/landlord whereupon its obligation to pay the rent would cease to exist.

8. The learned trial court, after hearing the learned counsel for the parties, observed that the appellant/landlord cannot claim any rent from the plaintiff, namely, the respondent/tenant after 31.12.2010 as the appellant/landlord had refused to take the possession of the tenanted premises despite having been offered to him by imposing certain conditions. Therefore, the respondent/tenant was deemed to have delivered the possession.

9. The learned Additional District Judge has also rejected the argument of the appellant/landlord that the notice of termination of tenancy was not valid as it was not a six months' notice. This argument was rejected by the learned Additional District Judge on the ground that the appellant/landlord was blowing hot and cold inasmuch as on the one hand, he is denying the extension of lease deed and on the other hand, he is claiming monthly rent at an enhanced rate of Rs.2,31,525/-. Accordingly, the trial court has rightly held that six months' notice was not required to be served and although, the respondent/tenant had given two months' notice terminating the tenancy but actually under Section 106 of the Transfer of Property Act, a fifteen days' notice was sufficient

enough to meet the requirement of law with regard to termination of tenancy.

10. I have considered the rival submissions made by the learned counsel for the parties and have also gone through the impugned order.

Order 39 Rule 10 CPC reads as under :-

“Deposit of money, etc., in Court – Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.”

(emphasis added)

11. A perusal of the aforesaid Rule would show that where the subject matter of a suit is money and any party thereto **admits** that he holds such money as a trustee of another party or that it belongs or is due to another party, the court may order the same to be deposited in court.

12. A perusal of the aforesaid Rule 10 of Order 39 CPC would clearly show that the very basis of passing an order under sub-Rule 10 is some kind of admission purported to have been made by a party with regard to the payment of money. In the instant case, no doubt the relationship of

the landlord and tenant which existed between the parties is not in dispute but the factum of admission with regard to payment of money by way of rentals is not at all admitted as the same is intrinsically linked with the holding of the premises by the respondent/tenant. In the instant case, the very question of obligation of the respondent/tenant to pay the rent is in dispute. The case which has been setup by the respondent/tenant for refund of the security is that it had given a notice of termination of tenancy and disclosed its intention to vacate the premises in question with effect from 31.12.2010 to the appellant/landlord and in terms of the agreement, it had asked for refund of its security amount as a pre-condition for vacating the premises. It had also stated in the plaint that as the security amount was not refunded to it, therefore, it is holding over the premises without any obligation to pay the rent to the appellant/landlord in terms of the agreement. Though, during the course of arguments and when the Local Commissioner was appointed, it had taken the plea that it had vacated the premises which was contrary to its pleadings. An oral argument which is made during the course of submissions and which is contrary to the averments made in the pleadings, cannot be taken cognizance of, therefore, there is no doubt

about the fact that the respondent/tenant has not handed over the possession of the suit premises to the appellant/landlord as averred by it. The question as to whether this offer which was made by the respondent/tenant to the appellant/landlord which has been taken to have absolved the respondent/tenant of its obligation to pay the rent as the learned trial court has observed that by this offer, the respondent/tenant is deemed to have delivered the possession, is in itself to be decided by the trial court after the parties have adduced their respective evidence. The view which has been expressed by the trial court that the respondent/tenant is deemed to have delivered the possession of the suit premises by this aforesaid offer is only tentative and the learned trial court ought to have conditioned its observations by a caution that this was only a tentative finding and would not impact the decision on the merits of the case after the parties have adduced their respective evidence. To that extent the finding of the trial court is certainly not sustainable as it cannot be termed to be a final adjudication of the payment of or recovery of rent by the appellant/landlord which is to be adjudicated by the trial court. This intrinsically connected to the handing over the possession of the premises to the appellant/landlord.

13. The three judgments which have been relied upon by the respondent/tenant to substantiate its submissions, that once the respondent/tenant has written a letter to the appellant/landlord that it is vacating the premises and it is prepared to hand over the possession of the suit premises to the appellant/landlord and the later does not come forward to take the possession or puts a condition of restoring the premises to the same position as was given to him, will be sufficient enough to draw a presumption that the possession has been handed over to the appellant/landlord, cannot be taken advantage of by the respondent/tenant for the simple reason that the facts of the reported cases are distinguishable from the facts of the present case. In one of the cases in such a contingency, the tenant had deposited the keys of the tenanted premises with the court when the landlord had refused to take the possession while as in the instant case; no such thing has been done by the respondent/tenant. In none of the three cases which has been relied upon by the respondent/tenant, there was an averment made in the plaint that it is holding over the possession of the premises despite having vacated the premises. It had declared its intention to terminate the tenancy on account of the fact that its security deposit is not being

refunded. In such a contingency, it cannot be said that the liability of the respondent/tenant to pay the rent ceases to exist unless and until there is a categorical finding in this regard arrived at by the trial court after the parties have adduced their respective evidence and the respondent/tenant is able to show to the court that this was one of the essential conditions of the renewed terms and conditions of the lease deed. Therefore, at this stage, it cannot be decided *prima facie* on the basis of the documents in either way.

14. Similarly, it was not open to the appellant/landlord to have also refused to accept the possession of the tenanted premises on the spacious ground that merely because the premises have not been restored to *status quo ante* when they were let out, that he would not accept the possession of the premises. The appellant/landlord could have accepted the delivery of the possession, got the damages assessed and thereafter sued the respondent/tenant for the damages rather than refusing to accept the delivery of the possession. In the same way, the respondent/tenant could have also deposited the keys of the premises with the court *de hors* the non-refund of the security deposit. All these issues are yet to be adjudicated by the court below, therefore, although, no fault can be found

with the outcome of the impugned order in rejecting the application of the appellant/landlord under Order 39 Rule 10 read with Order 12 Rule 1 and Section 151 CPC in not giving direction to the respondent/tenant to pay the rent as prayed by the appellant/landlord but certainly this was only a tentative opinion with regard to the rights and obligations of the parties and could not be treated as final. The trial court ought to have observed that the expression of any opinion in this regard is only tentative which has not been done.

15. Accordingly, the appeal of the appellant is rejected except with the observation that the findings returned by the first appellate court vide its impugned order dated 19.12.2012 are only tentative and shall not be referred to by either of the parties while deciding the issue with regard to payment of rentals as claimed by the appellant/landlord in his counter-claim at the time of final adjudication.

V.K. SHALI, J.

APRIL 29, 2014
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