

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.R. No. 8186 of 2016 (O & M)

Reserved on: 19.01.2017

Date of decision: 01.02.2017

Sadhana Foundation

....Petitioner(s)

Versus

M/s. Espire Infolabs Pvt. Ltd.

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Chetan Mittal, Sr. Advocate,
with Mr. Kunal Mulwani, Advocate,
for the petitioner.

Mr. Akshay Bhan, Sr. Advocate,
with Mr. Mohammad Shariq, Advocate,
for the respondent.

G.S.SANDHAWALIA, J.

The petitioner-landlord challenges the order of the Appellate Authority, Gurgaon dated 07.11.2016 (Annexure P-5) whereby, the appeal of the respondent-tenant has been allowed and the order dated 17.09.2016 (Annexure P-3) making assessment of the provisional rent was set aside. Directions were accordingly issued to pass appropriate orders afresh as per the earlier order passed by the Appellate Authority on 22.01.2016 (Annexure P-2) for assessment of the provisional rent on the basis of some consensus, if any, failing which, the authenticity of the unregistered lease deed relied upon by the petitioner-landlord or the registered lease deed dated 01.09.2015 had to be done before any such assessment was made.

The reasoning which prevailed with the Appellate Authority

was mainly that on an earlier occasion, the Appellate Authority had set aside the first order dated 23.12.2015 assessing provisional rent and directions had been issued to pass appropriate orders afresh on the basis of the consensus or after ascertaining the authenticity of both the lease deeds. On account of the finality inter se the parties, it was held that the subsequent assessment at ₹7,50,000/- per month was same as per the earlier order and, therefore, the earlier directions had not been complied with. Therefore, the provisional rent could not have been assessed when the parties were at dispute and the authenticity of both the lease deeds had to be taken into account. Another factor which prevailed with the Appellate Authority was that there was a reference by the Rent Controller to the word “fair rent” whereas, the issue was of assessing the provisional rent.

To appreciate the dispute, it would be necessary to also refer to the pleadings of the parties as such which have also been placed on record by way of Annexures.

The case of the petitioner-landlord in its petition filed on 01.12.2015 (Annexure P-6) was that being the trust, it was the landlord of the property bearing No. 486-487 situated at Phase 3, Udyog Vihar, Gurgaon which had been allotted to it by the HSIDC on 01.01.2013. The respondent had been put in as a tenant in the month of November, 2012 and the lease deed had been executed on 01.01.2013 whereby, the premises of the super built up area of 36,878 sq. ft. which comprised of the basement, ground floor, mezzanine floor, first floor and first floor (cafe), as shown as red in the map, had been leased out @ ₹50 per sq. ft. amounting to ₹18,43,900/-. Since the arrears of rent had not been paid which came to ₹6,26,92,600/- from 01.01.2013 to 30.10.2015, the eviction petition was

filed by taking the plea that legal notices dated 30.09.2015 and 10.10.2015 had also been served upon them. The relevant terms of the lease deed which was to be for a period of 3 years read thus:-

“1) a) *That in consideration of the monthly rent hereby reserved and of the terms, conditions, covenants and stipulation contained herein, THE LESSOR do and doth hereby demise by way of lease unto THE LESSEE, the said Premises for an aggregate super built up area of 36,878 sq. ft. comprising of Basement for area approx. 11,519 sq. ft., Ground Floor for area approx. 4,961 sq. ft., Mezzanine Floor for area approx. 7,470 sq. ft., First Floor for area approx. 8,765 sq. ft., First Floor (Cafe) for area approx. 4,091 sq. ft. (as shown in Annexure II) at Property Number 486 – 487, Phase III, Udyog Vihar, Gurgaon – 122002, more particularly described in the Schedules hereunder written (hereinafter referred to as the “Said Demised Premises”). To hold the same for the terms of 3 years commencing from the date of signing of this lease deed i.e. 1st January 2013 (“lease commencement date”), subject to payment of monthly rent and service tax, as applicable, to be paid in advance on or before 7th day of each month as stated hereinafter, without any reduction but subject to Taxes Deducted at Source (TDS) under the provision of the Income Tax Act, 1961.*

b) *THE LESSOR shall handover the actual, physical vacant and peaceful possession of the Demised Premises in bareshell to THE LESSEE on signing of the Lease Deed.*

2. MONTHLY RENT:

The LESSEE shall pay Rs. 50/- (Rupees Fifty only) per sq. ft. per month amounting to Rs. 18,43,900/- (Rupees Eighteen Lacs Forty Three Thousand and Nine Hundred Only) as monthly rent from 1st January 2013

(“Rent Commencement Date”), in advance on or before 7th day of each calendar month in advance. The rent is exclusive of Municipal Taxes. The Service Tax as applicable will be payable by LESSEE as extra.

