113 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.4732 of 2017 (O&M)
Date of Decision: November 02, 2017

M/s Espire Infolabs Private Limited ..... Petitioner

Versus

Sadhana Foundation ..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Mohammad Shariq, Advocate
for the petitioner.

Mr. Sanjay Kaushal, Senior Advocate with
Mr. Pritam Saini, Advocate
for the respondent.

DEEPAK SIBAL J. (ORAL)

The present petition is at the behest of the petitioner-tenant through which challenge is made to the order dated 19.04.2017 passed by the Rent Controller, Gurugram assessing Provisional Rent to be paid by the petitioner from 01.11.2015 till 31.01.2017. Challenge is also made to the order dated 03.07.2017 passed by the Appellate Authority, Gurugram, dismissing the petitioner's appeal against the aforesaid order of the Rent Controller.

The present petition arises out of the second eviction proceedings initiated by the respondent-landlord seeking the eviction of the petitioner from the tenanted premises on account of non-payment of rent from 01.11.2015 till 31.01.2017. The first one which was filed earlier sought the petitioner's eviction from the tenanted premises on the same ground as in the present one but for an earlier period from 01.01.2013 till

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30.10.2015. In the first eviction petition, the Rent Controller determining provisional rent at the rate of Rs.7,50,000/- per month. On appeal, the Appellate Authority set aside the order and remanded the matter to the Rent Controller for a fresh decision. The remand order was challenged by the respondent-landlord through a petition filed before this Court being ***Civil Revision No.8186 of 2016 – Sadhana Foundation vs. M/s Espire Infolabs Private Limited***. The respondent-landlord, who was the petitioner therein, while relying upon a lease deed dated 01.01.2013 submitted that the agreed monthly rent between the parties was Rs.18,43,900/- and therefore, the provisional rent should be assessed accordingly. Per contra, the petitioner-tenant, who was the respondent therein placed reliance upon a registered lease deed dated 01.09.2015 which was effective from 01.03.2015 in which the agreed monthly rent between the parties was Rs.7,50,000/-. While relying on clause 1(c) of the lease deed dated 01.09.2015, the petitioner-tenant submitted that even Rs.7,50,000/- could not be claimed by the respondent-landlord till the time the investment of Rs.9 crores made by the petitioner-tenant in developing the infrastructure of the tenanted premises was adjusted. The respondent-landlord disputed the lease deed dated 01.09.2015.

After considering the rival claims of the parties, while setting aside the order of the Appellate Authority, this Court through its order dated 01.02.2017 upheld the assessment of provisional rent by the Rent Controller at the rate of Rs.7,50,000/- per month. However, to protect the interests of the parties the amount was directed to be kept in a fixed deposit, to be paid to the successful litigant.

The petitioner challenged the above judgment of this Court

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before the Apex Court through SLP No.6133 of 2017 which through order dated 18.04.2017 was dismissed. Thus, the issue with regard to the assessment of provisional rent *qua* the tenanted premises for the period 01.01.2013 till 30.10.2015 attained finality.

In the meanwhile, as noticed earlier, the second eviction petition had been filed by the respondent-landlord seeking the eviction of the petitioner from the tenanted premises for non-payment of rent from 01.11.2015 to 31.01.2017. The Rent Controller through order dated 19.04.2017 assessed the monthly provisional rent for this period at the rate of Rs.7.50 lakhs. On appeal preferred by the petitioner, the Appellate Authority upheld the afore-referred order giving the petitioner a cause to knock the doors of this Court through the present petition.

When the present petition came up for hearing before this Court, learned Senior counsel appearing on behalf of the petitioner as also learned counsel appearing on behalf of the respondent informed the Court that both the parties had preferred applications seeking modification/clarification of the afore-referred final order dated 01.02.2017 passed by this Court in ***CR No.8186 of 2016*** and after taking note of such fact, the matter was adjourned to await the decisions on the above applications.

Both the applications, have now been adjudicated upon by this Court on 11.09.2017.

A brief reference to what those applications had been filed for along with the respective decisions rendered thereupon by this Court needs to be made.

CM No.3365-CII of 2017 had been preferred by the

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respondent-landlord seeking modification/clarification of the final order of this Court dated 01.02.2017 passed in ***CR No.8186 of 2016*** to the extent that so far as the deposit of the provisional rent was concerned, the same be restricted only till February 2015 for the reason that w.e.f 01.03.2015 a lease deed dated 01.09.2015 had been set up by the petitioner-tenant and therefore w.e.f. 01.03.2015, the assessed monthly provisional rent be paid directly to the respondent. Modification of the order was also sought to the extent that the petitioner-tenant be directed to pay not just the assessed rent but future rent as well. In the alternative, the respondent-landlord prayed that the order of converting the deposited rent into a fixed deposit may not be applied to any future proceedings.

