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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 31st October, 2018

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W.P.(C) 1588/2018

M/S BAND BOX PVT. LTD.

..... Petitioner

Through: Mr.Nikhil Goel, Ms.Gurpreet Hora
and Mr.Ashutosh, Advocates

versus

ESTATE OFFICER, PUNJAB AND SIND
BANK AND ANR.

..... Respondents

Through: Mr.Harish Katyal and Ms.Vinny
Shangloo, Advocates for respondent
No.2 Bank with Mr.Pronoy Ghosh,
Senior Manager Law.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. The petitioner has challenged the order dated 28th November, 2017 whereby the learned District Judge allowed the petitioner's appeal under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act (hereinafter referred to as 'Public Premises Act') and set aside the impugned order dated 23rd September, 2008 but rejected the petitioner's prayer for refund of Rs.90,00,000/- paid by the petitioner to the respondents.

Brief Facts

2. The petitioner is in occupation of showroom-cum-shop measuring 2222 sq. ft. on the ground floor of property bearing No. P-18/90, Connaught Circus, New Delhi-110001 (hereinafter referred to as 'subject premises') since 1952 as a tenant. The petitioner is carrying out the business of dry cleaning in the subject premises.

3. Respondent No.2 purchased the subject premises in 1978 whereupon the petitioner started paying the rent of Rs.183/- per month to respondent No.2.

4. Vide legal notice dated 15th November, 1999, respondent No.2 terminated the petitioner's tenancy w.e.f. 31st December, 1999 and thereafter, initiated the eviction proceedings against the petitioner under the Public Premises Act.

5. Vide notice dated 19th December, 2000, the Estate Officer declared the petitioner to be an unauthorized occupant of the subject premises under Section 7(2) of the Public Premises Act due to the termination of their tenancy.

6. Respondent No.2 initiated two proceedings against the petitioner namely-

(i) PPA Case No. 1 of 2000 under Section 4 of the Public Premises Act for eviction of the petitioner from the subject premises; and

(ii) PPA Case No.2 of 2000 under Section 7 of the Public Premises Act for determination of damages for unauthorized occupation of the subject premises.

7. The petitioner contested the aforesaid proceedings on various grounds *inter-alia* that the Public Premises Act cannot be invoked by respondent No.2 against the petitioner.

8. On 23rd September, 2008, the Estate Officer passed the following two orders against the petitioner:-

(i) An eviction order under Section 4 of the Public Premises Act against the petitioner in PPA Case No.1.

(ii) Order to pay damages at the rate of Rs.80 per sq. ft. along with

interest @ 12% per annum w.e.f. January, 2000 under Section 7 of the Public Premises Act in PPA Case No.2.

9. The petitioner filed two appeals to challenge the aforesaid two orders namely-

- (i) Appeal No.8 of 2008 against the eviction order under Section 4 of the Public Premises Act; and
- (ii) Appeal No.9 of 2008 against the order for payment of damages under Section 7 of the Public Premises Act, on the ground that Public Premises Act cannot be invoked against the petitioner.

10. Vide order dated 02nd December, 2010, the District Judge dismissed Appeal No.8 of 2008 holding that Public Premises Act was applicable to the subject premises and upheld the eviction order. However, Appeal No.9 of 2008 was adjourned *sine die* on 11th September, 2012.

11. The petitioner challenged the dismissal of the Appeal No.8 of 2008 before this Court in W.P.(C) 8254/2010 which was dismissed on 19th March, 2012.

12. The petitioner preferred L.P.A. No.250 of 2012 before the Division Bench in which, vide order dated 28th March, 2012, the Division Bench granted interim protection against eviction, subject to deposit of arrears of damages by the petitioner.

13. Vide order dated 13th July, 2012, the Division Bench dismissed L.P.A. No. 250 of 2012.

14. The petitioner preferred S.L.P.(C) No. 21436 of 2012 before the Supreme Court in which the Supreme Court, vide order dated 06th August, 2012, stayed the eviction order subject to deposit of Rs.90,00,000/- towards arrears of damages and monthly damages of Rs.1,80,000/- lakh per month,

subject to the final decision of the Special Leave Petition.

