

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.2441 OF 2012
IN
SUIT NO.2469 OF 2012
AND
NOTICE OF MOTION NO.994 OF 2016
IN
NOTICE OF MOTION NO.2441 OF 2012
IN
SUIT NO.2469 OF 2012**

The Indian Hotels Company Ltd. ... Applicant/Plaintiff
Versus
The Board of Trustees of the
Mumbai Port T ... Defendant

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Mr. Aspi Chinoy, Senior Advocate a/w Mr. Zal Andhyarujina, Mr. Nirav Barot I/b Maneksha & Sethna for the Plaintiff/Applicant in Notice of Motion No.2441 of 2012.

Mr. Prasad Dani, Senior Advocate a/w Ms. Ashwini Haridharan I/b HSA Advocates for the Defendant/Applicant in Notice of Motion No.994 of 2016.

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CORAM : S.C.GUPTE, J.

DATE : 23 OCTOBER 2018

ORDER :

. Heard learned Counsel for the parties.

2 The two notices of motion before the court, Notice of Motion No.2441 of 2012 and Notice of Motion No.994 of 2016, are, respectively, taken out by the Plaintiff and the Defendant. The Plaintiff's suit is for

specific performance of a contract of renewal of lease. The Defendant's predecessors, who were trustees of the Port of Bombay, had granted a lease of the suit plot to Jamshetjee Nusseerwanjee Tata (J.N. Tata) for a term of 99 years. This lease was assigned by J.N. Tata to the Plaintiff by a deed of assignment. The lease had a renewal clause. Subject to the lessee fulfilling the terms and conditions of the lease including payment of rent reserved, the lessors were required to prepare a new lease at their own expense for demise unto the lessee for a further period of 99 years on the same covenants save and except the covenant for renewal and at a rent that may be agreed upon between the lessors and the lessee. The Plaintiff's suit is for specific performance of this covenant of renewal. At the ad-interim stage, a statement was made on behalf of the Defendant that it shall not give effect to the notice of termination issued by it, which is the subject matter of challenge in the present suit. The Defendant's Notice of Motion seeks to modify the ad-interim statement made by the Defendant, so as to enable it to proceed with eviction proceedings against the Plaintiff under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Both notices of motion are heard together and disposed of by this common order.

3 The terms of the original lease are not in dispute. The lease contains a renewal clause. There was correspondence between the parties in respect of the proposal of renewal *inter alia* for a consolidated period of 30 years. It is pertinent to note that this correspondence is in the backdrop of an exercise of general rent revision undertaken by the Defendant in respect of Port Trust Properties leased out by them to diverse tenants/lessees. The rent revision made by the Defendant was held to be arbitrary and

unconstitutional by a learned Single Judge of this court in a writ petition filed by one of the lessees (Writ Petition No.35 of 1983). During the pendency of the Defendant's appeal from that order, the Defendant, sometime in the year 1991, approved certain terms as "compromise proposals". After a few revisions of the compromise proposals, by a judgment and order dated 11/12 March 1993, the revision proposed in the compromise proposals was held to be reasonable and fair by the court. The lessees thereafter carried the matter before the Supreme Court. The Supreme Court, by its judgment and order dated 31 October 1995, set aside the order of the Appeal Court and remanded the matter for reconsideration of the compromise proposals in the light of the reasons given by the learned Single Judge and the Appellants' contention that the compromise proposals for enhancement of rent suffered from the vice of arbitrariness. Upon remand, by its judgment and order dated 1 August 2000, the Division Bench held that the compromise proposals did not meet the test of fairness and reasonableness. The Division Bench directed the revision to be made on the basis of a formula proposed by it in its judgment. In this background, during the pendency of the aforesaid proceedings, the Plaintiff herein proposed enhanced rent in respect of the consolidated lease to be executed between the parties. In response, by its letter dated 4 March 2002, the Defendant confirmed that the Plaintiff's request for renewal and grant of a fresh consolidated lease for two suit lease hold premises would be considered by the Defendant's Board on the basis of rentals as per their compromise proposals/policy (pending final orders of the Supreme Court in the general rent revision matters as of that date), subject to the Plaintiff's furnishing a bond to pay such amount as may be finally decided by the Supreme Court in the general rent revision

