

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.3.2013

Coram:

The Hon'ble Mr. Justice T. MATHIVANAN

Appeal Suit No.855 of 2012

and

M.P.No.1 of 2012

Punjab National Bank,
Represented by its
Authorised Signatory,
Deputy Zonal Manager,
Integrated Zonal Offices,
No.160, Greames Road,
Chennai 600 006.

... Appellant

vs.

1.M.Palaniappan

2.M.Nagammal

3.R.M.Subbaiah

4.R.M.Muthu Palaniappan

... Respondents

Appeal Suit filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 14.3.2012 passed in O.S.No.12177 of 2010 on the file of the IV Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.M.L.Ganesh
For Respondents : Mr.M.V.Venkataseshan

J U D G M E N T

The memorandum of regular appeal has been directed against the judgment and decree dated 14.3.2012 and made in the suit in O.S.No.12177 of 2010 on the file of the IV Additional Judge, City Civil Court, Chennai.

2.The appellant herein is the defendant in the suit whereas, the respondents 1 to 4 are the plaintiffs. For the sake of convenience and for easy reference, the parties to the suit may hereinafter be referred to as the plaintiffs and the defendant wherever the context is require.

3.The whole suit is centered around Ex.A.2, the letter dated 10.7.2003, sent by the defendant bank to the plaintiffs, which carrying a crucial question as to "whether this letter expresses a concluded contract between the plaintiffs and the defendant"?

4.The lower Court finds this letter in favour of the plaintiffs and answered in the affirmative form, which eventually resulted in pronouncing the judgment in favour of the plaintiffs as prayed for.

5. Having been aggrieved by the impugned judgment dated 14.3.2012, the defendant Bank viz., Punjab National Bank, represented by its Authorised signatory stands before this Court with this regular appeal.

6. Conspectus of facts:

(i) The plaintiffs are the landlords of the second floor in the building bearing No.160, Greames Road, Chennai 600 006 as they have inherited the same from their grandfather M.Palaniappa Chettiar. The said Palaniappa Chettiar had leased out the premises in the said building having a total plinth area of 5400 sq.ft to the defendant bank under the lease deed dated 08.01.1992 on a monthly rent of Rs.33,750/- for a period of five years from 01.08.1991. The above said lease deed stipulated an option to renew the lease for a further period of five years with 20% enhanced rent. These are all the admitted facts.

(ii) As the defendant bank wanted to continue in possession and promised to pay the enhanced rent and the parties also exercised the option under the said lease deed, Palaniappa Chettiar had allowed the defendant bank for continuation of the occupied premises by paying

enhanced rent as agreed therein. Subsequently, Palaniappa Chettiar had been repeatedly demanding the defendant bank to enhance the rent as they had been occupying the leased out premises for more than ten years and he had also agreed to negotiate with the officials of the defendant bank.

(iii) By their letter dated 10.7.2003, the defendant bank had agreed to pay rent at the rate of Rs.12 per sq.ft. for the future period alone. The said Palaniappa Chettiar had also agreed for waiving his claim for the earlier period in the belief that the rent would be paid as per their new commitment. Palaniappa Chettiar had agreed to receive the rent at Rs.12 per sq.ft from 1.7.2003 by his letter dated 14.7.2003, which was acknowledged by the defendant bank on 25.7.2003. By their offer and subsequent acknowledgment, the defendant bank had agreed to revise the terms and a valid contract thus came into existence between the parties. The non-execution of lease deed will not affect the contract, which had been concluded between the parties as the defendant bank had categorically agreed to pay the rent at the rate of Rs.12 per sq. ft from August 2003 and the execution of a fresh lease deed was not a condition precedent for the payment of the enhanced rent. Therefore, the plaintiffs being the legal

heirs of Palaniappa Chettiar were constrained to file the above suit seeking the following reliefs:

(i) to direct the defendant bank to pay a sum of Rs.10,98,300/- being the arrears of rent from 1.7.2003 to 15.2.2007.

(ii) to direct the defendant bank to pay a sum of Rs.1,00,000/- per month towards damages for use and occupation from 1.3.2007 till handing over the possession of the leased out premises to the plaintiffs and

(iii) to direct the defendant to pay the costs.