15. Vide judgment dated 25th February, 2014, the Supreme Court allowed the petitioner's appeal holding that Public Premises Act was not applicable to the subject premises. The Supreme Court set aside the orders of the Estate Officer; District Judge; Single Judge as well as the Division Bench. The Supreme Court recorded an understanding between the parties that the petitioner shall continue as a tenant in the subject premises on a monthly rent of Rs.1,80,000/- per month subject to 10% increase every year for a period of 12 years.

16. Respondent No.2 filed Review Petition No.831 of 2014 before the Supreme Court which was dismissed on 23rd April, 2014. The petitioner also filed Review Petition No.1476/2015 before the Supreme Court which was also dismissed on 14th July, 2015.

17. In May, 2014, the petitioner sought refund of Rs.90,00,000/- which was paid by the petitioner to respondent no.2 subject to the outcome of Special Leave Petition.

18. On 4th September, 2014, the petitioner filed an application before the District Judge for revival of Appeal No.9 of 2008 which was adjourned *sine die* on 11th September, 2012 and to seek refund of Rs.90 lacs along with interest from respondent No.2.

19. Vide order dated 11th January, 2016, the learned District Judge revived Appeal No.9 of 2008.

20. Vide order dated 28th November, 2017, the learned District Judge allowed Appeal No.9 of 2008 and set aside the impugned order under Section 7 of the Public Premises Act but declined to order refund of Rs.90,00,000/- paid by the petitioner to respondent No.2.

Submissions of the petitioner

21. The petitioner is entitled to restitution by refund of Rs.90,00,000/- paid subject to the outcome of SLP

The Supreme Court directed the petitioner to make the payment subject to the outcome of the appeal. The respondent, having lost in the appeal, has to refund Rs. 90 lacs to the petitioner. Reliance is placed on maxim '*An Act of a Court should prejudice no one*' - The party who has enjoyed benefit under an interim order, should return the benefit in the case he loses. Reliance is also placed on *State of Gujarat vs. Essar Oil Ltd.* (2012) 3 SCC 522 (paras 58 and 71);

22. The remedy was only before the Court is Section 9 Appeal

The sole reason of rejection of Petitioner's claim is that it has been adjudicated by the Supreme Court. The error in such a view is that the Supreme Court adjudicated only the proceedings arising out of Section 4 of the Act. However, the order under Section 7 was not the subject matter before the Supreme Court. If the reasoning of the Learned District Judge is to be accepted, there was no requirement of getting the Section 9 appeal disposed of. The consequential order was required to be passed by the learned District Judge and was rightly decided in the Petitioner's favour. However, rejection of consequential claim of refund of Rs. 90 lacs is *ex-facie* erroneous. The impugned order is against the basic tenet of the common Law maxim '*Ubi Jus Ibi Remedium*'. Reliance is placed on *Suresh Khandelwal vs. M.P.* (2006) 13 SCC 698.

23. In Limini dismissal of Review Petition does not close all remedies for the Petitioner –

Since the SLP/Appeal before the Supreme Court only pertained to

proceedings under Section 4, no argument or any finding pertaining to proceedings under Section 7 are to be found in the judgment of the Supreme Court. It is for the first time in a Review Petition that the Petitioner sought refund of Rs. 90 Lacs in which order could have been passed only after order under Section 7 was quashed. A Review Petition under Article 137 is tested on principles of “*Error Apparent on the Face of Record*” and on the principle that “*the Court must be convinced that the earlier decision is plainly erroneous and has a baneful effect on the public*”. Therefore, dismissal of a Review would only mean that the principal judgment did not suffer from any error apparent. Reliance is placed on **VLS Finance Ltd. v. CIT**, (2016) 13 SCC 60. Since the principal judgment did not deal with any aspect of Section 7 proceedings, there could not have been a decision on the merits of the claim even on dismissal of a Review Petition. The issue of refund of “*Damages under Section 7*” was not in issue before the Supreme Court, much less directly and substantially in issue. Reliance is placed on **Dadu Dayalu Mahasabha, Jaipur (Trust) vs. Mahant Ram Niwas**, (2008) 11 SCC 753.

24. **Judgments relied upon by the Petitioner**

24.1. **State of Gujarat v. Essar Oil Ltd.** (2012) 3 SCC 522

58. ...The concept of restitution is basically founded on the idea that when a decree is reversed, the law imposes an obligation on the party who received an unjust benefit of the erroneous decree to retribute the other party for what the other party has lost during the period the erroneous decree was in operation. Therefore, the court while granting restitution is required to restore the parties as far as possible to their same position as they were in at the time when the court by its erroneous action displaced them.