Failure on the part of THE LESSEE to effect the remittance in time will entail, without prejudice to other rights and remedies of THE LESSOR, its having to pay interest @ 12% per annum calculated on day to day basis, provided 15 days written notice is given by THE LESSOR to THE LESSEE and THE LESSEE continues to pay the rent within the additional period, which will also result into breach of this agreement.

THE LESSEE shall also be liable to fulfill any and all procedural requirements as may be prescribed by the Central or the State Government/any local body/all other authorities in connection with the subject matter hereof.”

It is further apparent to notice that from the above lease deed also, it would be apparent that just a bare shell of the building in question was handed over. As per Annexure IV, there was responsibility fixed on the lessee while he had to do the interior fit out works and to ensure proper signages and modification apart from how the electrical fittings had to be fixed.

The stand of the respondent-tenant in the written statement dated 18.02.2016 (Annexure P-8) was that the said lease deed was inadequately stamped and not registered and, therefore, could not be taken into reckoning. Applications had been filed for impounding of the lease deed and no relief could be granted to the landlord. Signatures of the tenant on the lease deed were forged ones and applications had also been moved for sending the same for scientific evaluation and comparison of signatures

of Mr. Gagan Oberoi, the duly authorized person. The financial liability could not be affixed on the said lease deed. The service tax had not been deposited with the concerned statutory authorities by the landlord and no demand notice had been dispatched till the filing of the petition. Prior to the occupation of the premises, the same was not in a position to be let out and huge expenditure was required to make it capable to be utilized for operation as an I.T. Building. The officials of the tenant had communicated to the trustees of the trust that sum of ₹ 9 crores was required for the purpose of undertaking renovations, providing air conditioning, lighting etc. Ms. Sadhna Rai was the settler of the petitioner-Trust as she was the wife of Mr. Vinay Rai and was the mother of Amit Rai, who was the Chairman and Director of the respondent-tenant. It was admitted that keeping in view this relationship and understanding reached between the parties that the tenant would incur substantial expenditure in the building to make it capable of being used for the operations of an I.T. building and renovations were to be adjusted from the monthly rent to be mutually settled between the parties. Substantial expenditure was thus incurred by the tenant to establish the same with the latest equipment and standard and the premises were being run by the respondent as an I.T. office with approximately 300 employees working. The landlord had not taken any action for 3 years and was well aware that the respondent was using the building for an office and, thus, there was a clear arrangement as such that the respondent was not liable to pay any amount for the period towards arrears of rent.

A registered lease deed dated 01.09.2015 (Annexure P-9) was set up whereby it was alleged that both parties had arrived to a mutual arrangement that the funds would be contributed by the petitioners for the

purposes of undertaking renovations. The funds had not been contributed and the work had got delayed and resultantly, the lessee had, as per the terms of the registered lease deed, agreed to bear the cost of internal fittings which were approximately for ₹9 crores. The rent was not liable to be paid to the lesser until it recovered the entire said amount. The expenses of ₹7,57,05,348/- was incurred by making various changes and installing equipment which were provided in Annexure-I of the agreement Resultantly, the landlord was not entitled and was estopped from staking any claim for making the payment of the rent. Accordingly, it was pleaded that the value of the property has tremendously been enhanced by the expenditure incurred by the respondent-tenant and there was denial of receiving any notices dated 30.09.2015 or 10.10.2015.

