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

Judgment Reserved on: February 17, 2014
% *Judgment Delivered on: March 14, 2014*

\+ **RFA 319/2005**

STANDARD CHARTERED BANK ..... Appellant
Represented by: Mr.Sumit Bansal and Ms.Richa Oberoi, Advocates

versus

RAGHUBIR SARAN CHARITABLE TRUST ..... Respondent
Represented by: Mr.T.K.Ganju, Senior Advocate instructed by Mr.Ranvir Singh and Mr.Robin Raju, Advocates

RFA(OS) 105/2013

RAGHUBIR SARAN CHARITABLE TRUST ..... Appellant
Represented by: Mr.T.K.Ganju, Senior Advocate instructed by Mr.Ranvir Singh and Mr.Robin Raju, Advocates

versus

STANDARD CHARTERED GRINDLAYS BANK & ANR. ..... Respondents
Represented by: Mr.Sumit Bansal and Ms.Richa Oberoi, Advocates

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. Raghubir Saran Charitable Trust (hereinafter referred to as the Trust)

owned two properties bearing municipal No.6143, Block-E, Circus-D, Connaught Place, New Delhi and 6149 Block-E, Circus-D, Connaught Place, New Delhi and vide two registered lease-deed dated January 31, 1998 and March 18, 1999 let out the two properties to ANZ Grindlays Bank Ltd., the name whereof was changed to Standard Chartered Grindlays Bank Ltd. when the entire issued share capital of ANZ Grindlays Bank Ltd. was acquired by the Standard Chartered Bank. Alleging subletting contrary to the terms of the two lease-deeds without its permission, the Trust filed two suits for ejectment and mesne profits.

2. Vide judgment and decree dated April 02, 2005 challenged in RFA No.319/2005, decree for possession has been passed by the learned Additional District Judge pertaining to property No.6149. Issue pertaining to mesne profits has been kept pending for decision, and regretfully we note that in spite of seven years lapsing a final decree for mesne profits has yet to see the light of the day.

3. Admitting RFA No.319/2005 on November 23, 2006, record of the suit was returned hoping that the learned Additional District Judge shall decide the issue by quantifying the mesne profits. In the meanwhile CS(OS) NO.37/2003 filed by the Trust has been dismissed by a learned Single Judge of this Court vide impugned decision dated April 29, 2013 challenged by the Trust in RFA(OS) No.105/2013.

4. Since learned counsel for the parties stated before us on February 17, 2014, when the two appeals were listed before us, that both appeals could be heard with reference to appeal paper book pertaining to RFA(OS) No.105/2013, we had heard arguments in both appeals and reserved the matters for judgment.

5. Thus, we shall be referring to the pleadings of the parties and the evidence in CS(OS) No.37/2003.

6. But before that we would note that the suit filed by the Trust has been decreed by the learned Additional District Judge holding that on account of ANZ Grindlays Bank Ltd. being amalgamated with Standard Chartered Bank and the new entity named Standard Chartered Grindlays Bank Ltd., in view of the law declared by the Supreme Court in the decision reported as JT 2004 (8) SC 396 *Singer India Ltd. vs. Chander Mohan Chadha & Ors.* a sub-letting had taken place and since the lease-deed prohibited sub-letting otherwise than with the consent of the Trust, eviction had to follow.

7. On the same set of evidence and on identically worded lease-deed, vide impugned decision dated April 29, 2013, the learned Single Judge of this Court has held that the lease-deed permitted sub-letting and thus notwithstanding amalgamation it could not be said that any term of the lease was violated. Additional reason given by the learned Single Judge is that the Trust consented to the sub-letting evidenced by the correspondence exchanged between the parties.

8. Thus, in the appeals we are concerned with two distinct issues. The first whether the two identically worded lease-deeds permitted the assignment of the lease or not. Secondly, whether the correspondence between the parties evidenced the Trust accepted assignment of the lease.

