

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO. 1452 OF 2015****IN****SUIT NO. 504 OF 2012**

The Royal Bank of Scotland N.V.

...Applicant

In the matter between:

The Royal Bank of Scotland N.V.

...Plaintiff

vs.

Alok Prakash Kedar and another

..Defendants

*Ms. Soumya K. Srikrishna, instructed by Mr. Anil T. Agarwal for the Plaintiff.
Mr. S.A. Ahmed for Defendant No.1.*

CORAM: S.J. KATHAWALLA, J.

DATE: 4th JANUARY, 2016

P.C.

The present suit is filed by the Plaintiff – The Royal Bank of Scotland N.V. against the Defendants for the refund of security amount deposited by the Plaintiff with the Defendant No.1.

2. The Defendant No. 1 is the owner of Flat No. 153, Sea Lord B, in the Society known as Cuffe Parade Sea Lord Co-operative Housing Society Ltd. , 117, Cuffe Parade, Mumbai-400 005 (the suit flat).

3. Pursuant to the negotiations between the parties, the Plaintiff and Defendant No.1 entered into an Agreement dated 15th February, 2010 whereunder Defendant No. 1 allowed the Plaintiff to use and occupy the suit flat on leave and license basis for a period of 11 months (the said Agreement). A copy of the said Agreement is annexed and marked as Exhibit-B to the Plaint. Clauses 1, 2(a), 13, 23 and 24 of the said Agreement are relevant and therefore reproduced hereunder:

“1. The Licensor hereby grants to the Licensee, License to use and occupy the Licensed premises for a period of (11) eleven months on and from 1st January 2010. Either party shall have an option to terminate this Agreement by giving two month's notice in writing to the other party, without assigning any reason, whatsoever.

2(a) The Licensee shall pay to the Licensor a month license fee or compensation of Rs. 10,000/- (Rupees Ten Thousand only) per month for the use of the Licensed Premises which shall be paid by the Licensee in advance on the 07th of each month without any default commencing from the 1st day of January, 2010.

(13) The Licensee agrees to pay to the Licensor a sum of Rs. 1,30,00,000/- (Rupees One Crore Thirty Lacs only) as security deposit for due performance by the Licensee of the terms of this Agreement (hereinafter referred to as “the Security Deposit”). The Licensor acknowledges the receipt of the Security Deposit of Rs. 1,30,00,000/- (Rupees One Crore Thirty Lacs only). The amount of Security Deposit, shall be retained by the Licensor and returned to the Licensee, without

interest, simultaneously with the Licensee removing itself and all its belongings chattels, articles and things from the Licensed Premises on the expiration or sooner determination of this Agreement and handing over vacant possession thereof to the Licensor.

23. It is further agreed by and between the parties hereto that notwithstanding anything contained in this Agreement, on the expiry of or, in case of sooner determination/termination of this Agreement or if the Licensed Premises become uninhabitable as contemplated in clause 16 mentioned hereinabove and if the Licensee is ready and willing to give vacant and peaceful possession of the Licensed Premises to the Licensor, and then if Licensor does not refund the Security Deposit and the Bank Guarantee forwarded as per clause 14 above duly cancelled for any reason whatsoever, in that event, without prejudice to any other remedy available to the Licensee, the term of the license as stipulated herein or any extensions thereto shall be forthwith transformed into an irrevocable license on the contingencies specified hereinabove and in that event the Licensee shall be entitled to remain in occupation of the Licensed Premises under an irrevocable license without liability to pay any compensation or charges or other payments of whatsoever nature whether payable under the terms of this Agreement or otherwise howsoever and in addition thereto the Licensee shall be entitled to receive from the Licensor interest at the rate of 18% p.a. on the Security Deposit from the date of the offer by the Licensee to the Licensor to deliver vacant possession of the Licensed Premises on expiry of the initial term or sooner determination/termination of this Agreement until recovery of the entire amount of the Security Deposit without any deductions by the Licensee from the Licensor together with interest accrued thereon as

aforesaid and the Bank Guarantee duly cancelled.

24. In the event the Licensor refunds the Security Deposit amount by way of a cheque, the Licensee shall hand back possession only on the cheque being cleared by the Bank. In the event the Licensor refunds the Security Deposit amount by way of a Pay Order/Demand Draft, the Licensee shall hand back possession immediately.”