A perusal of the registered lease deed (Annexure P-9) would go on to show that the lease was to commence from 01.03.2015 and was to be valid till 28.09.2024 whereby, the monthly rent had been fixed at ₹7,50,000/- and the service tax was also to be paid by the lessee. However, as per Clause 1(c), the amount of ₹9 crores spent were liable to be adjusted from the rent due till the entire amount was paid. The relevant portion reads as under:-

*“NOW THIS INDENTURE WITNESSETH AND
IT IS HEREBY AGREED BY AND BETWEEN THE
PARTIES HERETO AS FOLLOWS:*

1) a) That in consideration of the monthly rent hereby reserved and of the terms, conditions, covenants and stipulation contained herein, the LESSOR do and doth hereby demise by way of lease unto THE LESSEE, the said Premises for an aggregate build up area of 36,878 sq. ft. comprising of Basement for area approx.,

*11,519 sq. ft., Ground Floor for area approx. 4,961 sq ft., Messanine Floor for area approx. 7,470 sq. ft., First Floor for the area approx, 8,765 sq. ft., First Floor (Cafe) for area approx. 4,091 sq. ft. and complete area in the entire Demised Premises (as shown in Annexure II) at Property Number 486 – 487, Phase III, Udyog Vihar, Gurgaon – 122002, more particularly described in the Schedules hereunder written (hereinafter referred to as the **(“Said Demised Premises”)**. To hold the same for the term as mentioned in the agreement, commencing from the date of signing of this lease deed i.e. **1st March, 2015**, (**“Lease Commencement Date”**) **and will be valid till 28th February, 2024, (Lease End Date)** subject to payment of monthly rent and service tax, as applicable, to be paid in advance on or before 7th day of each month as stated hereafter, without any reduction but subject to Taxes Deducted at Source (TDS) under the provision of the Income Tax Act, 1961.*

b) THE LESSOR shall handover the actual, physical vacant and peaceful possession of the Demised Premised in bareshell condition to THE LESSEE on signing of the Lease Deed. All the expenses relating to the construction and renovation, installments of furniture, fitting and fixtures in the Demised Premises shall be borne by the Lessee and will be deemed as its assets till the Lessee is able to recover the cost borne as described in this agreement.

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.

d) *It is also agreed by and between the parties that all government charges including property tax, society charges and similar such charges (both present and future) are the responsibility of the Lessor who is responsible to pay them completely. In case the Lessee is forced to pay any of these charges on behalf of the Lessor the same shall be adjusted against the monthly rental due to the Lessor.*

2. **MONTHLY RENT:**

*THE LESSEE shall pay **Rs. 7,50,000/- (Rupees Seven Lakh Fifty Thousand only)** per month as monthly rent from 1st March, 2015 (“Rent Commencement Date”), in advance on or before 7th day of each calendar month in advance. The rent is exclusive of Municipal Taxes. The Service Tax as applicable will be payable by the LESSEE as extra.*

Failure on the part of THE LESSEE to effect the remittance in time will entail, without prejudice to other rights and remedies of THE LESSOR, its having to pay interest @ 12% per annum calculated on day to day basis, provided 15 days written notice is given by THE LESSOR to THE LESSEE and THE LESSEE continues to pay the rent within the additional period.

THE LESSOR shall also be liable to fulfill any and all procedural requirements as may be prescribed by the Central or the State Government local body/all

other authorities in connection with the subject matter thereof.”

8. **TERMINATION**

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*d) The Initial Term of the lease shall be for a **period of 09 (nine) years** from the Lease Commencement Date (“Initial Term”). On the expiry of the Initial Term, THE LESSEE shall have the sole option to renew the lease for two more terms of 3 (THREE) years each, with a prior written notice of 06 (Six) months at the end of first term of 36 (Thirty Six) Months and a prior written notice of 06 (Six) months at the end of second term of 36 (Thirty Six) Months at an increase of 15% of rental and conditions contained in the Lease Deed.”*

It is relevant to mention that the said written statement is dated 18.02.2016. Prior to the filing of the same, the Rent Controller, vide order dated 23.12.2015, keeping in view the fact that the petitioners had set up the lease deed dated 01.01.2013 and were claiming ₹18.43 lacs per month, came to the conclusion that admittedly, the possession was as such of the respondent-tenants since 01.01.2013 and as per respondents themselves, rate of rent was ₹7.5 lacs per month and noting that no documents regarding the expenditure of ₹9 crores had been filed, fixed the provisional rent at ₹7.5 lacs per month. Accordingly, it calculated the rent for the period from 01.01.2013 to 30.10.2015 at ₹2.55 crores and assessed the interest at ₹29,75,000/- and fixed the costs of ₹1,500/-. Resultantly, the tender was to be of ₹2,84,76,500/- by 18.02.2016.