On the above application, on 11.09.2017, this Court passed the following order:-

> *"The present Civil Misc. Application filed by the applicant-petitioner for modification/clarification to the extent of payment of rent at the rate of ₹ 7.50 lakhs with effect from 1.3.2015 and in respect of arrears of rent and future rent is not pressed on account of subsequent order dated 19.4.2017(Annexure A/3) passed by the Rent Controller, Gurgaon which has been duly upheld by the Appellate Authority, Gurgaon on 3.7.2017 (Annexure A/4) and which is now subject matter of Civil Revision No.4732 of 2017 filed by the respondent-tenant.*
>
> *Accordingly, the present Civil Misc. Application is dismissed as not pressed."*

A perusal of the afore-quoted order shows that in view of the subsequent order passed by the Rent Controller on 19.04.2017 which was upheld by the Appellate Authority on 03.07.2017 and was a subject matter of challenge in the present petition, the application was not pressed.

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The petitioner-tenant had also preferred an application being ***CM No.17165-CII of 2017*** seeking modification/clarification of the final order dated 01.02.2017 passed by this Court in ***CR No.8186 of 2016*** to the effect that in that order, no adjustment has been made of the expenditure incurred by the petitioner-tenant to the tune of Rs.9 crores on the development of infrastructure of the tenanted premises. That application was dismissed by this Court through the following order:-

> "*The present Civil Misc. Application filed by the applicant-respondent for adjustment with regard to expenses of ₹ 9 Crores allegedly spent by it is not liable to be entertained on account of the fact that the order in the main case has already been upheld by the Apex Court in SLP (C) Nos.6133 of 2017 and 10559 of 2017 on 18.4.2017 (Annexre A/2).Resultantly, the matter cannot be reopened at the asking.*
>
> *Accordingly, the present Civil Misc. Application is dismissed.*"

Through the afore-quoted order, this Court declined to accept the prayer made by the petitioner-tenant on the ground that after the dismissal of the Special Leave Petition preferred by the petitioner-tenant against the order of which the modification/clarification was sought, the matter had attained finality.

Mr. Akshay Bhan, learned Senior counsel appearing on behalf of the petitioner-tenant submitted that both the Rent Controller as also the Appellate Court erred in the determination of monthly provisional rent to be paid by the petitioner for the period 01.01.2015 till 31.01.2017 at the rate of Rs.7.50 lakhs for the reason that while determining the provisional rent, no benefit was given to the petitioner for the investment

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of Rs.9 crores made by him in the renovation of the tenanted premises. In this regard, the attention of this Court was drawn to clause 1(c) of the registered lease deed dated 01.09.2015 allegedly executed between the parties which was to the effect that till the amount of Rs.9 crores is adjusted, the respondent would not be entitled to claim any rent from the petitioner.

It was further submitted that both the Rent Controller as also the Appellate Authority erred by not directing the deposit of the assessed provisional rent in the shape of an FDR in terms of the order of this Court dated 01.02.2017 passed in ***CR No.8186 of 2016*** which has also been approved by the Apex Court.

Mr. Sanjay Kaushal, learned Senior counsel appearing on behalf of the respondent-landlord resisted both the above arguments. He submitted that so far as the submissions raised on behalf of the petitioner-tenant questioning the assessment of monthly provisional rent at the rate of Rs.7.50 lakhs was concerned, the same contradicts the order passed by this Court in ***CR No.8186 of 2016*** which has also been upheld by the Apex Court. On the plea raised with regard to the deposit of the assessed monthly provisional rent with the Rent Controller, it was submitted that if such plea is allowed, then the respondent-landlord for the period in question as also for the earlier period would have not received a penny as rent.

Learned counsel for the parties have been heard and with their able assistance, the records of the case have also been perused.

The submission of Mr. Akshay Bhan that in terms of Clause 1 (c) of the lease deed dated 01.09.2015, the petitioner was not liable to pay

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or deposit any rent till his investment of Rs.9 crores in developing the infrastructure of the tenanted premises was adjusted, was also raised by the petitioner in ***Sadhana Foundation's case (supra)***. The same was considered and rejected by this Court through order dated 01.02.2017, by holding as under:-

> "*If these principles and parameters are kept in mind, specially alongwith the view laid down by the Division Bench of this Court in* ***Rajan @ Raj Kumar vs. Rakesh Kumar, 2010 (2) PLR 201,*** *wherein, it was held that where a default in payment after the provisional assessment had been made would entail the tenant for being evicted outrightly would go on to show that the prima facie view had to be taken into consideration by the perusal of the pleadings, which will give way to the final order. At the initial stage, only the relevant material in the shape of affidavits and documents are to be placed on record.*
>
> *The reasoning given by the Appellate Authority in such circumstances that there was an earlier direction as such inter se the parties whereby there had to be an adjudication on the authenticity of the documents while assessing the provisional rent is without any basis. Even if such a direction had been as such made by the earlier authority on 22.01.2016, the same was not in consonance with the law laid down by the Apex Court and, therefore, it would not be justified for the tenant to say that the order of remand is justified in the facts and circumstances.*
>
> *Another aspect to be noticed is that vide the order dated 17.09.2016, the Rent Controller had taken into account the admission made as such by the tenants to the extent they were liable to pay ₹7.5 lacs per month from 01.03.2015. As noticed, it is not disputed which would be clear from the written statement also that the respondents are running a commercial business in the premises in question by employing over 300 people for I.T. purposes. <u>Though the parties are closely related and it is alleged that</u>*