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61. The concept of restitution is virtually a common law principle and it is a remedy against unjust enrichment or unjust benefit. The core of the concept lies in the conscience of the court which prevents a party from retaining money or some benefit derived from another which it has received by way of an erroneous decree of court. Such remedy in English Law is generally different from a remedy in contract or in tort and falls within a third category of common law remedy which is called quasi-contract or restitution.

62. If we analyse the concept of restitution one thing emerges clearly that the obligation to retribute lies on the person or the authority that has received unjust enrichment or unjust benefit (see Halsbury's Laws of England, 4th Edn., Vol. 9, p. 434).

63. If we look at Restatement of the Law of Restitution by American Law Institute (1937 American Law Institute Publishers, St Paul) we get that a person is enriched if he has received a benefit and similarly a person is unjustly enriched if the retention of the benefit would be unjust. Now the question is what constitutes a benefit. A person confers benefit upon another if he gives to the other possession of or some other interest in money, land, chattels, or performs services beneficial to or at the request of the other, satisfies a debt or a duty of the other or in a way adds to the other's security or advantage. He confers a benefit not only where he adds to the property of another but also where he saves the other from expense or loss. Thus the word "benefit" therefore denotes any form of advantage (p. 12 of the Restatement of the Law of Restitution by American Law Institute).

64. Ordinarily in cases of restitution if there is a benefit to one, there is a corresponding loss to other and in such cases, the benefiting party is also under a duty to give to the losing party, the amount by which he has been enriched.

65. We find that a person who has conferred a benefit upon another in compliance with a judgment or whose property has been taken thereunder, is entitled to restitution if the judgment is reversed or set aside, unless restitution would be inequitable (p. 302 of the Restatement of the Law of Restitution by American Law Institute).

(Emphasis supplied)

24.2. **Kalabharati Advertising v. Hemant Vimalnath Narichania**, (2010) 9 SCC 437 (Paras 15-19)

“15.....A party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter blame the court. The fact that the case is found, ultimately, devoid of any merit, or the party withdrew the writ petition, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the court. [Vide A.R. Sircar (Dr.) v. State of U.P.8, Shiv Shankar v. U.P. SRTC, Arya Nagar Inter College v. Sree Kumar Tiwary, GTC Industries Ltd. v. Union of India and Jaipur Municipal Corpn. v. C.L. Mishra.]

16. In Ram Krishna Verma & Ors. v. State of U.P. & Ors., AIR 1992 SC 1888, this Court examined the issue while placing reliance upon its earlier judgment in Grindlays Bank Limited v. Income Tax Officer, Calcutta & Ors., AIR 1980 SC 656 and held that no person can suffer from the act of the Court and in case an interim order has been passed and the petitioner takes advantage thereof, and ultimately the petition stands dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized.

17. A similar view has been reiterated by this Court in Mahadeo Savlaram Shelke & Ors. v. Pune Municipal Corporation & Anr., (1995) 3 SCC 33.

18. In South Eastern Coalfields Ltd. v. State of M.P. & Ors., AIR 2003 SC 4482, this Court examined this issue in detail and held that no one shall suffer by an act of the Court. The factor attracting the applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the court; the test is whether an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage it would not have otherwise earned, or the other party suffering an impoverishment which it would not have suffered but for the order of the Court and the act of such party. There is nothing wrong in the parties demanding to be placed in the same position in which they

would have been had the Court not intervened by its interim order, when at the end of the proceedings, the Court pronounces its judicial verdict which does not match with and countenance its own interim verdict. The injury, if any, caused by the act of the Court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the Court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. The Court further held :

".....Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the Court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are earlier to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated....."

(Emphasis supplied)

24.3. **Suresh Khandelwal v.State of M.P.** (2006) 13 SCC 698

"7. We find substance in the plea of learned counsel for the appellant that it was being left without a remedy. The Division Bench declined to interfere in the matter holding that the grievance could be looked into in a review petition. The learned Single Judge observed that the review petition was not maintainable."