As noticed earlier, the appeal was of the tenant was allowed on 22.01.2016 (Annexure P-2) on the ground that on one hand, one lease deed was supposed to be a forged one whereas, on the other hand, the registered

lease deed dated 01.09.2015 had been executed by person who was no longer authorized by the landlord and, therefore, his signatures had no binding effect on it. It was accordingly noticed that the second lease deed was only to come into force from 01.03.2015 and the amount mentioned had been taken from 01.01.2013 and accordingly, the matter was remanded.

The Rent Controller thereafter, vide detailed order dated 17.09.2016, proceeded to reframe the provisional rent. The Rent Controller noticed that the premises were with the tenants from July, 2012 to September, 2015 and, therefore, it was not justified to deny the lease deed dated 01.01.2013. Amit Sharma had not been authorized to execute such a lease deed and there was a admission as such regarding the monthly rent of ₹7.5 lacs though from 2015 with a deduction of ₹9 crores. It was also noticed that the renovation was not proved and the sum could always be recovered by way of counter claim. However, at that point of time, the word “fair rent” was used though in an earlier part of the order, it has been clearly mentioned that the issue is of the provisional rent.

The prayers for impounding of the lease deed and sending the lease deed to the forensic science laboratory moved by the respondent-tenant were rejected. Inter se relationship between the parties was also noticed and their silence on the fact and accordingly, keeping in view the admission on the one side that the rent was at ₹7.5 lacs per month, the application was accordingly allowed by assessing a total amount of ₹2,93,26,000/- as the arrears of rent alongwith interest which was to be payable on 03.10.2016.

Mr. Chetan Mittal, Sr. Advocate has submitted that the Rent Controller had very validly balanced the interest of both the parties and in

the absence of any proof of spending ₹9 crores, the order passed was well reasoned. The consensus, in such a situation, could not arise even though the parties were closely related and keeping in view that there was admission of ₹7.5 lacs as a rate of rent as such payable, it was justified to fix the same as the provisional rent till the outcome of the final proceedings. It is submitted that admittedly 300 employees were already working in the premises in question and, therefore, the respondent-tenant could not be permitted to deny the amount of rent for the period in question.

On the other hand, Mr. Akshay Bhan, Sr. Advocate for the respondents submitted that order dated 22.01.2016 (Annexure P-2) had been passed inter se the parties and the Rent Controller was bound by those directions. It was only an order of remand as such passed by the Appellate Authority and it was justified in the facts and circumstances. There was a registered lease deed as such in place of ₹7.5 lacs from 01.03.2015 till 28.02.2024 and, therefore, the order of remand was well justified and the respondents were willing to deposit from 01.03.2015 till October, 2015.

The issue of the arrears of rent which have to be tendered on the first date of hearing, once the petition has been filed on the ground of arrears of rent came up for consideration before the Apex Court in ***Rakesh Wadhawan and others vs. M/s. Jagdamba Industrial Corporation and others, 2002 (5) SCC 440*** relating to the provisions of the East Punjab Urban Rent Restriction Act, 1949. It was accordingly noticed that unscrupulous landlords on one hand may claim arrears at highly inflated rate though the same had been paid for which receipts had not been issued. On the other hand, it was noticed that the landlord was driven for the need of filing successive proceedings for recovery of rent against erring tenants

since there was no provision for recovering rent falling in arrears month by month to be paid or deposited by the tenant. Resultantly, it was held that the tenant has to pay on the first date of assessment by the Controller. The order was to be passed prima facie by the perusal of the pleadings and such material which would be available before the Controller which would be an interim or provisional order which had to give way to a final order to be made on further inquiry to be held later in the event of there being a dispute between the parties calling for a determination.

The parties were to place the relevant material on record in the shape of affidavit and documents which would enable the Controller to make the provisional judicial assessment. The principle which was accordingly laid down was that a summary enquiry was to be done for the said purpose, which was a provisional adjudication and on the failure of the tenant to comply on the assessment of the arrears of rent, interest and the cost of application, eviction would follow. The inquiry would continue if the compliance was made as per finally adjudicating to the dispute as to the arrears of rent in the light of the contending pleas raised by the landlords-tenants. On the final adjudication, the amount which was at variance, the Court could direct refund where there was excess amount and where the tender was short or deficit, reasonable time had to be given for paying or tendering the deficit amount. Compliance would save the tenant from eviction. Even while making good the deficit, the relevant factor had to be taken into account whether the tenant was paying substantial and regular rent falling due month by month during the pendency of the proceedings. The relevant portions read thus:-

“25. What follows from the abovesaid discussion is that the proviso to clause (i) of sub-section