9. We refer to the lease-deed Ex.PW-1/2, dated January 31, 1998, (which is identically worded as the lease-deed dated March 18, 1999). Referring to the lessor and the lessee, as is usual in every leases, Ex.PW-1/2 records :-

"This Indenture Made this 31st day of January 1998

BETWEEN

SHRI RABHUBIR SARAN CHARITABLE TRUST, a Trust formed under Trust Deed duly registered on 7.4.1965 with Sub-Registrar of Assurances, Asaf Ali Road, New Delhi as Document No.2119, in Addl.Book No.I, Vol.No.129 pages 36 to 46 having its Registered Office at Pearey Lal Building, 40-42, Janpath, New Delhi-110001, having Shri H.K.Agarwal, Mrs.Kiran Agarwal and Shri Surender Nath as its trustees through its Secretary Shri S.N.Sharma, duly authorized to execute the present lease deed vide resolution dated 17-011998 hereinafter called the The Lessor (which expression shall unless excluded by or repugnant to the context be deemed to include their successors, executors, administrators and assigns) of the ONE PART

A N D

ANZ GRINDLAYS BANK LIMITED, a body corporate organised and existing under the laws of Australia and having its Registered Office at Level 2.100, Queens Street, Melbourne, Victoria 3000, Australia, and having one of its branches in India at H-2, Connaught Circus, New Delhi-110001, through its Constituted Attorney Mr.Harsh Wardhan Jetly (hereinafter called the LESSEE, which expression shall unless otherwise repugnant to the context or meaning thereof includes its successors and assigns) of the SECOND PART."

10. Clause 10.5 of the lease, which is a term and a condition of the lease records as under:

"10.5 The Lessee shall not have any right to assign, sublet, or part with the possession of the said property or any part thereof. However, it is agreed and understood that the use of the demised premises by the subsidiary/associates(s) of the Lessee shall not amount to subletting or parting with the possession of the said property in an manner, subject to the

following conditions:-

i) No independent tenancy right shall be created or deemed to be created in favour of any such subsidiary/associate of the lessee;

ii) The lessee shall be responsible and liable for the performance of the obligations as laid down in the lease deed.

iii) The subsidiary/associate if any, which may function from the said premises shall be set up only to handle the matters connected with the business of the Lessee and for no other activities."

11. With reference to the recital in the lease-deed : *(hereinafter called the LESSEE, which expression shall unless otherwise repugnant to the context or meaning thereof includes its successors and assigns) of the SECOND PART,* the learned Single Judge has held that the parties clearly envisaged that the expression lessee would include its successors and assigns. Referring to clause 10.5 of the lease-deed wherein the use of the leased premises by any subsidiary or associate of the lessee was not to be treated as amounting to sub-letting the learned Single Judge has held that the intention of the parties was not to absolutely prohibit assignment or sub-letting and as long as the assignment or parting with possession was in favour of a subsidiary or an associate the same could not be regarded as sub-letting; subject of course to the three conditions mentioned in sub-paras (i) to (iii) of clause 10.5 being fulfilled.

12. Since learned Counsel for the parties were not at variance that in view of the law declared in *Singer*'s case (supra) the result of the voluntary amalgamation would be a sub-letting, we proceed to analyse the reasoning

of the learned Single Judge with reference to the recital in the lease-deed and clause 10.5 thereof.

13. We would be guided by the law declared by the Supreme Court in the decision reported as 1973 (2) SCC 825 *DDA vs.Durga Chand Kaushik* that the job of a Court is to ascertain the real intention of the parties by considering all terms and conditions of a lease. It is trite that every agreement has to be read in its entirety and not in piece meal.

14. Now, clause 10.5 of the lease-deed clearly records that the lessee shall not have any right to assign, sub-let or part with the possession of the leased property or any part thereof. The parties could not have evinced their intention in more clear terms: by expressly recording that under the lease-deed the lessee shall have no right to assign, sub-let or part with the possession of the leased property or any part thereof. The hiatus between the recital and an express term of the lease-deed has to be resolved by giving emphasis to the term of the lease-deed.