24.4. **Bhagwati Developers (P) Ltd. v. Peerless General Finance Investment Co. Ltd.,** (2013) 5 SCC 455

"31. If the interpretation given by the Division Bench of the High Court is accepted, it would not merely render the appellant remediless at whose instance this Court had passed the order dated 26-4-1996, but would also defeat the doctrine embodied in the legal maxim, ubi jus ibi remedium (where there is a right, there is a remedy). This

Court dealt with the aforesaid doctrine in Dhannalal v. Kalawatibai and held that “if a man has a right, he must have the means to vindicate and maintain it, and also a remedy, if he is injured in the exercise and enjoyment of the said right, and that it is indeed, a vain thing to imagine a right without a remedy, for the want of a right and the want of a remedy, are reciprocal.” (See also Ganga Bai v. Vijay Kumar)

32. It was Respondent 1 who had suggested to this Court to dispose of the appeal filed by the appellant, while giving it liberty to file an appeal against the order of the Company Court Judge. Therefore, it was not permissible for Respondent 1 to agitate the issue with respect to the fact that as the Supreme Court had not set aside the orders dated 16-11-1993 and 18-11-1993 passed by the Division Bench of the Calcutta High Court, the same remained intact. Such an argument could not have been advanced by Respondent 1 before the Division Bench, in view of the legal maxim *actus curiae neminem gravabit* i.e. an act of court shall prejudice no man. This Court dealt with the said maxim in *Jayalakshmi Coelho v. Oswald Joseph Coelho* and explained its scope, observing:

“13. ... where the order may contain something which is not mentioned in the decree would be a case of unintentional omission or mistake. Such omissions are attributable to the court which may say something or omit to say something which it did not intend to say or omit. No new arguments or re-arguments on merits are required for such rectification of mistake.”

33. The order of this Court dated 26-4-1999, if given strict literal interpretation, would render the appellant remediless, which is not permissible in law. (Vide *Rameshwarlal v. Municipal Council, Tonk.*)”

(Emphasis supplied)

24.5. **Dadu Dayalu Mahasabha, Jaipur (Trust) v. Mahant Ram Niwas,** (2008) 11 SCC 753

“22. The judgment of a court, it is trite, should not be interpreted as a statute. The meaning of the words used in a judgment must be found out from the backdrop of the fact of each case. The court while passing a judgment cannot take away the right of the successful party

indirectly which it cannot do directly. An observation made by a superior court is not binding. What would be binding is the ratio of the decision. Such a decision must be arrived at upon entering into the merit of the issues involved in the case.”

(Emphasis supplied)

Submissions of the respondents

25. In SLP No.21436/2012 filed by the petitioner, the respondent agreed to extend the tenancy of petitioner for a further period of twelve years subject to payment of Rs.1,80,000/- monthly rental with 10% increase every year. The petitioner filed I.A. No. 5/2014 before the Supreme Court which was dismissed as withdrawn on 13th April, 2014 with liberty to file the review. The petitioner filed the review petition which was dismissed on 14th July, 2015. The petitioner sought refund of Rs.90,00,000/- in I.A. No. 5/2014 as well as review petition. The petitioner cannot seek refund of the amount in view of the dismissal of the review petition by the Supreme Court and the Learned District Judge has rightly rejected the claim. Reliance is placed on *Deepak Khosla v. Delhi High Court*, 2014 IV AD (DELHI) 765, *A.R. Antuley v. R.S. Nayak*, AIR 1988 S.C. 1531 and *Anupam Gupta v. Kuldeep Singh*, 2015 (147) DRJ 373.

Relevant Orders

26. **Order dated 23rd September, 2008 of the Estate Officer under Section 7 of the Public Premises Act** - Vide order dated 23rd September, 2008, the Estate Officer assessed the damages under Section 7 of the Public Premises Act. The relevant portion of the said order is reproduced hereinafter :

“I therefore, in exercise of powers conferred on me u/s 7(1), 7(2) read with section 7(2A) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, hereby order the Respondent M/s Band Box

Pvt. Ltd. company as shown in the schedule to pay to Punjab and Sind Bank, 21 Rajendra Place, New Delhi a sum of Rs. 1,86,17,397/- (Rupees One crore eighty six lac seventeen thousand three hundred and ninety seven only) as per details below as assessed by me as damages and pendente lite from January, 2000 to 22/09/2008.