(2) of [Section 13](#) must be read as obliging the Controller to assess, by means of passing an order, the arrears of rent, the interest and the cost of litigation all the three, which the tenant shall pay or tender on the first date of first hearing of the main petition following the date of such assessment by Controller. Such order based on an opinion formed prima facie by perusal of the pleadings and such other material as may be available before the Controller on that day would be an interim or provisional order which shall have to give way to a final order to be made on further enquiry to be held later in the event of there being a dispute between the parties calling for such determination. The Controller would, however, at the outset assess the rent, the interest and the cost of application in the light of and to the extent of dispute, if any, raised by the tenant. Such amount, as determined by Controller shall be liable to be paid or tendered by the Controller on the 'first date of hearing' falling after the date of the preliminary or provisional order of Controller. The expression "the date of first hearing" came up recently for the consideration of this Court in *Mam Chand Pal Vs Smt. Shanti Agarwal* (C.A. No.1187 of 2002 decided on 14.2.2002). It was held that 'the date of first hearing' is the date on which the Court applies its mind to the facts and controversy involved in the case. Any date prior to such date would not be date of first hearing. For instance, date for framing of issues would be the date of first hearing when the Court has to apply its mind to the facts of the case. Where the procedure applicable is the one as applicable to Small Cause Courts, there being no provision for framing of the issues, any date fixed for hearing of the case would be the first date for the purpose. The date fixed for filing of the written statement is not the date of hearing. Keeping

in view the interpretation so placed on 'the date of first hearing' the obligation cast by the proviso under consideration can be discharged by the Controller on any date fixed for framing of the issues or for hearing. It would be the obligation of the parties to place the relevant material on record, in the shape of affidavits or documents, which would enable the Controller to make a provisional judicial assessment and place it on record to satisfy the spirit of the proviso. It would be desirable if the Rent Controller specifically appoints a date for the purpose of such assessment and order so that the parties are put on adequate notice and bring the relevant material on record to assist the Controller. A litigant cannot be expected to be ready to comply with the order of the Controller on the very day on which the order is made. How could he anticipate what order the Controller would be making?

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29. *The result of the discussion may be summarized. Under proviso to [Section 13\(2\)\(i\)](#), the Controller having discharged his obligation of passing an order under the proviso, either suo moto or on his attention in this regard being invited by either of the parties, it will be for the tenant to pay or tender the amount provisionally assessed by the Controller on the first date of hearing of the application for ejectment. On compliance, the Controller would proceed to adjudicate upon the controversy arising for decision by reference to pleadings of the parties and by holding a summary enquiry for the purpose. Such adjudication shall be provisional and subject to the later final adjudication. The finding that may ultimately be arrived at by the Controller may be one of the following three. The Controller may hold that the quantum of arrears as determined finally is (i) the same as was*

found to be due and payable under the provisional order, (ii) is less than what was determined by the provisional order, or (iii) is more than the one what was held to be due and payable by the provisional order. In the first case the Rent Controller has simply to pass an order terminating the proceedings. In the second case the Controller may direct the amount deposited in excess by the tenant to be refunded to him. In the third case it would not serve the purpose of the Act if the tenant was held liable to be evicted forthwith as is the view taken by the Punjab High Court in the case of Dial Chand (supra). The Controller directing the eviction of the tenant may pass a conditional order affording the tenant one opportunity of and a reasonable time for depositing the amount of deficit failing which he shall be liable to be evicted. This power in the Rent Controller can be spelled out from the use of the word "may" in the expression "The Controller may make an order directing the tenant to put the landlord in possession", as also from the principle of equity and fair play that the tenant having complied with provisional order passed by the Controller should not be made to suffer if the finding arrived at by the Controller at the termination of the proceedings be different from the one recorded in the provisional order. While exercising the discretion to make a conditional order of eviction affording the tenant an opportunity of purging himself of the default the Controller may also take into consideration the conduct of the tenant whether he has even after the passing of the provisional order continued to pay or tender the rent to the landlord during the pendency of the proceedings as a relevant factor governing the exercise of his discretion. Such a course would be beneficial to the landlord too as he would be saved

from the trouble of filing a civil suit for recovery of rent which fell due during the pendency of proceedings for eviction before the Controller.