15. It happens in life that where the thought of an author of a document is given ink by a draftsman, the mundane expression in the mind of the draftsman gets insidiously reflected in the draft prepared. This has happened in the instant case. It is the usual practice of lawyers, while referring to the lessor and the lessee, while describing the two, to mechanically record in the recitals that the expression 'lessor' and the 'lessee' shall include their successors and assigns; overlooking that where a lease-deed prohibits an assignment, such description of the 'lessee' would be inappropriate.

16. As is to be noted, while resolving the hiatus, the learned Single Judge has held that clause 10.5 of the lease-deed did not completely prohibit a sub-letting of the leased property.

17. The learned Single Judge has totally misconstrued clause 10.5, for the reason, the first sentence of the clause clearly prohibits any assignment, sub-letting or parting with the possession of the leased premises or any part thereof. The second sentence does not permit assignment, sub-letting or parting with possession. It explains that the use of the leased premises by any subsidiary or associate of the lessee shall not amount to sub-letting or parting with the possession; if three conditions are satisfied : (i) no independent tenancy rights are created; (ii) the lessee continues to be responsible to perform the obligations in the lease-deed; and (iii) the subsidiary/associate only handles matters connected with the business of lessee and for no other activity.

18. In a case of assignment it is apparently a creation of an independent tenancy rights, with the lessee not being responsible to perform the obligations under the lease-deed. Further, as a result of the amalgamation the identity of the transferee company comes to an end and the question therefore of their being any subsidiary or an associate to handle the business of the transferee (lessee) would not arise.

19. Clause 10.5 simply means that where the lessee lets any associate or subsidiary of it to use the leased premises to handle matters connected with the business of the lessee, and for no other work, said act would not be construed as an assignment, sub-letting or parting with possession, for the reason in said situation the physical control of the leased premises would be with the lessee and the lessee would be responsible to fulfil the obligations under the lease-deed.

20. We overrule the decision of the learned Single Judge, that the lease-deed permits assignment, sub-letting or parting with possession.

21. We turn to the second reasoning of the learned Single Judge i.e. the Trust accepted the assignment evidenced by the correspondence exchanged between the parties.

22. The learned Single Judge has mentioned about the letters dated October 23, 2000, October 18, 2000, November 01, 2000, May 07, 2002, October 01, 2002 and November 02, 2002. The learned Single Judge has heavily relied upon, evidenced by the fact that he has verbatim quoted the two letters dated October 18, 2000 and November 19, 2000. We shall be quoting the said two letters at the appropriate stage while noting the correspondence between the parties.

23. Vide Ex.P-1, being the letter dated October 18, 2000, addressed by ANZ Grindlays Bank to the Trust, it informed the Trust as under:-

> "*Dear Sir,*
>
> ***Change of name of ANZ Grindlays Bank Limited to <u>Standard Chartered Grindlays Bank Limited</u>***
>
> *Please be advised that following the acquisition by Standard Chartered Bank of the entire issued share capital of ANZ Grindlays Bank Limited from the Australia and New Zealand Banking Group Limited, the name of ANZ Grindlays Bank Limited has been changed to Standard Chartered Grindlays Bank Limited. We enclose a copy of an extract from Part III – Section 4 of the Gazette of India, October 7, 2000, in this regard, being a direction of the Reserve Bank of India in respect of the change of name as above. The registered office of Standard Chartered Grindlays Bank Limited is now at the following address:*
>
> *"**Level 1, 345 George Street, Sydney, NSW 2000, Australia**"*

We enclose a copy of the Notification in form 203 lodged with the Australian Securities and Investments Commission indicating the new registered office address and principal place of business.