- 1) Rs. 19,55,360/- (Rupees Nineteen lac fifty five thousand three hundred sixty only) on 2222 sq. ft. @ Rs 80 per sq. ft. p.m. for the period Jan, 2000 to Nov, 2000.*
- 2) Rs. 1,66,62,037/- (Rupees One crore sixty six lac sixty two thousand thirty seven only) for the period December, 2000 to 22/09/2008 @ Rs. 80 per sq. ft. p.m..*
- 3) Future damages @ Rs. 80 per sq. ft. p.m. from the date of order till vacation and handing over of the premises to the Petitioner bank."*

27. Order dated 28th March, 2012 of Division Bench of High Court -

After suffering an order under Section 4, the Petitioner filed WP (C) 8254 of 2010 and thereafter, filed LPA No. 250 of 2012 in which interim order dated 28th March, 2012 was passed by the Division Bench of this Court. The relevant portion of the said order is reproduced hereunder :

"There shall be stay of the orders, subject to deposit of arrears to be calculated from the date of orders passed by the Estate Officer till today at the rate fixed by the Estate Officer within 15 days"

(Emphasis supplied)

The LPA was subsequently dismissed on 13th July, 2012.

28. Interim order dated 06th August, 2012 in SLP (C) No.21436/2012 -

The petitioner preferred SLP (C) No. 21436/2012 in which the Supreme Court passed the following interim order dated 06th August, 2012. The relevant portion of the said order is reproduced hereunder

"Issue notice.

Tag with SLP(C) Nos.18415-18419 of 2012.

The petitioner shall pay a sum of Rs.1,80,000/- per month as rent which shall be deposited positively by the 7th of every month.

Mr. Dave, learned senior counsel for the petitioner, on

instructions, states that his client will pay Rs.90 lakhs which is due in six equal monthly installments of Rs.15 lakhs each month. The petitioner shall also deposit the aforesaid monthly installment of Rs.15 lakhs on or before 7th of every month.

In default of payment of either the rent amount or the installment of Rs.15 lakhs, the special leave petition shall stand dismissed.

In view of the above, there shall be stay of eviction of the petitioner.”

(Emphasis supplied)

29. **Order dated 1st February, 2013 in SLP(C) No.21436/2012** - When the petitioner deposited the installments before the Bank, the covering letter written by the petitioner stated the payments are being made subject to the outcome of SLP. The Bank filed I.A. No. 4/2013 in SLP(C) No.21436/2012 claiming that the payments received should not be made subject to outcome of SLP. The Supreme Court disposed of the above I.A. directing that the payment shall be subject to the final decision of the special leave petition. The relevant portion of the said order is reproduced hereunder:

“Mr. Dave, learned senior counsel appearing on behalf of the petitioner has handed over in Court a cheque bearing No.039394 drawn on HDFC Bank, for Rs.16,80,000/-, to the learned counsel for the respondent-Bank. This payment shall be subject to the final decision of this special leave petition. I.A. 4 is disposed of”

(Emphasis supplied)

30. **Judgment dated 25th February, 2014 passed by the Supreme Court** - The SLP filed by the Petitioner was converted to Civil Appeal 2878 of 2014 and was allowed vide judgement dated 25th February, 2014 by the Supreme Court with the following findings:

“11. For the reasons stated above, we allow this appeal and set aside the order passed by the Division Bench as well as by the Single Judge, by the District Judge, and the Estate Officer. The

eviction proceedings initiated against the appellant will stand set aside.

12. Although, this appeal has been allowed in favour of the appellant, Mr. Vikas Singh has pointed out that when this appeal came up for consideration at an earlier stage, this Court had passed an order on 6.8.2012, that the appellant shall pay a sum of Rs.1,80,000/- per month as rent. Mr. Raval has taken instructions, and has very fairly stated that the appellant is agreeable to continue to pay this amount, though otherwise the recorded rent is only Rs.183/- per month. The appellant has been paying this amount, as per the order passed by this Court on 6.8.2012 and shall continue to pay that amount, hereinafter by way of rent. Mr. Raval has however sought that the appellant shall pay this rent regularly, but it should get some protection, inasmuch as he is agreeing to pay this substantial higher amount.