30. To sum up, our conclusions are:

1. In [Section 13\(2\)](#) (i) proviso, the words 'assessed by the Controller' qualify not merely the words 'the cost of application' but the entire preceding part of the sentence i.e. 'the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application'.
2. The proviso to Section 13(2)(i) of East Punjab Urban Restriction Act, 1949 casts an obligation on the Controller to make an assessment of (i) arrears of rent (ii) the interest on such arrears, and (iii) the cost of application and then quantify by way of an interim or provisional order the amount which the tenant must pay or tender on the 'first date of hearing' after the passing of such order of 'assessment' by the Controller so as to satisfy the requirement of the proviso.
3. Of necessity, 'the date of first hearing of the application' would mean the date falling after the date of such order by Controller.
4. On the failure of the tenant to comply, nothing remains to be done and an order for eviction shall follow. If the tenant makes compliance, the inquiry shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the landlord and the tenant before the Controller.
5. If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If, on

the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount, failing which alone he shall be liable to be evicted. Compliance shall save him from eviction.

6. While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings.”

If these principles and para meters 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. Though the parties are closely related and it is alleged that ₹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.

Another factor which would go against the respondents would be that they had sought to challenge the other part of the order dated

17.09.2016 of the Rent Controller whereby, the Rent Controller refused to impound the unregistered lease deed and also send it to the Forensic Science Laboratory on the ground that the remedy was to move such an application before the concerned Collector and it had still to be proved during the course of the evidence whether the signatures were forged. The said order had been challenged by the respondent-tenant itself when this Court while dismissing Civil Revision No. 6780 of 2016 on 07.10.2016 (Annexure P-4) had held that issues were yet to be framed and at an appropriate stage, an application could be moved for the necessary relief. This fact was also noticed by the Appellate Authority in para no. 8. In spite of that the Appellate Authority has directed that a finding be recorded on the authenticity of the unregistered lease deed at the time of making the assessment of provisional rent. The relevant observations read as under:-

“This is revision against the order dated 17.09.2016 passed by the Rent Controller, Gurgaon to the extent it dismissed two applications filed by the revision petitioner, seeking impounding of lease deed dated 01.01.2013; to forward the same to Collector for adjudicating deficiency of stamp duty/penalty/registration charges etc., and second application for sending the said lease deed to Forensic Science Laboratory, Madhuban for analysis and comparison of signatures of Mr. Gagan Oberoi.

The applications were dismissed by the Rent Controller being not maintainable at this stage and rightly so because the case is at initial stage of assessment of provisional rent. The lease deed, if having inadequate stamp, will be impounded at appropriate stage of the case and if it is result of fraud, party alleging so is required to prove its plea by leading evidence. At the stage of assessing provisional rent, the

Rent Controller was not required to allow the relief as claimed by the revision petitioner.

Learned counsel for the revision petitioner has argued that the Rent Controller observed in para 12 of the order that the revision petitioner is at liberty to move application before the Collector regarding inadequacy of stamps on the lease deed.

It appears that the above observations were made in view of the request made by the revision petitioner for sending the lease deed to the Collector for adjudicating inadequacy of stamp duty/penalty/registration charges. Learned Rent Controller refrained himself to give finding on merits on this plea raised by the revision petitioner.

It is quite strange that the petitioner is pressing the Rent Controller to impound the document before it is tendered in evidence and to send it to the Forensic Science Laboratory for comparison of signatures. When a party to lis raises plea of a document being forged, the onus lies on it to prove its plea. The issues are yet to be framed and at appropriate stage, the petitioner may move the application for leading the evidence on impounding of any document or proving that it is a fake document.

This revision petition has no merits.

Dismissed with the observation that nothing contained in the impugned order passed by the Rent Controller will be deemed as expression of opinion on merits.”

The Appellate Authority, in such circumstances, was not justified in setting aside the well reasoned order passed by the Rent Controller inter se the parties which was in consonance with the judgment of the Apex Court and would be contrary to the directions passed by this

Court regarding the same order, though qua other aspects.

In such circumstances, impugned order dated 07.11.2016 (Annexure P-5) is not justifiable and the same is set aside. The revision petition accordingly stands allowed. However, the time given to respondent-tenants to deposit the amount of ₹2,93,26,000/- by 03.10.2016 with the Rent Controller, Gurgaon shall be extended till 31.03.2017, who shall, on deposit, keep the amount in a Fixed Deposit Receipt, to earn the highest rate of interest and to be paid at the time of final decision of the ejectment application.

01.02.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No