If you have any queries, please do not hesitate to call the undersigned on telephone No.3721395/3406432.

We value our relationship with you and thank you for your kind cooperation at all times, and take this as an opportunity to wish you and your family a Very Happy Diwali."

24. It was followed by a letter dated October 23, 2000, Ex.P-2, written by the Bank to the Trust informing that RBI permission had been granted to change the name of ANZ Grindlays Bank to Standard Chartered Grindlays Bank. A draft letter, Ex.P-3, was sent by the Bank to the Trust; to be signed by the Trust acknowledging that the Trust had noted the proposed restructuring of Standard Chartered Grindlays Bank with Standard Chartered Bank. On October 01, 2002, the Trust wrote to ANZ Grindlays Bank Ltd., with reference to clause 3(a) of the lease-deed that proportionate Security Deposit be enhanced due to periodical increase in the rent. The Bank acknowledged the same intimating that necessary action would be taken in compliance as per the Bank's letter dated October 10, 2002 Ex.P-5. On October 30, 2002, vide Ex.P-6, a letter was written by the Bank to the Trust enclosing therewith two pay orders in sum of ₹30,336/- on account of increase in rent with effect from October 01, 2002 and ₹2,30,400/- towards increase in the Security Deposit.

25. There appears to be a lull in the letters addressed. A letter dated November 19, 2001 (referred to in the impugned decision as a letter dated November 19, 2000) was admittedly written by Standard Chartered

Grindlays Bank Ltd., which letter has not been proved, much less exhibited at the trial. But since parties through their counsel conceded before us that said letter was written and has been correctly reproduced by the learned Single Judge in para 21 of his decision, (wrongly mentioning the same as dated November 19, 2000), we note its contents as reproduced by the learned Single Judge. It reads as under:-

> "**Sub: Lease Agreement dated 1 March 1999 in respect of premises at E-36 First Floor, Connaught Place, New Delhi**
>
> *As discussed with you personally, Standard Chartered Grindlays Bank (SCGB) is in the process of restructuring its business. The restructuring in compliance with Indian Laws will result in SCGB Indian assets and liabilities being merged with Standard Chartered Bank ("SCB"). On completion of the above merger, SCB will become the premier foreign bank operating in India.*
>
> *While it may not strictly be necessary to ask for your consent for SCB to stand substituted for SCGB in respect of the above premises, SCB wishes to maintain the cordial relations that SCGB has with you. To this extent, your formal permission to enable to use the above premises is required. SCB is writing to you separately that SCB will duly abide by the contractual terms agreed between the SCB and yourselves. We seek your formal consent as per draft enclosed.*
>
> *The actual date and effectiveness of the merger will be intimated to you separately."*

26. For record we may note that in the affidavit by way of evidence, to be treated as the examination-in-chief of the sole witness of the Trust, Shri A.V.Gaur, a reference is made in para 7 of the affidavit that by the letter dated November 19, 2001 the Bank informed the Trust that it was in the

process of restructuring its business and the letter has already been exhibited as Ex.P-3; but the fact of the matter is that Ex.P-3 is a draft letter, to be sent by the landlord to the Bank.

27. The Trust wrote, with reference to the letter dated November 19, 2001, vide its letter dated April 02, 2002, Ex.P-1/3, as under:-

> *"Re: Premises No.E-36, Connaught Place, New Delhi*
>
> *Dear Sir,*
>
> *Please refer to your letter dated 19.11.2001 wherein we are informed that Standard Chartered Grindlays Bank is in the process of re-structuring its business which will result in Indian assets and liabilities of Standard Chartered Grindlays Bank being merged with Standard Chartered Bank and on completion of the merger Standard Chartered Bank will become the Foreign Bank operating in India. In this regard, we have to state as under:-*
>
> *1. That vide a Lease Deed dated 18th March, 1999, the premises bearing No.E-36 Connaught Place, New Delhi was leased in favour of ANZ Grindlayz Bank Ltd.*
>
> *2. Clause 10.5 of the said Lease Deed reads as under:-*
>
> > *"10.5 The Lessee shall not have any right to assign, sublet, or part with the possession of the said property or any part thereof. However, it is agreed and understood that the use of the demised premises by the subsidiary/associates(s) of the Lessee shall not amount to subletting or parting with the possession of the said property in an manner, subject to the following conditions:-*
> >
> > *i) No independent tenancy right shall be created or deemed to be created in favour of any such subsidiary/associate of the lessee;*