(iv) The defendant bank has contended that they had sent a letter dated 13.2.2001 to the first plaintiff stating that the lease had expired on 31.07.2001 and therefore, requesting him to visit the office of the defendant bank for having discussion to renew the lease with effect from 1.8.2001 on mutually agreed terms. Subsequently, the Bank had also sent reminders. It appears from the written statement that they had extended the lease between the first plaintiff and the Senior Manager of the defendant bank with regard to the revised rent of Rs.20 per sq.ft in future along with differences amount of rent from 1.8.2001. However, the defendant bank has admitted that in response to their letter dated 10.7.2003, the first plaintiff had sent a reply dated

14.7.2003 stating that he had agreed for an enhanced rent at Rs.12/- per sq. ft payable from 01.7.2003 and the period of lease will be of five years only. But, on the contrary to the letter dated 14.7.2003, the first plaintiff Palaniappan Chettiar wanted to enhance the rent at Rs.25% per sq. ft for the period of five years after expiry of the lease on 8.1.2000 to 8.1.2005 at Rs.35/- per sq. ft thereafter. The defendant bank vide their letter dated 7.12.2006 had informed that they are willing to vacate the premises on 31.12.2006 and requested the first plaintiff to take possession on that date and give them no due certificate. It was followed by a reminder dated 22.12.2006. That on 27.12.2006, the first plaintiff had sent a letter to the defendant bank stating among other things that the matter was to be settled by paying the arrears otherwise legal action would be taken. The defendant bank has also contended that after adjusting the rental advance of Rs.1,01,250/-, which is lying with the plaintiffs' father, towards the month of December 2006, an amount of Rs.60,750/- was to be refunded to the defendant bank and the defendant bank has also requested the first plaintiff to collect the keys and take vacant possession of the premises at least by 9.1.2007 failing which, it shall be deemed that the first plaintiff had taken legal possession and nothing was due and payable to them. Thereafter, on behalf of the

first plaintiff, a legal notice dated 4.1.2007 was sent to the Deputy Zonal Manager of the defendant bank, calling upon them to pay the arrears of rent at Rs.64,800/- from 1.7.2003 to 1.1.2007.

(v)It is also the case of the defendant bank that after the demise of the first plaintiff, the other plaintiffs have been receiving the rent as per the earlier lease deed dated 8.1.1992 and neither there was any request for enhancement of rent nor the rents were received by them under protest and thereby other plaintiffs have acquiesced, accepted and implicitly agreed to rents payable by the defendant from time to time and therefore, they are estopped from making any demand including the damages.

(vi)Based on the pleadings of the parties to the suit the learned trial Judge has formulated as nearly as seven issues for the better adjudication of the suit. In order to substantiate their case, the parties were directed to face the trial. In consequence there of, the fourth plaintiff had examined himself as P.W.1. During the course of his examination, Exs.A.1 to A.10 were marked on the side of the plaintiffs. On the other hand, no witness was examined and Exs.B.1 and B.2 were marked on the side of the defendant.

(vii)The learned trial Judge has decreed the suit on 14.3.2012 in part stating that the plaintiffs are entitled to the suit claim of Rs.10,98,300/- being the arrears of rent as claimed in the suit with interest at the rate of 6% as future interest from the date of judgment till the date of realization. As far as the claim of damages is concerned, the trial Court has held that the plaintiffs are not entitled to maintain the claim of damages. Having been aggrieved by the impugned judgment, the defendant stands before this Court with this appeal. With respect to the negatived relief of damages, no cross objection has been filed by the plaintiffs.

7.Heard Mr.M.L.Ganesh, learned counsel appearing for the appellant and Mr.M.V.Venkataseshan, learned counsel appearing for respondents 1 to 4.

8.From the grounds raised in the memorandum of appeal as well as the materials available on record, the following point has arisen for the consideration of this Court:

“Whether there is a concluded contract between the plaintiffs and the defendant?”

9. For the purpose of deciding this point, Sections 4 and 7 of the Indian Contract Act, 1872 are very much relevant. Chapter I of the Indian Contract Act 1872 encompasses the captions of **"OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS"**. Sections 4 and 7 of the Act come under Chapter I.

Section 4 contemplates "communication when complete, whereas Section 7 envisages acceptance must be absolute".

Section 4 enacts as under:

Section 4 – Communication when complete:

"The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,-

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,-

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge.”

10.The first portion of Section 4 itself is very much clear and expresses in clear terms that the communication of the proposal is complete when it comes to the knowledge of the person to whom it is made.

11.The second portion is crystal clear that the communication of an acceptance is complete as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor.

Section 7 enacts as under:

“Section 7:Acceptance must be absolute.- In order to convert a proposal into a promise, the acceptance must -

(1)be absolute and unqualified;

(2)be expressed in some usual and

reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance."

12.From the language coined under the provisions of Section 7, it connotes the meaning that in order to convert a proposal into promise, the acceptance must be absolute and unqualified.

13.With reference to the agreement through correspondence the legal proposition is that an agreement, even if not signed by the parties, can be spelt out from correspondence exchanged between the parties. It is the duty of the Court to construe correspondence with a view to arrive at a conclusion whether there was any meeting of mind between the parties, which could create a binding contract between

them but the Court is not empowered to create a contract for the parties by going outside the clear language used in the correspondence.