matter and paying regularly till then the amounts mentioned in the enclosed liability statement. The liability statement enclosed with the compromise proposals included proposals for payment of rent upto the end of 30 years' lease period, that is, upto 31 July 2031. It is pertinent to note that these amounts included not only future rent upto 31 July 2031, but also premium for constructions and change of user as also a penalty for taking up works referred to therein without permission (not amounting to increase in built up area) and a security deposit equal to 12 months' rent. All these payments were made by the Plaintiff. Finally, on 13 January 2004, the Supreme Court delivered its judgment in the general rent revision case, deciding the fair and reasonable rent that can be charged by the Defendant from its lessees for the period between 1994-2000. The Supreme Court disposed of all appeals in terms of its detailed directions, including revision of rent on the basis of rates of returns determined by it. The Supreme Court directed the parties to execute lease deeds consistent with the compromise proposals, subject to modification proposed by the Supreme Court. The court held that even if such lease deeds were not executed, the compromise proposals would bind the lessees. This judgment was accepted by the Defendant. By resolution dated 10 March 2014, the Defendant recorded that the compromise proposals suggested as original compromise proposals and as modified by it from time to time, would made part of fresh lease deeds for 30 years to be granted to its lessees with proposed annual increase of 4 per cent in rent upto the year 2024. The Plaintiff, despite reduction of the rent revision based on a formula proposed by the Supreme Court in its final order, continued to pay the originally proposed compromise rent (i.e. as per the Defendant's proposal of 4 April 2002). It is not in dispute that amounts have been paid

upto date, though the Plaintiff has reserved its right to seek an appropriate revision based on the order of the Supreme Court. In the background of these facts and after accepting the Plaintiff's rent for more than two years after the Supreme Court passed its final order, in November 2006, the Defendant raised further bills for lease rent for the period from October 2006 onwards, which was 20 times higher than the originally agreed/stipulated lease rentals under the liability statement enclosed with its letter of 4 April 2002. The Plaintiff protested against the bills and continued to pay in accordance with the liability statement enclosed with the letter dated 4 April 2002. In these facts, the Defendant, by its notice dated 12 April 2012, purported to terminate the lease/tenancy of the Plaintiff and demanded vacant possession of the suit property. That is how the present Suit has been filed by the Plaintiff and, as noted above, *status quo* as of the date of the Suit has been perpetuated during the present Notice of Motion on the ad-interim statement made by the Defendant, as noted above.

4 Learned Counsel for the Defendant submits that the Plaintiff does not have a *prima facie* case for renewal of lease as of right. Learned Counsel submits that there is a well known distinction between continuation of lease and renewal of lease by executing a fresh lease deed. Learned Counsel submits that the particular renewal covenant contained in the original lease deed did not not propose any fixed rent for the period of renewal or even a formula for determining such rent. Learned Counsel, in the premises, submits that there is no *prima facie* case of a concluded agreement for renewal of lease which can be sought to be performed. Learned Counsel submits that though possession of the Plaintiff may be

protected on the basis of the ad-interim statement made earlier, and which may be continued hereinafter, it may be clarified by this court that the Defendant would be within its right to adopt eviction proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the Plaintiff's possession, protected in the present suit, may be made subject to the result of such proceedings.

5 In a case such as this, what the court has to consider, for the purpose of interlocutory relief, is whether the Plaintiff's case merits trial and pending such trial, whether the Plaintiff's right needs to be protected and if so, on what terms. Apart from the fact that the Plaintiff has an arguable case for renewal of lease as of right, what is important to note is that the Defendant has already proposed compromise proposals, which had since been accepted by the Plaintiff and the parties had even acted on them for last about 16 years. Learned Counsel for the Defendant submits that this was an arrangement without prejudice to the rights and contentions of the parties. It is, on the other hand, argued by the Plaintiff that the proposal, which was originally meant to be a without prejudice proposal, upon it being accepted by the Plaintiff and acted upon by the parties, particularly, in the light of the Supreme Court order passed in the general rent revision, must be treated as a matter of agreement between the parties. It is arguable that in the light of the Supreme Court judgment, which was accepted by the Defendant and also acted upon by passing an appropriate board resolution, forbids the Defendant from taking a contrary stand disputing the rent payable by the Plaintiff. All this calls for a trial and pending such trial, the Plaintiff's right to the suit property needs to be protected.

6 As for the terms on which such protection ought to be granted, it is pertinent to note that the Defendant, after taking into account all circumstances of the case, including the rent revision matter pending before the Supreme Court, by an appropriate board resolution, had proposed a formula of revision of rent and renewal of lease on the basis thereof. This formula has been proposed till 31 July 2031. It has been accepted by the Plaintiff and acted upon by the parties for all these years. If that is so, it is reasonable to consider the rent proposed in the liability statement forming part of the compromise proposals as a reasonable interim rent, on payment of which the Plaintiff's possession of the suit property may be protected.

7 Accordingly, the motions are disposed of in terms of the following order.

: O R D E R :

- (i) Notice of Motion No.2441 of 2012 is made absolute in terms of prayer clauses -(a) and (b);
- (ii) Notice of Motion No.944 of 2016 is dismissed;
- (iii) Costs to be costs in the cause.

(S.C. GUPTE, J.)