ii) The lessee shall be responsible and liable for the performance of the obligations as laid down in the lease deed.

iii) The subsidiary/associate if any, which may function from the said premises shall be set up only to handle the matters connected with the business of the Lessee and for no other activities."

Upon reading of the said Clause, it is clear that there is a prohibition on the Lessee to sub-let the said premises and in the event there is any sub-letting it will amount to a breach of the terms and conditions of the Lease Deed and you will be liable to be evicted from the premises.

3. The present arrangement as indicated by you in your aforesaid letter clearly establishes that by way of re-structuring you are going to vest the tenancy right in respect of the aforementioned premises in favour of Standard Chartered Bank which is contrary to the intention of the parties in the Lease Deed.

4. We, therefore, call upon you to immediately stop the misuse of the premises by Standard Chartered Bank as the premises were never let out to M/s Standard Chartered Bank but only to ANZ Grindlays Bank whose name we were informed was changed to Standard Chartered Grindlays Bank.

We, therefore, inform you that upon such arrangement/restructuring our tenancy cannot be transferred and as such we call upon you to immediately withdraw from the said premises and handover the possession thereof to us failing which we will have no alternative but to take appropriate action against you in the court of law at your risk and cost."

28. The Bank replied on May 07, 2002 vide Ex.P-1/4, informing as under:-

"We are concerned to receive your letter dated 2nd April 2002 bearing Ref.No.RSCT/C-3/2002/03. In this connection, we would like to write to you as under:-

1. *Contents of paragraph 1 of your letter are not disputed.*

2. *Contents of paragraph 2 of your letter are also not disputed nor the contents of Clause 10.5 of the lease deed are disputed in any manner.*

   We may however, clarify that the proposed merger of Standard Chartered Grindlays Bank as said by us in our letter dated 19th November 2001, is not yet effected. Infact, we are yet to approach RBI (Reserve Bank of India) with our proposal and there would be a change of the name at the most.

3. *Contents of paragraph 3 of your letter, as stated are denied. Please note that the inference being drawn to the effect that the proposed merger is contrary to the intention of the parties in the lease deed is incorrect and bad in the eyes of law.*

4. *Contents of paragraph 4 of your letter, as stated are denied.*

In view of the above, we request you to please withdraw you letter in question. If you desire any further clarification, we would be happy to provide the same on hearing from you."

29. At this stage it would be relevant to note the pleadings of the defendants in the written statement. Before giving para-wise reply to the averments in the plaint, it has been pleaded :-

"At the very outset it is the respectful submission of the defendant that the defendant No.1 has merged into defendant No.2 pursuant to an amalgamation dated September 01, 2002 of defendant No.1 with defendant No.2. It is submitted that defendant No.1 no more exists and it is

only defendant No.2, which is in existence and is a legal entity. Defendant No.1 does not exist and the plaintiff has arrayed the said defendant malafiedly.