14. On coming to the instant case on hand, in Ex.A.2, the letter dated 10.7.2003 which appears to have been signed by the Senior Manager of the defendant bank, the defendant bank has stated as under:

“Regarding renewal of lease of our office premises:-

This has reference to your letter dated 3.7.2003 requesting us to pay for our office premises enhanced rent at a rate of Rs.12/- per sq.ft from 1.8.2001 and at Rs.20/- per sq.ft in future.

In this regard we request you to consider the following terms:

- The bank is presently paying a rent of Rs.7.50 per sq.ft. The rent prevailing in this area is Rs.10/- to Rs.12/- per sq. ft only. The bank, therefore, is willing to consider a rent of

Rs.12/- per sq.ft.

- As the bank does not have any policy to pay rental arrears, enhanced rent will be paid from the date of execution of lease deed only.

- The lease deed will be executed for 5+5+5 years with 20% enhancement in rent after the initial five years period with effect from date of renewal.

We therefore request you to return the enclosed consent letter duly signed by your goodself, for the bank to consider enhancement of rent and execution of fresh lease deed at the earliest."

15.The above said letter has admittedly been addressed to the deceased first plaintiff Palaniappa Chettiar. Ex.A.3 is the letter dated 14.7.2003 written by the deceased first plaintiff to the Senior Manager (GAD) of the defendant bank at Grems Road, Chennai 600 006. In this letter, the deceased plaintiff Palaniappa Chettiar has stated that "with reference to the above I agreed to enhance the rent at a rate of

Rs.12/- per sq.ft from 01.07.2003 and also agreed to the lease deed will be executed for five years only.

Please be kind enough to consider enhancement of rent and execution of fresh lease deed immediately.”

16.As defined under Sections 4 and 7 of the Indian Contract Act 1872, the Senior Manager of the defendant bank has given a proposal saying that the bank is willing to consider the rent of Rs.12/- per sq.ft. Then the proposal offered by the defendant bank has been accepted by the first plaintiff Palaniappa Chettiar by his letter dated 14.7.2003 wherein, he has stated that he had agreed to enhance the rent at the rate of Rs.12/- per sq.ft from 1.7.2003.

17.When the proposal made by the defendant bank was accepted by the deceased first plaintiff Palaniappa Chettiar, the averment on the part of the defendant that there was no concluded contract between the plaintiffs and the defendant does not have any force. The learned trial Judge has also given a clear finding based on Exs.A.2 and A.3 that there is a binding and concluded contract between the plaintiffs and the defendant.

18. Section 4 of the Indian Contract Act, 1872 has also bearing upon controversy, which provides for circumstances under which the contract can be said to have been accepted.

19. As observed in UNION OF INDIA Vs. PEECO HYDRAULIC PRIVATE LIMITED, (AIR 2002 DELHI 367 = to 2002 (65) DRJ 12), under Section 7 of the Indian Contract Act, 1872, the acceptance of the offer has to be absolute but need not be conditional. However, if there is a conditional or counter offer and it is acted upon without protest and the acceptance has been conveyed subject to that, to which there is no dispute raised.

20. In order to shed more light on this issue, this Court would like to rely upon the decision of the Apex Court in MAYAWANTI Vs. KAUSHALYA DEVI (1990 [30] SCC 1) wherein, the Apex Court has held that "it is settled law that if a contract is to be made, the intention of the offeree to accept the offer must be expressed without leaving room for doubt as to the fact of acceptance or to the coincidence of the terms of acceptance with those of the offer."

21. In the given case on hand, the offer of the defendant bank i.e. expressing their willingness to pay the rent at Rs.12/- per Sq.ft

was accepted by the deceased first plaintiff Palaniappa Chettiar under Ex.A.3. On an harmonious reading of Exs.A.2 and A.3 this Court finds that the contract between the plaintiffs and the defendant bank is a concluded contract and only on the basis of the completed contract, the plaintiffs have filed the suit claiming the rent at the rate of Rs.12/- per sq.ft from 1.7.2003 to 15.2.2007. For the reliefs sought for by the plaintiffs in the suit, only the first portion of the prayer has been rightly granted by the trial Court. Insofar as the second portion of the prayer is concerned, i.e. damages for use and occupation, the claim was rejected. However, no cross objection has been filed on the side of the plaintiffs. Hence, this Court finds that the judgment and decree of the trial Court dated 14.3.2002 is found to be in tact and does not require any interference of this Court.

22.In the result, the appeal is dismissed with the costs of the respondents. Consequently, M.P.No.1 of 2012 is closed.

15.03.2013

Index:Yes/No
Internet:Yes/No

cla

To

1.The Registrar,
City Civil Court,
Chennai.

2.The Section Officer,
V.R. Section,
High Court, Madras.

T. MATHIVANAN,J

cla

A.S.No.885 of 2012

15.03.2013