

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

RESERVED ON : 5th DECEMBER, 2017

DECIDED ON : 5th JANUARY, 2018

+ **RSA 308/2016 & CM No.38046/2016**
M/S INNOVATIVE CO-OPERATIVE URBAN BANK LTD
..... Appellant
Through : Mr.V.K.Khanna, Advocate.

versus

BABITA AGGARWAL Respondent
Through : Mr.Puneet Yadav, Advocate.

+ **RSA 306/2016 & CM No.38034/2016**
M/S INNOVATIVE CO-OPERATIVE URBAN BANK LTD
..... Appellant
Through : Mr.V.K.Khanna, Advocate.

versus

PUSHPA AGGARWAL Respondent
Through : Mr.Puneet Yadav, Advocate.

+ **RSA 307/2016 & CM No.38038/2016**
M/S INNOVATIVE CO-OPERATIVE URBAN BANK LTD
..... Appellant
Through : Mr.V.K.Khanna, Advocate.

versus

ANKUR AGGARWAL Respondent
Through : Mr.Puneet Yadav, Advocate.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. All these appeals are decided by a common judgment as they arise out of a common order dated 22.02.2016 in RCA Nos. 29/2014, 28/2014 and 27/2014. The Second Appeals have been preferred against the order dated 22.02.2016 whereby judgment and decree dated 25.01.2005 of learned Civil Judge in Suit Nos. 683/2002 titled as '*Babita Aggarwal vs. M/s.Innovative Co-operative Urban Bank Ltd.*'; 1089/2002 titled as '*Pushpa Aggarwal vs. M/s.Innovative Co-operative Urban Bank Ltd.*'; and, 1068/2002 titled as '*Ankur Aggarwal vs. M/s.Innovative Co-operative Urban Bank Ltd.*' were upheld.

2. It is relevant to note that Babita Aggarwal, Ankur Aggarwal and Pushpa Aggarwal had filed civil suits for recovery and possession of the rented premises bearing Suit Nos.683/2002, 1068/2002 and 1089/2002 respectively against M/s.Innovative Co-operative Urban Bank Ltd. (hereinafter 'the appellant'). All these suits were consolidated and disposed of by a common judgment / decree dated 25.01.2005. Suit No.683/2002 was treated as main suit and all the proceedings of the consolidated suits were recorded therein.

3. It is further relevant to note that during the pendency of the proceedings before the learned Civil Judge vacant physical

possession of the rented accommodation was handed over to the respondents on 21.08.2004. The dispute remained regarding recovery of the arrears of rent / damages only.

4. I have heard the learned counsel for the parties and have examined the file. Relationship of landlord and tenant between the parties is not at issue. It is also not in dispute that the premises in question were let out on a specific date. The rate of rent is also not in controversy in any of the three civil suits. It is also not in dispute that the appellant was in arrears of rent for the period from which the rent / damages were claimed by the respondents.

5. Limited dispute between the parties was regarding ₹10 lacs paid to the respondents at the time of taking the accommodation on rent by the appellant. It is not in dispute that ₹4.5 lacs, ₹2.9 lacs and ₹2.6 lacs were given to Ankur Aggarwal, Babita Aggarwal and Pushpa Aggarwal on behalf of the appellant Bank. Appellant's case is that this amount was paid to the respondents as 'advance' rent. The said advance rent paid to the respondents was adjusted towards the arrears of rent for the period mentioned in the plaints. It was further urged that TDS certificates were also claimed by the respondents by moving an application under Section 151 CPC for the rent adjusted. It is further urged that Mr.Shankar Lal Aggarwal, who was closely related to the respondents, was working as Managing Director of the Bank at the relevant time and he by misuse of power / authority, released huge 'advance rent' to the respondents.

6. Contention of the respondents throughout is that ₹10 lacs were never paid as 'security' or 'advance rent'. This amount was paid

to them on behalf of the appellant bank for the purpose of renovation of the tenanted premises. The said payment was made towards furniture charges and it was so recorded in the minutes of the bank. It was further urged that the respondents had spent about ₹11.5 lacs in the installation of the furniture etc.

7. Both the Courts below did not agree with the appellant's plea that ₹10 lacs were paid as 'advance rent'. Concurrent findings of the Courts below based upon cogent evidence need no intervention. No material document has been produced by the appellant bank that ₹10 lacs in all were paid to the respondents towards 'advance rent'. It has not been elaborated as to for what period the said 'advance rent' pertained. It has come on record that initially the appellant bank had paid the rent regularly to the respondents; only after the rent became due w.e.f. 01.03.2000, no rent was paid to the respondents. It was allegedly adjusted towards ₹10 lacs paid to the respondents as advance rent. Appellant's claim is that excess payment has been made to the respondents. However, the appellant did not file any counter claim or initiate any recovery proceedings against the respondents. Admittedly, the respondents were never informed if the rent due w.e.f. 01.03.2000 was being adjusted towards 'advance rent' allegedly paid to them. Mere deposit of TDS for subsequent period with the Income Tax Authorities without actually making payment of the rent to the respondents is inconsequential.

8. The appellant had examined only DW-1 (R.C.Jain) who joined the bank only on 18.05.2004. He also did not place on record any document by which he was authorized by the appellant bank to

appear and give evidence. Apparently, he was not aware of the transactions in question and his evidence was based upon contents of the photocopies of certain documents.

9. The appellant is not sure as to for what purpose ₹10 lacs in all were paid to the respondents. At one stage, it was claimed that this payment was given as a 'security' to be returned at the time of vacating the tenanted premises. At other stage, it was urged that the said payment was given as 'advance rent'. No credible evidence has emerged on record to substantiate either of the pleas.

10. True, the respondents have also failed to prove if ₹10 lacs were paid for wooden furniture, POP work, polishing, painting, lighting, flooring etc. as deposed by PW-1 (Manish Aggarwal). It was further claimed that ₹11.5 lacs were spent. The respondents, however, failed to produce on record any document whatsoever to show that any specific amount was incurred for the said work. The excess payment allegedly incurred was never claimed from the appellant. It is unbelievable that huge amount ₹10 lacs will be paid by the appellant bank to the respondents just for the above work without it being accounted for. Since the close relative of the respondents Shankar Lal Aggarwal was at the helm of the affairs in the appellant bank and was working as MD at the relevant time, possibility of the release of the huge sum of ₹10 lacs to the respondents as a favour cannot be ruled out. The respondents did not furnish any account to the appellant bank as to how much amount out of ₹10 lacs was spent over installation of wooden furniture etc. For the unauthorized payments (if any) by Shankar Lal Aggarwal, it has come on record that a

criminal case has already been initiated and FIR No.751/2007 under Sections 406/409/467/468/471/120B IPC PS Ashok Vihar has already been lodged.

11. Since the appellant has failed to establish that the said payment was towards 'advance rent', they cannot be permitted to adjust the rent for the period from 01.03.2000. For unauthorized payment (if any) given by Shankar Lal Aggarwal to the respondents, the appellant bank will be at liberty to avail legal remedies available to it under law.

12. Regarding TDS collected by the respondents by moving an application under Section 151 CPC, it has no impact as the said application was filed during the pendency of the proceedings before the Civil Judge when the appellant had claimed that they had deposited the TDS with the Income Tax Authorities after adjusting the rent for the period for which the rent was due.

13. In the light of above discussion, this Court finds no merit in the appeals and the same are dismissed. Pending applications also stand disposed of.

14. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

JANUARY 05, 2018 / tr