IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.6164 of 2015
Date of decision: 14.03.2016

The Chief Manager, Punjab & Sind Bank, G.T.Road, Jalandhar and others.

... Appellants

Versus

Manjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. BPS Dhaliwal, Advocate
for the appellants.

AMOL RATTAN SINGH, J.

This is the second appeal filed by the appellant Punjab & Sind Bank, who were defendants before the learned Civil Judge (Jr. Division), Jalandhar, in a suit filed by the respondents-plaintiffs seeking recovery of Rs.7,73,760/-, inclusive of interest.

2. As per the case set up by respondents No.1 to 3 (plaintiffs), they are joint owners of a property known as Lotus Tower, EH-198, G.T.Road, Civil Lines, Jalandhar (hereinafter referred to as EH-198), to the extent of 1/3rd share each. Respondents No.4 to 7 in this appeal were defendants No.5 to 8 before the learned Civil Judge, in the suit filed. They are owners of property No. EQ-292, Civil Lines, G.T.Road, Jalandhar (hereinafter referred to as EQ-292).

The appellant-bank had been inducted as a lessee on the property of respondents No.4 to 7 on a monthly rent of Rs.3200/-, in the year 1972. The said building having become old, respondents No.4 to 7 initiated ejectment proceedings against the appellant-bank, after the Municipal Corporation, Jalandhar, also served a demolition notice on them.

3. Other than that, respondents No.4 to 7 requested the bank for temporary vacation of the building and respondents No.1 to 3 offered the bank temporary accommodation in their building, i.e. EH-198. As part of the offer, respondents No.1 to 3 were not to charge any rent from the bank for a period of 18 months from the date that they vacated building No.EQ-292, or uptill the date of completion and possession of the new building that was being constructed on Plot No.EQ-292, whichever event occurred earlier.

The appellant-bank agreed to the arrangement and shifted to the premises of respondents No.1 to 3.

Though the agreement was initially for accommodation of 4000 sq. yards carpet area, the bank eventually shifted into 2600 sq. ft. for a period of 18 months, in terms of a tripartite agreement dated 24.08.2001, between the bank, respondents No.1 to 3 and respondents No.4 to 7. It was further stipulated in the agreement that in case the bank continued to remain in possession of the premises beyond 24 months from the date of occupation, respondents No.1 to 3 would be entitled to charge rent @ Rs.78,000/- per month, which the bank could thereafter recover from respondents No.4 to 7.

4. The bank having failed to vacate the premises within 24

months, although it was contended that the building at EQ-292 Civil Lines, had been completed by respondents No.4 to 7, these respondents (No.4 to 7) paid rent to respondents No.1 to 3 from August 2003, uptill 31.05.2005.

The bank refused to pay the arrears of rent even thereafter, w.e.f. 01.06.2005 uptill 31.01.2006, i.e. for the period that they continued to occupy the suit property.

Respondents No.1 to 3 had legal notices issued to the appellant bank on 24.04.2006, 08.12.2005 and 19.02.2007, demanding that arrears of rent be paid, but with no result.

Hence, the suit out of which this second appeal arises, was instituted.

5. In the reply filed by the bank before the learned Civil Judge (Junior Division), Jalandhar, it took preliminary objections with regard to the suit not being within limitation, the plaintiffs not having come to the Court with clean hands, collusion between the plaintiffs and defendants No.5 to 8 etc.

On merits, it was contended that respondents No.4 to 7 had been pretending to be owners of the property under the garb of some scheme and they actually sold away the property to some persons by the name of Parveen Sachdeva, Jyoti Sachdeva, Ashok Kumar and Veena Rani, in August 2003. As such, it was contended that the plaintiffs-respondents No.1 to 3 had not made the actual owners of property No.EQ-292, Civil Lines, party to the suit, with malafide intentions. It was further contended that actually rent had been paid even upto

31.05.2005, by the new vendees, to the plaintiffs.

