

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

+ RFA(OS) 1/2015 & CM No. 6297/2015

% Date of decision : 7th May, 2015

VIDYAWATI KHANNA TRUST Appellant

**Through: Mr. Ajay Kapur, Sr. Adv. with
Mr. Harshbir Singh Kohli, Adv.**

versus

M/S CENTRAL BANK OF INDIA Respondent

**Through: Mr. Jaswinder Singh, Adv. with
Mr. M.K. Gaiind (DGM) and
Mr. A.K. Srivastava (AGM)
Mr. Ranjit Kumar Mohanty, Asstt.
General Manager, Central Bank of
India, Janpath Branch**

AND

+ RFA(OS) 21/2015 & CM Nos. 2637-2638/2015

CENTRAL BANK OF INDIA Appellant

**Through: Mr. Jaswinder Singh, Adv. with
Mr. M.K. Anand (NGM) and
Mr. A.K. Srivastava (AGM)**

versus

VIDYAWATI KHANNA TRUST Respondent

**Through: Mr. Ajay Kapur, Sr. Adv. with
Mr. Harshbir Singh Kohli, Adv.
Mr. Ranjit Kumar Mohanty, Asstt.
General Manager, Central Bank of
India, Janpath Branch**

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE P.S.TEJI

GITA MITTAL (J) ORAL

1. These two appeals assail the judgment and decree dated 19th November, 2014 passed by the learned Single Judge accepting IA No. 3829/2014 filed by Vidyawati Khanna Trust-plaintiff in the suit under Order 12 Rule 6 of the CPC against the Central Bank of India-defendant in the suit filed for possession and mesne profits.

2. For the purposes of convenience, we propose to refer to the parties by the nomenclature assigned to them in the suits. It is an admitted position on record that the Central Bank of India was occupying the premises as a tenant by virtue of a registered lease deed dated 1st July, 2005 which expired with efflux of time on 30th November, 2012. As the Central Bank of India failed to vacate the premises on 7th January, 2013, CS(OS) No. 54/2013 was filed by the plaintiff seeking a decree for recovery of possession and damages/mesne profits. In the written statement which was filed, the relationship of landlord and tenant; the tenancy between the parties by virtue of the registered lease deed dated 1st July, 2005; the expiry of the tenancy by efflux of time on 30th November, 2012 as well as the rental being more than ₹3500/- were admitted.

3. The record of the suit has also been received in court and has been perused by us. The parties pray that the appeals may be taken up for

disposal today. Learned counsel for the parties submit that the necessary documents/pleadings in CS(OS) No.54/2013 have also been filed in these two appeals. With the consent of both counsels and the parties, we have consequently heard learned counsel for the parties and proceed to judgment.

4. After the framing of issues in the suit on 3rd February, 2014, the plaintiff filed IA No.3829/2014 under Order 12 Rule 6 of the CPC praying for passing of a decree of possession in favour of the plaintiff in view of the unequivocal admissions of the defendant.

5. It appears that the parties were exploring the possibility of an extension of the lease which is manifested from the letter dated 16th November, 2012 (Exh.P-4) wherein the defendant has stated as follows :-

“Apropos, you are aware that we are operating our Janpath Branch and other offices from your 70, Janpath premises since long, and we have cordial relations beyond the relationship of Lessor & Lessee with your fullest cooperation in the past 4 decades.

Now, as you aware that the term of lease is going to expire on 30/11/2012, and as envisaged in lease deed we have approached you for its extension on mutually agreed terms.

Please recall your last discussion with the undersigned wherein you have assured us that extension of lease can be granted on the rates 10% below the prevailing market rate.

Thus, we have gathered information from the market in respect of prevailing rates for similar premises by calling bids/tenders by giving Advertisement in Newspapers adopting Govt. guidelines, and got to know that they are in between Rs.300/- to 350/- psf, thus we have again approached you today with a request to reconsider your

decision for extending the lease on the above rates so that his long un-perishable relationship may continue for ever.”
(Underlining by us)

6. Our attention is drawn to the proceedings held on 16th October, 2014, whence a statement was made on behalf of the defendant that it had been decided to hand over vacant and peaceful possession of the suit premises to the plaintiff within a period of 12 months from that date. Further statement stands noted that the defendant shall pay rent at the rate of ₹350/- per sq. feet. The matter was adjourned as the learned counsel for the plaintiff sought time to take instructions from the plaintiff in this regard.

7. We now enter into the realm of a dispute so far as this statement is concerned inasmuch as the defendant thereafter filed IA No.2275/2014 stating that the above statement with regard to payment of rent at the rate of ₹350/- was recorded due to oversight and that the order requires to be corrected/modified in this regard. Inasmuch as there was no dispute to the letter dated 16th November, 2012, the learned Single Judge by the impugned order dated 19th November, 2014 has also dismissed IA No. 2275/2014 resulting in the appeal.

8. So far as the prayer for the decree for possession based on admissions is concerned, by the judgment dated 19th November, 2014, the learned Single Judge has accepted the same. On the prayer of payment of rent, it has been directed that in case the defendant was agreeable to paying the rent at the rate of ₹350/- per sq. feet, the defendant may hand

over possession to plaintiff on or before 15th October, 2015. The suit was accordingly so decreed.

This composite judgment on the two applications, one by the plaintiff under Order 12 Rule 6 of the CPC and the other by the defendant seeking correction/modification of the order dated 16th October, 2014 have been assailed by both the parties. The plaintiff has challenged the judgment dated 19th November, 2014 by way of RFA(OS)No.1/2015 contending that the learned Single Judge has erred in not noticing the prayer for grant of mesne profits with effect from the date on which the lease expired till the suit property is vacated. It is pointed out that the prayer to this effect was never obtained by the plaintiff but had also filed its affidavit by way of evidence on the issue in this regard.

