

GAHC030001422022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RFA/14/2022

State Bank of India and Anr.
Regional Business Office
Through the Assistant General Manager
Babutlang, Aizawl

2: State Bank of Indi

VERSUS

Thanhira Hauva
S/o Hauva (L)
R/o G-33, Chanmari, Aizawl

Advocate for the Petitioner : C Malsawmtluanga
Advocate for the Respondent : Mr Lalfakawma for R1

Linked Case : I.A.(Civil)/130/2022

Sh. Thanhira Hauva
R/o Chanmari
Aizawl

VERSUS

State Bank of India
Regional Business Office Through the Assistant General Manager
R/o Babutlang
Aizawl

2:State Bank of India
Special Personal Banking Branch Through the Assistant Branch Manager
Zarkawt

. Aizawl

Advocate for the Petitioner : Mr Lalfakawma

Advocate for the Respondent :

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG**

JUDGEMENT

Date : 20-03-2023

Heard Mr. Zodinpuia Hnamte, learned counsel for the appellants along with Mr. Lalfakawma, learned counsel for the respondent.

2. This is an appeal under Order 41 r/w Section 96 of the Code of Civil Procedure, 1908 as well as Section 17 of the Mizoram Civil Courts Act, 2005 against the impugned Judgment & Order dated 13.12.2021 passed by the learned Senior Civil Judge-IV, Aizawl District, Aizawl in Money Suit No. 9/2016.

3. Facts of the case in a nutshell is that the appellants had executed an Agreement dated 01.08.2006 with the respondent that the first floor of the property of the respondent which comprises of an area of 2000 sq.ft., would be rented by the appellants @Rs. 18,000/- (Rupees eighteen thousand) only, for a period of 5 years (i.e. till 01.08.2011). The agreement was subject to renewal for a further period from the date of expiry. However, after the expiry date of the rental agreement, no rental agreement or renewal or extension of rental agreement was made between the parties. The appellants had in an effort to

shift the premises in a area within Zarkawt had made a newspaper publication on 18.07.2012 however since they did not find an alternative building the appellants continue to occupy the building and continued to pay Rs.18,000/- per month. On 19.08.2013, the respondents wrote a letter to the appellants stating his desire to raise the rent amount while mentioning the rental rates paid by other banks located at the same locality, *i.e* HDFC, Zarkawt branch which was paying Rs.36.68 per sq.ft and at 1230 sq.ft was paying Rs. 45,000 per month, and ICICI Bank was paying close to Rs.1,40,00/- per month at the rate of Rs.35/- per sq ft. Thereafter on 28.09.2013 he again wrote to the appellants that the rent of the premises occupied by the appellants would increase and shall be Rs.72,000/- per month at the rate of Rs. 36/- per sq.ft from October 2013 till December 2013 and for the appellants to vacate the premises since the lease agreement expired on 01.08.2011 and that the lease period of two years would be @ of Rs.25 per sq.ft *i.e* Rs. 50,000/ per month for a period of 25 months. On 09.10.2013, the respondent wrote a similar letter to the appellant. Both the parties thereafter tried to come to some settlement with regards to the new rental rates but could not arrive at any agreement. The appellants in the meantime, continued to pay the rent amount of Rs. 18,000/- per month as per their previous agreement, while they continued to look for a new office building in the same locality and moved out to a new office during the month of March,

2015. After the appellants vacated the office, the respondent wrote a letter dated 23.03.2015 on referring to his previous letters dated 23.08.2013, 30.09.2013, and 7.10.2013, mentioned that as per the above correspondences the appellant bank was informed to pay a monthly Rs, 75,000/- at the rate of Rs. 35 per sq. ft since the rate of Rs. 9 per sq. ft was no longer acceptable. However since the appellant Bank had continued to stay in the premises for over a year without any reply, the Respondent claimed arrears of rent payable by the appellants from the month of October 2013 to February 2015 @Rs. 72,000/- per month which after deducting the Rs. 18,000/- per month for the said period amounted to Rs. 9,18,000/-. It was also mentioned that will not be charging the rent for the month of March 2015.

4. However since no steps was taken by the appellant, the respondent/ plaintiff approached the Court of Senior Civil Judge-IV, Aizawl District in Money Suit No. 9/2016 for payment of the amount of Rs. 16,86,000/- as per the following break up.