Mr. Vikas Singh has taken instructions and he states that the appellant will be allowed to continue in the premises, at least, for a period of 12 (twelve) years, provided the appellant pays the monthly rent regularly, with a rider that at the end of every financial year, the respondent-Bank will have the right to revise the rent by an increase of ten per cent. Mr. Raval agrees to the suggestion of Mr. Vikas Singh. Therefore, the next revision of rent will be from 1.4.2015. We record this understanding between the parties and though this appeal is allowed, the appellant will pay the rent of Rs.1,80,000/- per month till the end of 31.3.2015, where after the Bank will be entitled to revise the rent by ten per cent every year. In the event of any default in paying the monthly rent, the respondent-Bank will be entitled to take the appropriate proceedings. The 12 years period will be counted from 1.4.2013. We make it further clear that after the expiry of twelve years, it will be open to the respondents to take steps under the Public Premises Act, 1971, if required.”

(Emphasis supplied)

31. **Order dated 14th July, 2014 of SC in Review Petition No. 1476/15 -**

The petitioner filed a Review Petition No. 1476 of 2015 in Civil Appeal 2878 of 2014 which was dismissed by the Supreme Court vide order dated

14th July, 2014. The relevant portion of the said order is reproduced hereunder:

“There is a delay of 399 days in filing the present review petition. The explanation offered in the application for condonation of delay is neither satisfactory nor reasonable. The application for condonation of delay is, therefore, rejected. Even otherwise we have gone through the review petition and the connected records. We do not find any merit therein. The review petition is, therefore, dismissed both on the ground of delay and merit.”

32. **Order dated 11th January, 2016 of District Judge in Petitioner’s appeal against Section 7 Order -** The petitioner filed an application dated 4th September, 2015 before the Learned District Judge under Section 151 of Code of Civil Procedure for revival of Appeal No. 9 of 2008 which was adjourned *sine die* on 11th September, 2012 and to direct the respondent no.2 to refund the sum of Rs.90 lacs along with simple interest at the rate of 12% from the date of receipt of the said amount till its payment. Vide order dated 11th January, 2016, the learned District Judge revived the appeal. The relevant portion of the said order is reproduced hereunder:

“On the other hand, Ld. Counsel for the respondent stated no objection submitting that the appeal be decided on merits.

Heard. Keeping in view the aforesaid submissions made on behalf of the parties, the present appeal is revived at its original number and place...”

33. **Judgement dated 28th November, 2017 of learned District Judge in Petitioner’s appeal against the order dated 23rd September, 2008 -** Vide judgement dated 28th November, 2017, Learned District Judge allowed the petitioner’s appeal and set aside the order dated 23rd September, 2008 whereby damages were awarded to the respondent. However, the Learned

District Judge declined to order refund of Rs.90 lacs paid by the petitioner pursuant to the directions of the Supreme Court. The relevant portion of the said order is reproduced hereunder:

“7.4 Now coming to the appellant’s plea that the appellant is entitled to refund of Rs.90 lacs paid by it towards arrears of rent (calculated from the date of orders passed by the Estate Officer i.e. 23.09.2020, till 28.03.2012) pursuant to the directions of the Hon’ble Supreme Court dated 06.08.2012.

7.4.1 It may be mentioned that the similar prayer for refund of the said amount of Rs.90 lacs along with simple interest @ 12% p.a. was made by the appellant before the Ld. Predecessor Court vide its application under Section 151 CPC while seeking revival of its present appeal (09/2008). The said application was disposed of by the Ld. Predecessor Court allowing the revival of the present appeal but no order for refund was made.

7.5 Thus, the Ld. Predecessor Court vide above order only directed revival of the appellant’s present appeal to its original number. It is a matter of record that the appellant did not either seek any review of the said order as far as its prayer for refund was concerned. Nor did it challenge the aforesaid order before any higher Court.