By way of RFA(OS)No.21/2015, the defendant assails the decree for possession as well as the rejection of the application for correction/modification of the order dated 16th November, 2014 before us.

9. During the pendency of the present appeals, the defendants have taken a stand that it does not wish to continue with the possession of the lease premises. Consequently, an undertaking by way of the affidavit dated 25th April, 2015 has been filed before us to the effect that the appellant Bank would hand over vacant and peaceful possession of the leased premises to the plaintiff within a period of six months from the date of the undertaking which would end on or about 25th October, 2015. In view thereof, so far as the decree for possession is concerned, the challenge thereto in RFA(OS)No.21/2015 does not survive and is hereby

rejected.

10. So far as the issue of mesne profits and use and occupation charges is concerned, it cannot be disputed that the same has not been adjudicated by the learned Single Judge. We find that on the 3rd of February 2014, the court had framed the following as the issue no.3 :-

“(iii) Whether the plaintiff is entitled to a decree of Rs.26,21,500/- on account of user and occupation charges from the month of December, 2012? If so, to what period?
OPP”

There is therefore merit in the submission of learned senior counsel for the landlord that this claim and issue have to be decided in accordance with law and that the learned Single Judge could not have disposed of the suit without adjudication on the mesne profits issue.

11. We are informed that pursuant to the orders passed in the suit, the evidence of the plaintiff on this issue has been filed. It is submitted before us by Mr. Ajay Kapoor, learned senior counsel for the plaintiff that in the evidence led by the plaintiff before the learned Single Judge, the plaintiff placed some evidence that the market rent of similarly situated premises in the immediate vicinity in the tenanted premises was ₹500/- per month. Learned senior counsel for the plaintiff submits that the appellant has other witnesses who the plaintiff has to examine in support of the pleas taken in the plaint on the issue of mesne profits. There can be no objection to this.

12. Learned senior counsel for the appellant has also submitted that

given the admission of the defendant in the letter dated 16th November, 2012-Exh.P-4, the plaintiff would be entitled to decree in terms thereof.

13. The defendant however has challenged the entitlement of the plaintiff to a decree at the rate and period mentioned in this letter and has also sought an opportunity to cross examine the witnesses of the plaintiff on the issues as well as to lead its own evidence in the matter.

The Central Bank of India challenges this submission and submits that it is also entitled to lead evidence on its defence and explanation. The defendant is legally entitled to an opportunity to explain the statements made in the letter dated 16th November, 2012 and to lead its evidence on mesne profits as well, of course after cross examining the witnesses of the plaintiff. Rentals do not remain static and both parties are required to establish prevalent rentals/use and occupation charges as well as the periods for which they subsisted.

14. Needless to say, so far as the effect of the letter dated 16th November, 2012 on the adjudication on the issue is concerned, the same would have to abide by consideration of the pleas which are pressed by the parties before the learned Single Judge, the evidence led and the position in law. We refrain from commenting or adjudicating on the same.

15. In view of the above, the present appeals are disposed of in the following terms :-

(i) The challenge to the judgment and decree dated 19th November, 2014 to the extent it grants possession made in RFA(OS)No.21/2015 is hereby rejected.

(ii) The undertaking by way of the affidavit dated 25th April, 2015 given on behalf of the respondent bank by Sh. Ranjit Kumar Mohanty, Asstt. General Manager (who is present in court) to vacate the property on or before 25th October, 2015 is accepted. The Central Bank of India and Mr. Ranjit Kumar Mohanty shall remain bound by the same.

(iii) Without prejudice to the rights and contentions of both parties, so far as the period after the decree for possession dated 19th November, 2014 is concerned, the appellant shall be liable to pay use and occupation charges calculated at the rate of ₹350/- per sq. feet in terms of the judgment dated 19th November, 2014.

The arrears based on this calculation shall be cleared within a period of six weeks from today.

Month by month charges hereafter on the same rate shall be paid on or before the 7th day of each English calendar month to the plaintiff till vacation of the premises.

(iv) It is made clear that so far as the payment of use and occupation charges in terms of this direction is concerned, the same shall also abide by final adjudication by the learned Single Judge who shall conduct the inquiry in this regard. The defendant bank shall be entitled to adjustment of any amounts if found having been paid in excess thereon.

In case, the learned Single Judge concludes that the plaintiff is entitled to use and occupation charges at a higher rate, the defendant shall be liable to make good the deficiency in the amounts which are being tendered pursuant to this order. The learned Single Judge would pass appropriate orders in this regard.

(v) The matter is remanded for adjudication on issue no. 3 with regard to the mesne profits which the plaintiff has claimed in the suit.

(vi) The plaintiff is permitted to file additional evidence on affidavit within a period of eight weeks from today.

(vii) The matter shall be listed before the Joint Registrar (Original) for fixation of a date for cross examination of the plaintiff's witnesses on 20th July, 2015. The matter shall thereafter proceed to recording of defendant's evidence.

(viii) It is made clear that we have hereby maintained the judgment of the learned Single Judge for handing over the possession. The order for deposit of the occupation charges at the rate of ₹350/- with effect from 19th November, 2014 to the date of handing over possession has been made without adjudicating on the merits of the rival claims and this direction shall not influence adjudication on the issue no. 3 in any manner.

(ix) In view of the above, it is directed that the execution of the decree for possession shall be kept in abeyance till 25th October, 2015.

These appeals and applications are disposed of in the above terms.

CM No.6297/2015

In view of the disposal of the appeal, this application does not survive for adjudication and is disposed of.

GITA MITTAL, J

P.S.TEJI, J

MAY 07, 2015
aj/kr