4. In August, 2010, the Plaintiff decided to terminate the said leave and license Agreement. The Plaintiff as agreed clause (1) of the said Agreement, therefore by its letter dated 16th August, 2010, gave notice to the Defendant No.1 qua their decision to terminate the Agreement dated 15th February, 2010 upon expiry of two months. By its said letter, the Plaintiff also recorded that: “ *On 13th October 2010, against return of our security deposit of Rs. 1,30,00,000/- (Rupees One Crore Thirty Lacs only), we will return vacant peaceful possession of your flat.”*

5. On 13th October, 2010, Defendant No.1 sent an e-mail to the Plaintiff which reads as under:

*“Lease expires today. Deposit will be returned shortly. Flat sale is underway. **Meanwhile, RBS can charge applicable interest on deposit paid.** (emphasis supplied)*

6. Since the Defendant No. 1 failed to return the security deposit of Rs.1,30,00,000/- on 2nd November, 2011, the Plaintiff was constrained to file the

above Suit against the Defendants, inter alia, for an order and decree against the Defendants to pay to the Plaintiff a sum of Rs. 1,53,40,000/- with further interest on the principal sum of Rs. 1,30,00,000/- at the rate of 18 per cent from 14th October, 2011 till payment and/or realization.

7. In the above suit, the Plaintiff has taken out the above Notice of Motion seeking a decree on admission under Order 12 Rule 6 on the ground that the Defendant No. 1 has by his e-mail dated 13th October, 2010 admitted that the lease has expired on 13th October, 2010 and the deposit payable by the Defendant No. 1 shall be returned shortly and in the meantime the Plaintiff can charge the applicable interest (i.e. 18% per annum) on the deposit amount.

8. The Learned Advocate appearing for the Defendant No. 1 on instructions from the Defendant No. 1 who is present in Court has submitted that the Defendant No. 1 admits that he is required to pay to the Plaintiff the amount as claimed in the suit. However, he has drawn my attention to Section 74 of the Contract Act, 1872 and has submitted that since the said Agreement provides that 18 per cent interest will be charged in the event of the Defendant No. 1 not returning the security deposit of Rs. 1,30,00,000/-, the interest payable @ 18% is in the nature of penalty, this Court should exercise its discretion and reduce the rate of interest set out in clause 23 of the said Agreement. The Learned Advocate appearing for Defendant No. 1 has relied on

Section 23 of the Civil Procedure Code, 1908 and has submitted that this Court should also use discretion and reduce the rate of interest payable by the Defendant No. 1 to the Plaintiff from the date of filing of the suit till payment and or realisation.

9. It is true that the interest payable under the Agreement at the rate of 18 per cent by the Defendant No. 1 to the Plaintiff in the event of the Defendant No. 1 failing to return the security deposit amount to the Plaintiff is in the nature of penalty. It is also true that this Court in its discretion can reduce the penal rate of interest specified in an Agreement. However, I am not inclined to reduce the agreed rate of interest payable by the Plaintiff from 14th October, 2010 till the date of filing of the suit since Defendant No. 1 himself has expressly stated in his e-mail dated 13th October, 2010 that the leave and license agreement expires on 13th October, 2010 and pending return of the security deposit the Plaintiff can charge the applicable interest on the deposit paid. However, since under the terms of the said Agreement, the Applicant/Plaintiff is allowed to retain possession and use the licensed premises free of charge until the Defendant No. 1 returns the security deposit of Rs. 1,30,00,000/-, I am inclined to direct the Defendant No. 1 to pay interest @ 6 per cent on the said amount of Rs. 1,30,00,000/- from the date of filing of the suit till payment and/or realization. Hence I pass the following order:

(i) The Suit is decreed in terms of prayer clause (a) with a modification that from

the date of filing of the suit till payment and/or realization, the Defendant No. 1 shall pay 6 per cent interest on the principal sum of Rs. 1,30,00,000/-.

(ii) Upon payment of the decretal amount, the Plaintiff shall forthwith hand over possession of the licensed premises to the Defendant No.1.

(iii) The Suit is accordingly disposed of. The Defendant No. 1 shall also pay costs of the suit to the Plaintiff.

(iv) Refund of court fees, if any, according to Rules.

Notice of Motion is also accordingly disposed of.

(S.J. KATHAWALLA, J.)