Sl. No.	Period	Amount Payable (In INR)	Amount Paid (In INR)	Difference (In INR)	Actual Amount Payable (In INR)
1.	01.09.2011 to 30.09.2013 i.e. 24 months	50,000/-	18,000/-	50,000 - 18,000 = 32,000/-	32,000 x 24 months = 7,68,000/-
2.	01.10.2013			72,000	54,000 x 17

	to 28.02.2015 <i>i.e.</i> 17 months	72,000/-	18,000/-	- 18,000 = 54,000/-	months = 9,18,000/-
				TOTAL	16,86,000

However, due to the non co operative behaviour and attitude of the Appellant Bank, the arrears of rent between 01.09.2011 and 01.09.2013 at the rate of Rs.50,000/- as per the previous letters dated 28.09.2013 and 07.10.2013 is also claimed in the trial court as shown in the above table.

5. The appellant bank/defendant in the money suit, on the other hand claimed that they had approached the respondent/plaintiff for renewal of the lease agreement which had expired on 01.08.2011 however the respondent/plaintiff had refused to renewal of the lease agreement vide his letter dated 16.07.2011. The appellants/ defendants had immediately informed their Assistant General Manger (admn.) Administrative Office, Shillong vide letter no. ROSL/17/282 dated 16.09.2011. Since no new lease agreement could be made they took steps to vacate the premises by making a newspaper publication dated 18.07.2012 . That since they could not find an alternative building immediately they continued to occupy the building by paying the Rs, 18,000 which was received by the respondent/plaintiff without any objection. That efforts were made to negotiate the matter with the respondent/and his son but to no avail.

That the letter received on 19.08.2013 to raise the rent did not specify the expected rent by the respondent/plaintiff., who had merely mentioned the rents paid by the ICICI bank and the HDFC banks in the same locality while asking them to vacate his premises. That the appellant/defendant bank had asked the respondent/plaintiff to give them time to find an alternative place and to discuss the matter as per his convenient time vide their letter dated 07.10.2013 as advised by their Regional Manager. That the respondent/plaintiff taking advantage of the fact that the appellant could not find an alternative place had demanded and raised the rent by increasing the rate by 277.77% and 400.00% . That when the appellants attempted negotiate and request the respondent to reduce the amount they were told that Mr. Nicky Hauva was out of station .Thus since there was no mutual agreement between them the respondent/ plaintiff cannot demand the increased in the rent which was too high and not acceptable as per the State Bank of India Manual of Instruction on Premises Matters, January 2014.

6. From the averments made by the parties, the learned Lower Court framed the following issues

1. Whether there is any agreement signed by the parties for the new rental amount claimed for?

2. Whether the increased rate is too excessive?
3. Whether the defendants are liable to pay the plaintiff Rs. 16,86,000/- with interest at the rate of the prevailing prime lending rate of nationalized banks per annum from 01.08.2006 till date of payment?
4. Whether the plaintiff is entitled to the relief claimed? If so, to what extent

7. Thereafter both the parties adduced their evidence in the trial court and the learned trial court decided in issue no.1 that there was no new rental agreement signed between the parties

8. Issues no.2 and no. 3 were then taken up together and the learned trial court held that the plaintiff had informed the defendants the amount he expected as rent for his premises after the expiry of their lease agreement on 01.08.2011 vide his letters dated 19.08.2013, 28.09/2013, 0.10.2013 and 23.03.2015 which were received by the defendants. The learned lower court also held that the 'Manual of Instructions on Premises matter of SBI' was not a part and parcel of the previous lease agreement and cannot be invoked at this later stage. The learned trial court also held that the increased amount of rent calculated by the plaintiff was not too excessive and decided that the defendants were liable to pay the total amount is Rs, 16,86,000/- with interest

as per the prevailing rate of nationalised banks and also held that the calculation of interest shall be from the date on which the agreement between the parties expired i.e from 01.08.2011 till the dated of payment . The learned trial court also decided issue no.4 in favour of the plaintiff and held that the instant appellant was also to pay the cost of the suit to the instant respondent which was calculated at Rs. 1,00,000/- (Rupees one lakh) only.