6. Ejectment proceedings initiated by respondents No.4 to 7 against the bank and the compromise deed dated 25.08.2001, were admitted to, but it was stated that the building had not been completed by respondents No.4 to 7 within 18 months and that since the period of 18 months expired in August 2003, and respondents No.1 to 3 had been demanding payment.

It was further admitted in the reply that the additional clause in the agreement stipulated that if the premises at the old site were not restored within 2 years to the bank, the rent would be paid by bank, with a right to the bank to recover the same from respondents No.4 to 7 .

It was further contended that respondents No.4 to 7 continued to pay the rent to respondents No.1 to 3 even after the stipulated 24 months, as the building had not been completed and handed over to the bank and in fact, it was alleged, that the building was actually in possession of the new buyers.

7. The present respondents No.4 to 7 (defendants No.5 to 8 before the Civil Judge), also filed a separate written statement, contending with regard to the suit being bad for mis-joinder etc., as preliminary objections.

On merits, it was contended that despite the compromise deed (dated 24.08.2001) the bank was reluctant to re-occupy the previous premises, even though the construction was complete within the agreed period.

8. Upon replication having been filed by the plaintiffs-respondents No.1 to 3, the following issues were framed by the learned Civil Judge:-

> "1. Whether the plaintiffs are entitled to recover Rs.7,73,760/- along with interest, if so to extent and at what rate of interest? OPP
> 2. Whether the suit is barred by limitation? OPD
> 3. Whether the suit has been filed in collusion between the plaintiffs and defendants No.5 to 8? OPD
> 4. Whether the plaintiffs are estopped by their own conduct from filing the instant suit? OPD
> 5. Whether the suit is bad for non joinder of necessary parties? OPD 5 to 8
> 6. Whether no cause of action has ever accrued to plaintiff to file the instant suit? OPD 5 to 8
> 7. Relief."

9. The plaintiffs examined respondent No.1 and the bank examined its Manager, in oral evidence. Documentary evidence was led as follows:-

By the plaintiffs:-

Sale Deeds	-	Ex.P1 to Ex.P3;
Copy of Tripartite Agreement	-	Ex.P4;
Copies of Notice	-	Ex.P5 to Ex.P7;
Postal Receipts	-	Ex.P8 to Ex.P11.

By the defendants:-

Letters	-	Ex.D1;
Notice	-	Ex.D2

10. Upon hearing parties and appraising the evidence led, that Court first referred to the admitted facts with regard to the tripartite agreement and payment of rent uptill 31.05.2005.

Having thereafter found that there was no doubt that the bank actually was bound, in terms of the agreement, to pay rent after a period of 24 months, the question of limitation raised by the bank was considered and the suit having been filed on 24.12.2007, with the plaintiffs-respondents No.1 to 3 having claimed rent from 01.06.2005 to 31.01.2006, the suit was found to be within limitation, such period of limitation being within three years from when the cause of action arises.

The contention that rent having been paid initially by respondents No.4 to 7 or the new vendees, was held by the Court, in effect, to be of no consequence, as regards the banks' liability to pay rent for the remaining period.

The suit was accordingly decreed in favour of the plaintiffs-respondents No.1 to 3, to the extent of recovery as claimed. The rate of interest awarded was at the rate of 9% per annum, from the date of filing of the suit till the date of decision, with a provision for interest thereafter at the rate of 6% per annum, till the date of realization of the amount.

The claim for interest at the rate of 12% per annum, was therefore, rejected.

11. Before the learned Additional District Judge, Jalandhar, in the appeal filed by the present appellants, the following two points were considered for determination:-

> “1. Whether the judgment and decree under appeal is liable to be set aside and reversed on account of the failure of respondents no.1 to 3/plaintiffs to prove on record their entitlement to recover the arrears of rent as prayed for?
>
> 2. If the answer to first point for determination lies in NEGATIVE, whether the judgment and decree under appeal is liable to be set aside and reversed on account of the failure of respondents no.1 to 3/plaintiffs to implead the subsequent buyers as party in the main suit?”

