

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11096 OF 2017

Mohammed Arif Ali Mohamed Batatawala ... Petitioner
Vs.
Dena Bank ... Respondent

Mr. Javed Rashid Patel for Petitioner.
Mr. Rajesh Lalji Shethia a/w. Mr. Chetan Shah for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JUNE 27, 2018

P.C. :

Heard Mr. Patel, learned Counsel for the petitioner and Mr. Shethia, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'plaintiff', has challenged the judgment and order dated 08.09.2017 passed by the Appellate Bench of the Small Causes Court in Revision Application No.259 of 2017. By that order, the Appellate Court partly allowed the Revision Application filed by the respondent, hereinafter referred to as 'defendant', and modified the order dated 11.08.2017 passed by the learned trial Judge below exhibit-11. The Appellate Court directed the defendant to pay the rent for the period from 01.06.2015 to 30.06.2016 at the rate of Rs.85.35 per sq.ft. per month i.e. as per the last agreed rate. The Appellate Court further observed that the plaintiff will be entitled to enhanced rent, subject to proving of the said fact.

3. In support of this Petition, Mr. Patel has invited my attention to the recital in the lease deed dated 08.06.2005 and clauses 3(l) and (m) thereof. The recital was to enable the defendant to hold the premises admeasuring 1036.81 sq.ft. carpet area situate on the ground floor of 431-A. Maulana Azad Road, Duncan Road, Goldeval, Mumbai 400 004

(for short 'suit property') for a period of 5 years from 01.06.2005 to 31.05.2010 with the option of renewal for a further period of five years on monthly rent of Rs.70,786/- @ Rs.68.27/- per square feet. Clause 3(l) provided for renewal for a further period of 5 years subject to the terms and conditions mentioned in the lease deed. Clause (m) recited that in the event of renewal of the lease for a further period of 5 years then the rent will be increased by 25% of the existing monthly rent i.e. Rs.88,483/-. This amount comes from Rs.85.34/- per square feet per month. He invited my attention to the correspondence exchanged between the parties. On one hand, defendant expressed its willingness for renewal and on the other, plaintiff called upon the defendant to vacate the suit premises. He invited my attention to the letter dated 23.09.2015 addressed by the defendant to the plaintiff proposing rent of Rs.199/- per square feet per month and all taxes, charges, repair cease and property tax was to be borne by the plaintiff-landlord and the response dated 29.09.2015 by the plaintiff-landlord. He also invited my attention to the letter dated 13.01.2016 addressed by the plaintiff to the defendant wherein he agreed with change of condition No.4 of lease deed term from 3 to 5 years only without any renewal.

4. Mr. Patel submitted that though counter-offer was given by the plaintiff on 29.09.2015, the defendant did not give any reply. In other words, the changes made in the counter offer by the plaintiff in the offer of the defendant were accepted by the defendant. He, therefore, submitted that the Courts below ought to have directed the defendant to pay Rs.2,06,325.19/- as a monthly rent, calculated @ Rs.199/- per sq.ft..

5. On the other hand, Mr. Shethia submitted that the Appellate Court has recorded a categorical finding in paragraph 16 that there is nothing on record to show that the parties agreed on the quantum of rent @ Rs.199/- per sq.ft. per month for further renewal of lease w.e.f. 01.06.2015. He also submitted that Mr. Vivek P. Bhoyar, Manager of

Thakurdwar Branch of Dena Bank is present in the Court. He has tendered photocopy of his identity card, which is taken on record and marked 'X' for identification. Upon taking instructions from him, he states that defendant-bank is not inclined to handover possession of the suit premises to the plaintiff. Mr. Shethia has handed over Banker's Cheques, all dated 27.06.2018 in the sum of - (i) Rs.9,50,620/- covering the period from June, 2015 to May, 2016, (ii) Rs.9,55,620/- covering the period from June, 2016 to May, 2017 and (iii) Rs.7,96,350/- covering the period from June, 2017 to March, 2018 drawn in the name of the plaintiff. He has handed over those Banker's Cheques to Mr. Patel. Mr. Shethia submits that these Banker's Cheques are issued @ Rs. 85.35 per sq.ft. per month. Mr. Patel accepts Banker's Cheques without prejudice to the rights and contentions of the plaintiff in the pending proceedings.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the offer dated 23.09.2015 made by the defendant shows that defendant-bank offered to pay rent @ Rs.199/- per sq.ft. per month and all taxes, charges, repairs cease and property taxes were to be borne by the plaintiff-landlord. On 29.09.2015, instead of accepting that offer, plaintiff gave counter offer. Plaintiff agreed for payment of rent @ Rs.199/- per sq.ft. per month. However, plaintiff expected defendant to pay all taxes, charges, repairs cease and property taxes. Mr. Patel was not in a position to show the acceptance of the counter offer contained in plaintiff's letter dated 29.09.2015. In fact that is precisely the ground given by the Appellate Court in paragraph 16 of the impugned order. In view thereof, I do not find that Appellate Court committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)