7.5.1 Be that as it may. As noted above in paras 6.7 & 6.8 (supra), the appellant vide its application bearing I.A. No. 5/2014 in its Civil Appeal No. 2878 of 2014 sought similar directions to the respondent to refund an amount of Rs.90 lacs with 12% interest. The said application was disposed of as withdrawn with liberty to file review petition. As noted above, it is a matter of record that thereafter, the appellant filed Review Petition (C) 1476 of 2015 in Civil Appeal No. (S) 2878 of 2014 before the Hon’ble Supreme Court praying for review of judgment and order dated 25.02.2014 in Civil Appeal No. 2878 of 2014 in so far as it did not deal with the refund of Rs.90 lacs. The appellant categorically mentioned in its review petition that – “The present petition is being

preferred only to the extent of seeking direction to the respondent to refund an amount of Rs.90 lacs with reasonable interest which was paid by the petitioner to the respondent without prejudice as per the interim order passed by this Hon'ble Court on 06.08.2012". Thus, a specific prayer in this regard was made before the Hon'ble Supreme Court. As noted in para 6.10 (supra), the appellant's review petition seeking refund of Rs.90 Lacs was dismissed on merits by the Hon'ble Supreme Court vide order dated 14th July, 2015, besides for the reasons of delay. In view of the same, the issue of refund of Rs.90 lacs cannot be re-agitated before this Court.

8. Learned counsel for the appellant further argued that the relief claimed vide its review petition was pre-mature, as the relief of refund had not accrued to the appellant, in view of the pendency of the present appeal.

8.1 From the order of the Hon'ble Supreme Court dated 14.07.2015 as reproduced above, it is evident that the appellant's review petition was dismissed on merits and not on account of being pre-mature. Hence, I find no merit in the appellant's contention. In view of the same, the aforesaid judgments in Mukunda Pradhan's case (supra), Doraisami Aiyar's case (supra), South Eastern Coalfield's case (supra) and Kavita Trehan's case (supra) relied upon by the appellant, are of no assistance to it.

9. In view of the above, impugned order is set aside. Appeal is allowed. The Estate Officer's record be returned along with copy of this order.

(Emphasis supplied)

Findings

34. The petitioner paid Rs.90,00,000/- to the respondent subject to the final decision of the S.L.P.(C) No. 21436 of 2012, as recorded in the order dated 01st February, 2013.

35. The Supreme Court vide judgment dated 25th February, 2014 held that Public Premises Act was not applicable to the subject premises and the

eviction order passed by the Estate Officer was set aside by the Supreme Court. The Supreme Court also set aside the order passed by the District Judge, the Single Bench as well as Division Bench of this Court.

36. The judgment dated 25th February, 2014 records that the parties have agreed to extend the lease for a period of 12 years w.e.f. 01st April, 2013 upon payment of monthly rent of Rs.1,80,000/- with annual increase by 10%. The judgment also records that the recorded rent of the subject premises was Rs.183/- per month. However, the judgment does not deal with the amount of Rs.90,00,000/- paid by the petitioner to the respondent subject to the outcome of the appeal. It is not the case of the parties that the petitioner agreed not to seek the refund of Rs.90,00,000/- from the respondent.

37. Vide order dated 11th January, 2016, the District Judge revived the appeal and thereafter, vide order dated 28th November, 2017, the learned District Judge allowed the appeal and set aside the impugned order of damages under Section 7 of the Public Premises Act.

38. There is merit in the plaintiff's contention that the dismissal of the review petition by the Supreme Court would not disentitle the petitioner to seek the refund of the amount considering that the issue of damages in respect of the subject premises was not the subject matter of the S.L.P.(C) No. 21436 of 2012 before the Supreme Court. The issue of damages under Section 7 of the Public Premises Act was subject matter of challenge in Appeal No.9 of 2008 before the District Judge which was adjourned *sine die* on 11th September, 2012.

39. This Court is of the view that the order of restitution can be passed by the Court which had ordered the deposit of the amount. In that view of the

matter, after setting aside the order of damages dated 23rd September, 2008, the learned District Judge, should have given liberty to the petitioner to approach the Supreme Court instead of rejecting the petitioner's claim for refund of the amount.

Conclusion

40. The impugned order dated 28th November, 2017 is upheld in so far the learned District judge has set aside the order dated 23rd September, 2008 of the Estate Officer. With respect to the Petitioner's claims for refund of the amount of Rs.90,00,000/- paid to respondent No.2 subject to the outcome of SLP, the petitioner is at liberty to approach the Supreme Court.

41. It is clarified that nothing recorded herein shall be considered as final expression on the merits of this case.

42. The petition is disposed of in the above terms.

OCTOBER 31, 2018
ds

J.R. MIDHA
(JUDGE)

भारतमेव जयते