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> *₹9 crores had been spent on the renovation but it is also apparent that the tenant is depriving the landlord of any amounts of monthly rent. The observations of the Apex Court that the balance has to be maintained inter se the parties was thus kept in mind by the Rent Controller while assessing the provisional rent at ₹7.5 lacs per month as per the stand of the respondents themselves. As per the terms of the registered lease deed, as noticed, if the authenticity is to be gone into, they are liable also to adjust the amount against the amount already spent against the alleged expenditure of ₹9 crores and, therefore, leaving the landlord without any payment till the expiry of the lease deed itself till 2024. In such circumstances, the assessment of ₹7.5 lacs was well justified by the Rent Controller keeping in mind the fact that the premises are in occupation admittedly from 2012 and the arrears of rent was claimed from 01.01.2013 to 30.10.2015. The interest of the parties can be protected by directing that the amount be kept in Fixed Deposit by the Rent Controller to be paid at the time of final decision."*
>
> *(emphasis supplied)*

The above order was challenged by the petitioner before the Apex Court through a Special Leave Petition which was dismissed through order dated 18.04.2017 which reads as under:-

> *"Delay condoned.*
>
> *We are not inclined to interfere with the orders passed by the High Court.*
>
> *The special leave petitions are dismissed.*
>
> *However, the petitioner should deposit an amount of Rs.2.5 crores with the trial Court on or before 31st May, 2017."*

Even a clarificatory application filed by the petitioner being ***CM No.17165-CII of 2017*** in ***CR No.8186 of 2016*** seeking modification/clarification of the final order dated 01.02.2017 passed by

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this Court in ***Sadhana Foundation's case (supra)*** to the effect that the petitioner-tenant be allowed adjustment of Rs.9 crores allegedly spent by the petitioner on the development of the infrastructure of the tenanted premises was considered and rejected through order dated 11.09.2017 which has already been extracted earlier.

At this stage, it would be advantageous to refer to Clause 1(c) of the lease deed dated 01.09.2015 which reads as under:-

> *"1(c) In order to avoid any dispute it is hereby agreed by and between the parties to these presents, that as mentioned hereinabove, the Lessor had handed over the said premises to the Lessee or bareshell basis and THE LESSEE has agreed to do all the internal work in the Demised Premises including furnitures and fixtures, air conditioning, lightning, flooring, false ceiling, bathroom etc. so as to bring it to the standard of and International Class IT Office. It has been agreed between the Lessor and the Lessee that the Lessee shall bear the cost of the same which shall be approximately 9 Crores. This amount will be payable by the Lessor to the Lessee and the Lessee shall adjust the same from the rent due to the Lessor till the entire amount is paid. Hence the Lessee will not be liable to pay any rent to the Lessor unless it has recovered the entire amount of approximately 9 Crores from the rent due to Lessor."*

The lease deed dated 01.09.2015 in its entirety is disputed by the respondent. He relies on another lease deed dated 01.01.2013. It is further the respondent's case that no investment as claimed by the

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petitioner has been made by him. In these circumstances, to protect the interest of both parties, this Court in ***Sadhana Foundation's case (supra)*** directed that the petitioner would deposit the determined provisional rent in Court with a further direction to convert the same into a fixed deposit, to be paid to the successful litigant. As noted earlier, such arrangement received the approval of the Apex Court.

The only difference between the earlier proceedings and the present one is the period for which the provisional rent has been determined. In the earlier matter, rent was claimed from 01.01.2013 to 30.10.2015 and in the present proceedings, the period of claim is from 01.11.2015 to 31.01.2017.

The determined monthly provisional rent at the rate of Rs.7.50 lakhs for the period covered under the first eviction petition i.e. 01.01.2013 to 30.10.2015 as also under the second eviction petition for the period from 01.11.2015 to 31.01.2017 comes to Rs.3,68,50,000/- (approximately) which is no where even close to Rs.9 crores. On one hand, it is the case of the petitioner that as per the lease deed dated 01.09.2015, the petitioner is not entitled to pay any rent till his investment of Rs.9 crores is adjusted and on the other hand, the respondent disputes not only the lease deed dated 01.09.2015 and sets up another lease deed dated 01.01.2013 where the agreed monthly rent between the parties is Rs.18,43,900/-. He further denies the investment alleged to have been done by the petitioner.

To balance the equities and to safeguard the interest of the parties as also in terms of the order of this Court in ***Sadhana Foundations's case (supra)***, it is directed that monthly provisional rent

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determined by the Rent Controller through order dated 19.04.2017 at the rate of Rs.7.50 lakhs would also be deposited before the Rent Controller to be converted into a fixed deposit in a nationalized bank earning the maximum rate of interest to be paid to the successful litigant.

Mr. Bhan prays for some time to deposit the determined provisional rent.

Finding his prayer to be reasonable, one month time from the date of receipt of a certified copy of this order is granted for making the deposit with the Rent Controller, Gurugram.

The petition stands disposed of in the above terms.

(DEEPAK SIBAL)
JUDGE

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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