

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10803 OF 2016

Bharati Airtel Ltd.

.. Petitioner

-Versus-

Vinaso Infotech & Leasing Pvt. Ltd.

..Respondent

Mr. S.M.Gorwadkar, Senior Advocate with Mr. Pritesh Vyas for petitioner
Mr. Ashish Kamat with Mr. M.K.Sayed i/b. Federal Rashmikant & Co. for respondents.

CORAM : R.G.KETKAR, J.

DATE : 22nd September 2016.

P.C.

1] Heard Mr. Gorwardkar, learned Senior Counsel for petitioner and Mr. Ashish Kamat, learned Counsel for respondent No.1 at length.

2] By this petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as defendants, have challenged the judgement and order dated 30th September 2015 passed by the learned Judge, Small Causes Court, Mumbai below Exh.15 in T.E.R Suit No.23 of 2013 as also the judgement and order dated 25th July 2016 passed by the appellate bench of the Small Causes Court in Revision Application No.126 of 2015. By these orders, the Courts below allowed the

application made by the respondents, hereinafter referred to as plaintiffs, seeking direction against the defendants to pay arrears of rent, compensation / mesne profits, amenity charges and service tax with interest thereon and directed the defendants, without prejudice to the rights and contentions of both the parties, to deposit Rs.12,81,503 per month towards lease rent plus Rs.2,51,275 per month as amenity charges from April 2012 to January 2014 within three months.

3] In support of this petition, Mr. Gorwadkar invited my attention to clauses 3(a) and 14(a) of the lease dated 15th July 2005 executed between the parties. In terms of clause 3(a), the lessee (defendant herein) agreed to pay monthly lease rental of Rs.9,69,000/- for the first 36 months for the lease period commencing from 15th July 2005 to 14th July 2008. The defendants further agreed to pay escalation of 15% of the lease rent from 15th July 2008 to 14th July 2011. In terms of clause 9(a) it was agreed between the parties that neither parties shall have the right to terminate the lease deed for a period of two years from 15th July 2005 to 14th July 2007 (lock in period). In the event the lessee terminates lease deed during the lock in period, it will pay the rent as will be payable under the lease deed for unexpired portion of the lock in period. Mr. Gorwadkar heavily relies upon clause 14(a) of the lease deed to contend that by this clause the lessee is entitled to terminate the lease in respect of part of the

area.

4] He submitted that the lease was executed in respect of the built up area of 38,000 sft. equivalent to 3530 sq.mtrs. or thereabouts or equivalent to carpet area admeasurintg 32,300 sft. equivalent to 3000 sq.mts or thereabout on the sixth floor of the building No.7 in the project known as "Interface" situate at the address more particularly mentioned in the lease deed. In terms of clause 14(a), the defendants addressed a letter dated 23rd September 2011 for surrendering possession of 17,000 sq.ft. area out of 38000 sq.ft. The plaintiffs did not respond to this letter. The defendants addressed another communication dated 10th December 2012, requesting the plaintiffs to take vacant possession of 17000 sq.ft. He submitted that as per the lease deed, the defendants have paid rent upto 31st March 2012. He submitted that as the plaintiffs did not respond to the letter dated 23rd September 2011, there was tacit acceptance on their part about the offer made by the defendants for surrender of 17000 sq.ft. It is a matter of evidence and, therefore, at this stage the courts below were not justified in directing the defendants to deposit Rs.12,81,000/- per moth as lease rent and Rs.2,51,275/- per month as amenity charges for the period April 2012 to April 2014. He, therefore, submitted that the petition requires consideration.

5] On the other hand, Mr. Kamat invited my attention to para 7 of the plaint wherein the plaintiffs specifically asserted that the termination of lease in respect of 17000 sq.ft. was invalid and barred by law and was not in accordance with the lease deed. The purported partial termination of lease only in respect of 17000 sq.ft. was invalid, barred by law and against the provisions of lease deed. He submitted that there was no tacit or implied acceptance of surrender by the plaintiffs. The plaintiffs had replied the letters dated 23rd September 2011 and 12th April 2012 on 26th April 2012. He submitted that the suit premises comprising of one single unit and partial termination is not provided under the lease. He, therefore, submitted that no case is made out for interference under Article 227 of the Constitution of India.

6] I have considered rival submissions made by the learned Counsel appearing for the parties. . I have also perused the material on record. Clause 9(a) of the lease deed reads thus:-

“9(a) Except as provided herein, it has been expressly agreed by and between the parties hereto that neither party shall have the right to terminate this Lease Deed for a period of two years from the date hereof i.e. upto 14th July 2007 (lock in period). In the event that the lessee terminates this lease deed during the lock in period/ firm period, it will pay the rent as may be payable under this lease deed for the unexpired portion of the lock in period.”

Perusal of this clause shows that neither party has right to terminate the lease deed for a period of two years from 15th July 2005 to 14th July 2007. In the event of lessee terminating the lease deed during the lock in period, it will pay the rent as may be payable under the lease deed for the unexpired period of the lease deed.

7] Clause 14(a) of the lease deed reads thus:-

“14(a)Notwithstanding anything contained in clause 9(a) hereinabove the lessee will have an option to terminate this lease for any reason by serving a six months' written notice to the lessor of its intention to terminate this lease. However, if the lessee terminates this lease during the lock in poeriod the lessee shall be liable to pay the rent for the unexpired portion of the lock in period or for the said notice period of six months, whichever is higher.”

Clause 14(a) lays down that notwithstanding anytghing contained in clause 9(a) the lessee will have an option to terminate **this lease** for any reason by serving a six months written notice to the lessor of its intention to terminate **this lease**. However if the lessee terminates **this lease** during the lock in period, the lessee shall be liable to pay the rent for the unexpired portion of the lock in period or for the said notice period of six months, whichever is higher. (emphasis supplied).

8] Perusal of clause 14(a) prima facie does not indicate that partial

termination of lease deed viz., qua part of the area of total 38000 sq.ft is permissible. That apart, perusal of para 7 of the plaint also shows that plaintiffs specifically gave reply dated 26th April 2012 to the letters dated 23rd September 2011 and 10th April 2012 inter alia contending that partial termination of lease in respect of the 17000 sq.ft area was invalid. Prima facie, at this stage, it cannot be said that there was either tacit or implied acceptance as contended by Mr. Gorwardkar.

9] In view thereof, I do not find that the courts below committed any error in passing the impugned orders. Hence, the petition fails and is dismissed. However, parties are at liberty to apply for expeditious hearing before the trial court. If such an application is made the trial Judge shall pass appropriate orders thereon.

10] At this stage Mr. Gorwadkar orally applies for extension of time by six weeks fro deposit of the amount as per the impugned order. He assures that he will not seek further extension of time. Notwithstanding the dismissal of this petition, time is extended for six weeks with clear understanding that no further extension will be sought for.

(R.G.KETKAR, J)