9. Aggrieved by this Judgment & Order dated 13.12.2021, the instant appeal has been filed.

10. Mr. Zodinpuia Hnamte, learned counsel for the appellants submits that the Judgment & Order dated 13.12.2021 is liable to be set aside/modified, since the Trial Court failed to take notice of the fact that the monthly rent of Rs. 18,000/- in the Agreement dated 01.08.2006 was raised the rent by 277.77% from 01.09.2011 to 30.09.2013 at Rs. 50,000/- per month and by 400% from 01.10.2013 to 28.02.2015 at Rs. 75,000/- per month. That this rise of the rent is extremely high and is against the Mizoram Urban Areas Rent Control Act, 1974, wherein Section 3(3) which allowed Act an increase in the rent subject to a maximum of 50% of the preceding standard rent. The learned counsel also mentions that according to the State Bank of India, Manual of Instructions on Premises Matters, norms, increase in the rent after every 5 years cannot be

more than 25% of the prevailing rent. For the above reasons, the learned counsel submits that the exorbitant increase in the rent is unacceptable and not payable by the appellants. The learned counsel also submits that the appellants did not agree with the exorbitant increase in the rents and had tried to find an alternative premises through the newspaper publication on 18.07.2012. That the office needed time to shift its office due to the heavy equipment placed in the office and could only shift its office during the month of March 2015. That the Judgment & Order dated 13.12.2021 passed by the learned Senior Civil Judge-IV, Aizawl District, and Aizawl in Money Suit No. 9/2016 is liable to be set aside since the appellants never agreed with the raised rent after the expiry of the agreement dated 01.08.2006 on 01.08.2011.

11. Mr. Lalfakawma, learned counsel for the respondents, on the other hand, submits that after the expiry of 5 years from the rental Agreement dated 01.08.2011 which was agreed for a monthly rental charge of Rs. 18,000/- for an area of 2000 sq.ft. @Rs. 9/- per sq.ft., the appellant bank refused to respond to the letters written by the respondents dated 19.08.2013, wherein the respondent had pointed out the need to a raise the rent, giving instance of the rent paid by the HDFC Bank, wherein the rental charge was of Rs. 45,000/- per month, whereas ICICI Bank which is located very close to the rental property were paying rental charges of Rs. 2,43,049/- only. That the respondent had also

sent two more representations to the appellants on 28.09.2013 and on 07.10.2013, wherein the respondents had mentioned that they were liable to pay arrears in relation to the occupation of the rented property, which they were occupying without any formal or level authority. The respondent in an effort to come to an amicable settlement had informed the appellants that while asking them to vacate the rented property in his letter dated 23.03.2015 mentioned that he would accept monthly rent for the period between October, 2013 and February, 2015, the rent would be payable @Rs. 36/- per sq.ft., which amounts to Rs. 72,000/- per month.

12. The learned counsel for the respondents submits that in spite of this communication, the appellants which is the State Bank of India being a public office still continued to occupy the building of the respondent and thus, the respondent had no other choice but to approach the learned Lower Court for recovery of the rent amount, which is as per the current market rate and paid by the other banks within the same locality. The learned counsel for the respondent further submits that the appellants in the Trial Court had not mentioned anything about the rent payable under the Mizoram Urban Areas Rent Control Act, 1974 and cannot do so now on appeal he also submits that the Mizoram Urban Areas Rent Control Act is also not applicable in the instant case, since the agreement dated 01.08.2006 was executed between the

appellants and the respondent as between two private parties with mutual understanding and no standard rate was calculated under the Mizoram Urban Areas Rent Control Act. In the Agreement dated 01.08.2006 the rent was agreed @Rs. 18,000/- per month which is not a fixed standard rent under the provisions of the said above Act. He further submits that the said agreement dated 01.08.2006 makes no mention of the State Bank of India norms, wherein increase in rent every 5 years cannot be more than 25% of the prevailing rent. That the appellants cannot now opt for the State Bank of India norms at this later stage. He also submits that the appellants had chosen to ignore all the attempts made by the respondent to renew the rental charges, after the expiry of the Agreement dated 01.08.2006 and had continued to occupy the premises of the respondent by imposing the rental charges as per the expired agreement, without making any attempt to formally extend the terms of agreement which was in fact provided in para 5 (d) of the lease agreement dated 01.08.2006. The learned counsel for the respondent submits that the respondent should not suffer unduly due to the non-action and unresponsiveness of the appellants. That the appellants did not make any serious effort to vacate the premises except for the newspaper publication dated 18.07.2012 and that no grounds have not been made out to interfere with the Judgment & Order dated 13.12.2021.

13. I have heard the submissions made by both the parties and have also perused the documents on record.

14. The points for consideration that arise are:

i). On the expiry of the lease agreement dated 01.08.2006 between the parties on 01.08.2011, whether the Mizoram Urban Areas Rent Control Act, 1974 and the State Bank of India norms can be applied for an increase of the rent while the appellant bank continued occupying the premises.

ii). Whether the increase in the rent as calculated by the respondent/plaintiff was extremely high.

iii). Whether the learned trial court had erred in deciding that since the appellant bank continued to occupy the premises of the respondent in spite of being aware of the demand of the increased rent by the respondent, the appellant bank should pay the increase in rent as calculated by the respondent and whether the judgment and order of the trial court is liable to be set aside.