12. As regards the point of reversal of the decree on merits, after discussing the admitted position as regards the tripartite agreement and its stipulations, it was found by the learned first Appellate Court also, that the contention of the appellant bank to the effect that rent even beyond the period of 31.05.2005 had already been received by respondents No.1 to 3 from respondents No.4 to 7, was unsustainable, as no proof of such payment was presented.

Hence, with the admission by the bank, as regards the contents and terms and conditions of the tripartite agreement, the Ist appellate Court found no error in the findings of the learned Civil Judge and consequently, the first point enumerated hereinabove, was decided in favour of the respondents-plaintiffs.

13. As regards the second point, i.e. failure of the plaintiffs to implead the subsequent buyers of the property as party, it was held that recovery of arrears of rent, with regard to the period of overstay by the bank, would not eclipse the right of the plaintiffs-respondents No.1 to 3 to recover such arrears from the Bank, in terms of the agreement. Hence,

that point was also decided against the present appellants.

Consequently, the first appeal filed by them was dismissed.

14. Before this Court, learned counsel for the appellant submits that the suit, having been instituted on 24.12.2007, was beyond the period of limitation, because in terms of the agreement dated 24.08.2001, the bank was to start paying rent after 24 months, which would have expired at the end of August 2003.

The said contention is rejected, in view of the fact that, admittedly, respondents No.4 to 7 (defendants No.5 to 8 before the learned Civil Judge), continued to pay rent on behalf of the bank uptill 31.05.2005 and the claim of the plaintiffs (respondents No.1 to 3 herein), for recovery of rent @ of Rs.78,000/- per month, was only qua the period w.e.f. 01.06.2005 till 31.01.2006, i.e. the period for which neither the bank nor respondents No.4 to 7 had paid any rent.

Hence, limitation would run not from the date of initial payment due, but only qua the amounts actually sought to be recovered.

There is, therefore, no error in the judgment of the learned Civil Judge, or the Ist appellate Court, even on the issue of limitation.

15. Learned counsel for the appellant further submits that the Courts below have lost sight of the fact that recovery rights were available to the bank, from respondents No.4 to 7, even as per the tripartite agreement; yet no such recovery rights have been granted in the impugned judgments.

However, a perusal of the judgment of the learned lower appellate Court reveals that in Para 19 thereof, it has been noticed as follows:-

> "In furtherance of the discussion, it is necessary to mention here that it is clearly stipulated in the additional clause Ex.P4/A that the appellant bank had to pay the amount of rent @ Rs.78,000/- per month for the period of over stay to the owners of Lotus Tower building, i.e. respondents/plaintiffs and the appellant bank is further entitled to recover the said rent from respondents No.4 to 7 along with its entitlement to claim damages and compensation of Rs.50 lacs for delay in handing over the possession of old property EQ 292. The payment of rent by the respondents No.4 to 7 has in no way exonerated the appellants to comply with the terms and conditions/stipulated made in the agreement Ex.P-4 and Ex.P4/A. The claim of recovery made by the respondents/plaintiffs is duly based on the stipulation made in the admitted and proved agreement Ex.P-4, hence their entitlement to recovery the arrears of rent cannot be questioned or disputed."

16. Hence, from a reading of the above, it is clear that the learned Courts below have not estopped the bank from making recovery in terms of the tripartite agreement, from respondents No.4 to 7 herein. Therefore, if such rights flow to the appellant-Bank from the tripartite agreement dated 24.08.2001, obviously it would be within its rights to take legal recourse to make such recoveries, as per law, if admissible in terms of the said agreement.

It is clarified that in case of any such recovery proceeding initiated by the appellant-bank, all parties would be at liberty to take all pleas as are legally available to them and such proceeding, if instituted, would be decided on its own merits.

With the aforesaid observations, finding no merit in the appeal, the same is dismissed, *in limine,* with no order as to costs.

14.03.2016 **(AMOL RATTAN SINGH)**
dinesh **JUDGE**