PRELIMINARY OBJECTIONS

1. That the whole suit of the plaintiff is anchored on the false issue that the plaintiff was unaware of the merger of the Standard Chartered Grindlays Bank and had acquired only Grindlays portion of business of ANZ Grindlays Bank Limited and consequently, there was a change in the name of the bank to Standard Chartered Grindlays Bank, was intimated to the plaintiff. It is further submitted that subsequently, when the defendant was in the process of restructuring its business whereby Standard Chartered Grindlays Bank was to be amalgamated with Standard Chartered Bank pursuant to the permission of the amalgamation issued by the Reserve Bank of India, the said fact was also duly intimated. Even at the time the whole world including the plaintiff herein knew Standard Chartered Bank has acquired the business portion of ANZ Grindlays. However, for completing the formalities, any as per the requirement of law and conditions imposed by RBI and other statutory authorities, the name was changed to SCGB and after amalgamation of Standard Chartered Grindlays Bank with Standard Chartered Bank, the SCB formally took over. The necessary documents are being filed. It is worth noting that this is a lengthy process of amalgamation and certain other legal formalities are also required to be complied with and only when the amalgamation scheme is approved by the RBI the name change is sanctioned and approved by RBI. It is further submitted that the plaintiff was duly informed that all documents, which were executed with ANZ Grindlays Bank and Standard Chartered Grindlays Bank, would continue to be in operation on same terms and conditions. Therefore the contention of the plaintiff that it was not aware of the developments is without any basis.

2. That admittedly the plaintiff was aware of the amalgamation of business of the Standard Chartered Grindlays Bank which had been intimated by the defendant by its various letters addressed to the plaintiff. The plaintiff itself has annexed all such letters with the plaint but at the same time is showing surprise on the amalgamation of the Standard Chartered Grindlays Bank with Standard Chartered Bank. It is submitted that at first the plaintiff did not raise any disputes to the said amalgamation and continued to accept the defendant as its tenant and consequently accepted the rent being tendered by the defendant. It is submitted that subsequently as an afterthought the plaintiff tried to twist the facts and raised this frivolous issue of subletting on refusal of the defendant to increase the rent contrary to the lease deed to extort high rent from the defendant. The said fact is also borne out from the letter of the counsel for the plaintiff dated July 12, 2002 addressed to the defendant which clearly stipulated that in case the defendant is willing to pay rent as per the market rate contrary to the agreed rent as per lease deed the plaintiff would be advised to enter into a fresh lease deed with the defendant. The plaintiff has also suppressed the fact of the reply dated January 09, 2003 given by the defendant to the legal notice dated November 15, 2002 sent by the plaintiff. In the said reply also the correct facts and position has been explained. It is submitted that the chronological narration of the facts is being given by the defendant in the Preliminary submissions herein after.

3. That the suit of the plaintiff is based on a fallacy, which is a figment of imagination of the plaintiff in order to extract more rent from the defendant. The plaintiff by drawing a distinction between the Standard Chartered Grindlays Bank and Standard Chartered Bank is trying to create confusion and a situation which only exists in the mind of the plaintiff. As stated earlier the defendant No.1 has now amalgamated with defendant No.2. It is further

submitted that the plaintiff was aware of this development for more than two years but never raised any objection to the same."

30. The letter Ex.P-1, dated October 18, 2000, contents whereof have been noted by us in paragraph 23 above, has been opined, in paragraph 27 of the impugned decision dated April 29, 2013, by the learned Single Judge to be indicative of; and we quote:-

> *"27. From a plain reading of the above mentioned letter, I am of the opinion that this letter is an unequivocal communication of the fact that the erstwhile tenant has been duly taken over by the defendant No.2. Three essential developments are brought to the attention of the landlord by the said letter. Firstly, the fact that the entire issued share capital of the tenant has been purchased by defendant No.2. Secondly, the fact that this change is notified in the Gazette in accordance with the requirement under Indian Law. And thirdly, the change of address of the registered office. Although, the subject of the letter states that the name of the Bank is being changed, the three notable developments, ex facie suggest that it is not only the name of the bank that has undergone the change, but the acquisition of ANZ Grindlays Bank by Standard Chartered Bank (defendant No.2)."*