15. With regards to the first point, this court finds that in this case the previous lease agreement executed by the parties for a rent of Rs.18,000 per month was not calculated as standard rent as envisaged under the Act the

Mizoram Urban Areas Rent Control Act, 1974 and thus since section 3 (1) of Act, refers to the standard rent, the said Act is not applicable in calculating the increased rent amount from the agreed rent of RS.18,000/- per month. This court also finds that the State Bank of India Manual of Instructions on premises Matters cannot be imposed upon the respondent in deciding the increase in rent after the expiry of the lease agreement on 01.08.2011 since in the lease agree between the parties dated 01.08.2006, there was no mention that the State Bank of India norms would be applicable at any time for renewal of the lease agreement.

16. With regards to the rate by which the rent was increased, the Court finds that the respondent had relied on the rent paid by other banks within the same locality and not on the increase percentage wise from the previous lease agreement. This Court finds the rise in the rent as calculated by the respondent reasonable since the lease agreement had already expired on 01.08.2011 and the rise in rent is taken as per the prevailing market rate.

17. On perusal of the lease agreement dated 01.08.2006, it is seen that para 5 (d) had provided a condition for renewed lease of the demised premises, which reads as follows “(d) *That the Lessor will grant to the Bank a renewed lease of the demised premises on the Bank’s written request to make at any time before*

the expiration of this lease for such further period named by the Bank not exceeding years at the same rent and on the same terms as this lease."

However no renewed leased agreement was made. From the evidence adduced by the defence witness no1, it is seen that the appellant bank had approached the lessor/respondent for the renewal of the lease agreement before the expiry of the lease agreement which was however, refused by the respondent vide his letter dated 06.07.2011 which is annexed in the written statement. Moreover there is no evidence that a written request was made by the appellant bank. The appellant Bank had thereafter taken steps to vacate the premises by making a newspaper publication dated 18.07.2012. The appellant bank manager, Zarkawt Banch was also advised to have a dialog with the landlord and to look for an alternative premises in around Zarkawt Branch Area by The Regional Manager of the appellant bank vide letter dated 26.04.2013.

18. Thereafter since the appellant had not vacated the lease premises, the lessor/respondent had sent the first letter of his intent to raise the rent on 19.08.2013. However, on perusal of the letter dated 19.08.2013, exhibited as Exht .P- 4 no specific rent was mentioned by the respondent except for highlighting the rates paid by the HDFC and ICICI banks in the same Zarkawt area. Thereafter, the respondent wrote the letters dated 28.09.2013 and 07.10.2013 exhibited as Exbt P-10 and Exht-P-11 where he communicated the

raised rent by relying on the rents paid by the other banks i.e HDFC and ICICI banks as the market rate and calculated the rents to be paid by the appellant bank for a period from 02.08.2011 till 02.08.2013 @Rs. 25/- per sq.ft., i.e. Rs. 50,000/- per month and from the period between October, 2013 and December, 2013, the rent payable to be @Rs. 36/- per sq.ft., which amounts to Rs. 72,000/- for 2000 sq.ft. per month. The respondent in these letters had also asked the bank to vacate the premises by December 2013. In their letter dated 07.10.2013, exhibit- Exbt D-6 the appellant bank had responded by asking the respondent for time to vacate the premises stating that they were searching for an alternate place. No mention was made in the said letter dated 07.10.2013 with regards to the raised rent amount. The respondent as plaintiff witness No.1 has however mentioned that sometime in the year 2014, there was a meeting to discuss the rental charges with the appellant bank and that he was informed that the matter was being under consideration for a quick resolution. The defence witness 1 and 2 who are representing the appellant bank have also stated in their cross examination that the representatives of SBI held several rounds of meetings and the respondent plaintiff had also presented the amount of rent expected, however the parties could not come to any settlement.

19. The demised premises was then vacated by the appellant bank in the month of March 2015 and the respondent then wrote the letter dated

23.03.2015 which is exhibited as Exbt-P-12 for payment of arrears due. It is seen that in the letter dated 23.03.2015, the respondent has only claimed the raised rent for the period between October 2013 and February 2015. The said letter while referring to the earlier correspondence dated 19.08.2013, 28.08.2013 and 07.10.2013, stated that as per the correspondences, the appellant bank was understood to pay a monthly rent of Rs.72,000/- or vacate the premises. That the decision of the higher authorities of the appellant bank has been awaited for a period of more than one year while the appellant bank continued to occupy the premises paying the rent of Rs. 18000/- per month, which was much less than the prevailing market which is Rs.35/- per sq.ft as paid by the ICICI bank, while the appellant bank was paying a merger rent of Rs.9/- per sq.ft. That as such, the appellant bank was now liable to pay him/respondent the difference between the monthly rent charged by him at Rs. 72,000/- and the monthly rent paid i.e Rs 18,000/- for the period between October 2013 and February 2015. Accordingly the respondent stated that the arrears after due calculation for a period of 17 months was Rs.9,18,000/-. Nothing was mentioned in the letter dated 23.03.2015 why the respondent/plaintiff had not claimed the raised rents from 02.08.2011 till 02.08.2013 @Rs. 25/- per sq.ft., i.e. Rs. 50,000/- per month.

20. From the evidence adduced in the trial court, what can be clearly inferred

is that there was no expressed agreement on the rate of the rent for the demised premises after the expiry of the leased agreement on 01.08.2011. It is seen that after the expiry of the lease agreement, since the respondent was not willing to renew the lease agreement, the appellant bank had taken steps to vacate the premises by making a newspaper publication dated 18.7.2012. Thereafter after the communications sent by the respondent for raising the rent, the appellant bank had asked for further time to vacate the premises since they were searching for an alternative building. There is nothing to indicate that the appellant bank has agreed to the raised rent as imposed by the respondent but the evidence adduced only indicate that the parties have held meetings and have also attempted to have meetings to discuss the raised rent.

21. For the above reasons this court is of the considered view that the trial court had erred in allowing the claim of the respondent/plaintiff for recovery of the total amount of Rs. 16,86,000/- with interest from 02.8.2011 till date of payment, which is the raised rent from 02.08.2011 till 02.08.2013 @Rs. 25/- per sq.ft., i.e. Rs. 50,000/- per month in addition to the raised rent from October 2013 till February 2015 @ Rs. 35 per sq.ft i.e Rs 72,000/- per month.

22. After coming to the above finding, this court, however finds that the appellant bank cannot take undue advantage of the fact that because there was

no written consent, they had continue occupancy of the demised premises for almost 4 years as per the rent paid in the expired lease deed which already expired on 01.08.2011, by claiming that they were looking for an alternative building, whilst the respondent had specifically refused the renewal of the lease agreement after it expired on 01.08.2011 finding the previous rent too meagre. This court finds that there is no evidence that indicates that the appellant bank had tried earnestly and diligently to find a place to shift after the expiry of their leased agreement when they could not come to any settlement for a renewed lease.

23. For the above reasons, this court is also of the considered opinion that the respondent should not be made to suffer by imposing the terms of the expired lease agreement when the appellant bank failed to vacate the premises for a period about 4(four) years after they were asked to re allocate on 06.07.2011 when the respondent refused the renewal of the lease agreement once it expires on 01.08.2011 which was Exhibited as Exbt D-2. Thus since the parties have not been able to come to any sort of agreement, I find that the ends of justice would be met if as per the respondent's calculation in its letter dated 25.03.2015, the appellant bank, paid the arrears due for a period of 17 months from the month of October 2013 till February 2015 at the raised rent of Rs. 72000/- per month which is at the rate of Rs.36/- per sq.ft, after deducting the

already paid Rs.18000/- per month, which amounts to Rs.9,18,000/-. This rate is based on the rent paid by ICICI Bank in the building rented by them within the locality of Zarkawt area, which is proved and the same was not disputed by the appellant bank.

24. The learned counsel for the respondent also submits that the appellant bank has deposited 50% from the decretal amount of Rs. 16,86,000 passed in the impugned Judgment and order dated 31.12.2021 along with interest incurred which amounts to Rs.8,97,852/-and that the said amount has been released to the respondent. In view of the above, this court finds that, on the failure of the rival parties to come to any agreed rent amount, the ends of justice would be met if the appellant bank deposited the balance amount on deducting Rs. 8,97,852/- from the said Rs.9,18,000/- which amounts to Rs.20,148/-(Rupees twenty thousand one hundred forty eight) *only* in the Registry within one month from the date of this order. Both the parties shall bear their own cost.

25. In view of the above findings the Judgment & Order dated 13.12.2021 passed by the learned Senior Civil Judge-IV, Aizawl District, Aizawl in Money Suit No. 9/2016 is quashed and set aside and this Regular First Appeal stands disposed as per the above directions.

JUDGE

Comparing Assistant