31. The learned Single Judge has totally misinterpreted the letter to ex-facie suggest that the Trust has been unequivocally informed that ANZ Grindlays Bank had been acquired by Standard Chartered Bank. The caption of the letter captures the thought conveyed by the letter: '***Change of name of ANZ Grindlays Bank Ltd. to Standard Chartered Grindlays Bank Ltd.***'. The letter informs that the entire issued share capital of ANZ Grindlays Bank has been acquired by Standard Chartered Bank and as a result the name of ANZ Grindlays Bank has been changed to Standard

Chartered Grindlays Bank Ltd. The learned Single Judge has overlooked that amalgamation of a company which results in the loss of identity of the transferee company when it merges into the transferor company is distinct from when a company acquires the entire share holding of another company. In the latter situation the identity of the two companies is retained. If as a result of acquisition of entire share capital of a company its name is changed, the jural identity of the company remains the same because change of name of a company has nothing to do with the corporate existence of a company. The learned Single Judge has further overlooked the fact that in its letter dated November 19, 2001 (date wrongly mentioned by the learned Single Judge November 19, 2000), the Standard Chartered Grindlays Bank Ltd. categorically informed the Trust that Standard Chartered Grindlays Bank was in the process of restructuring its business. It may be true that the bank wrote to the Trust that as a result of restructuring the assets and liabilities of Standard Chartered Grindlays Bank will merge with Standard Chartered Bank, but took the stand that the same would not strictly require any consent from the Trust as regards the tenanted premises. Vide Ex.P-1/3 dated April 02, 2002 the Trust responded to the letter dated November 19, 2001 in which it clearly took the stand that the proposed restructuring arrangement would result in transfer of the tenancy rights which was not acceptable to the Trust, to which Standard Chartered Grindlays Bank wrote back vide Ex.P-1/4 on May 07, 2002 that the proposed merger referred to in its letter dated November 19, 2001 has not yet been effected and thus the question of the transfer of any tenancy would not arise.

32. It is clear that the bank was twisting facts hoping that caught in the idiom of the language the Trust may inadvertently accord its consent for

transfer of the tenancy. From the stand taken in the letter dated October 18, 2000 that upon acquisition of the entire issued share capital of ANZ Grindlays Bank by Standard Chartered Bank the name of ANZ Grindlays Bank was changed to Standard Chartered Grindlays Bank, in the letter dated November 19, 2001 it spoke about a complete merger and took a summersault in the letter dated April 02, 2002 that the merger had not yet taken place. Further, from the written statement, contents whereof we have noted in paragraph 29 above, even in its pleadings the bank took an ambivalent stand that amalgamation had not yet come into being. It was categorically pleaded that : '*It is worth noting that this is a lengthy process of amalgamation and certain other legal formalities are also required to be complied with and only when the amalgamation scheme is approved by the RBI the name changed is sanctioned and approved by RBI*. So pleading in paragraph 1 of the preliminary objections, in paragraph 2 of the preliminary objections it took the stand that the plaintiff was aware of the amalgamation.'

33. It is trite that a consent must be unequivocal and clear. No such consent as propounded by the bank emerges. In fact, the impugned judgment has not analyzed the contents of letters exchanged and in fact has not even noted the contents of two letters; a passing reference has been made to the fact to those letters being exchanged.

34. Thus, we overrule the view taken that the Trust consented to the amalgamation and transfer of the tenancy.

35. For our reasons aforenoted we dismiss RFA No. 319/2005 and allow RFA (OS) No.105/2003.

36. CS (OS) No.37/2003 filed by the Trust is decreed in favour of the

Trust and against the defendants as regards relief of possession; simultaneously noting that during the pendency of the suit possession was handed over and thus no execution is warranted. But, since mesne profits have to be determined we restore CS (OS) No.37/2003 requiring the learned Single Judge to determine the mesne profits. The suit shall be listed for directions before the learned Single Judge on March 24, 2014.

37. Parties shall bear their own costs in the appeals.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

MARCH 14, 2014
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