

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

+ **RFA No. 197/2018**

% **Reserved on: 23rd February, 2018**
Pronounced on : 1st March, 2018

VEENA KHANNA Appellant

Through: Ms. Renuka Arora, Advocate
with Ms. Nikita Salwan,
Advocate.

versus

INDIAN BANK Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

C.M. No.7051/2018 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No.197/2018 and C.M. No.7050/2018 (stay)

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the judgment of the trial court dated 12.1.2018 by which trial court has decreed the suit filed by the respondent/plaintiff for a sum of Rs.11 lacs. Trial court has not granted any interest and costs in

favour of the respondent/plaintiff. Suit has been decreed for the amount of Rs.11 lacs on account of trial court holding by the impugned judgment that the appellant/defendant had failed to execute the lease deed of the premises of the appellant/defendant in favour of the respondent/plaintiff in spite of an agreement between the parties and therefore the respondent/plaintiff had to take on lease another property on a higher rate of rent and hence the difference in the amount of rent was decreed against the appellant/defendant in terms of the impugned judgment.

3. The facts of the case are that the appellant/defendant is the owner of the property bearing no. M-5, South Extension-II, New Delhi. On account of the respondent/plaintiff having to vacate its existing premises at South Extension by 31.3.2004, therefore for an alternative accommodation the respondent/plaintiff had issued an advertisement in the leading newspapers on 8.6.2003. The appellant/defendant in response had offered her property on lease to the respondent/plaintiff in terms of the written proposal dated 9.7.2003. There was further correspondence entered into between the parties for finalization of various terms of the lease and ultimately the

last set of correspondences are the letter dated 1.1.2004 of the appellant/defendant to the respondent/plaintiff, response of the respondent/plaintiff to the appellant/defendant dated 3.3.2004 and lastly the reply of the appellant/defendant to the respondent/plaintiff of the same date 3.3.2004. It was the case of the respondent/plaintiff that a contract was finalized between the parties for the respondent/plaintiff to be granted lease by the appellant/defendant of the suit property and since the appellant/defendant failed to execute the lease deed therefore the respondent/plaintiff had to take a premises on rent by paying a higher rental amount of Rs.2,35,000/- and therefore the subject suit was filed claiming the difference @ Rs.35,000/- per month totaling to Rs.21 lacs with an additional amount being claimed of Rs.1 lakh towards litigation expenses for facing contempt proceedings in the contempt case filed by the previous landlord and a further sum of Rs. 2 lacs towards advertisement costs and arranging of alternative premises.

4. The appellant/defendant contested the suit by filing her written statement. She pleaded that no contract was ever finalized between the parties and there were only unsuccessful negotiations for

grant of lease and the negotiations did not fructify. Suit was therefore prayed to be dismissed.

5. After completion of pleadings, trial court framed the following issues:-

- “1. Whether the plaint is signed and verified and the suit is filed by a duly authorized person. If so, its effect? OPP
2. Whether there existed a concluded contract between the parties and the defendant was pursuant thereto obliged to let out the premises in question to the plaintiff? OPP
3. Whether the defendant is liable to pay damages for breach of contract. If so, what amount? OPP

Issues on Counter-Claim

1. Whether the plaintiff is liable to pay rent to the defendant for the period from May, 2003 to March, 2004 @ 2,00,000/- p.m. as claimed in the Counter-claim and Rs.8,00,000/- as damages along with interest?”

6. I may note that counter-claim has been decreed in favour of the appellant/defendant for a sum of Rs.6 lacs and there is no challenge by the appellant/defendant in this appeal for grant of a higher amount of Rs.26 lacs as claimed in the counter-claim and this appeal is therefore confined to the decree of the suit in favour of the respondent/plaintiff for the rent differential amount.

7. Trial court has held that as a result of the last two letters, one dated 1.1.2004 of the appellant/defendant to the respondent/plaintiff and the second dated 3.3.2004 of the

respondent/plaintiff to the appellant/defendant there resulted a concluded contract between the parties. In this regard, trial court has made the following correct observations:-

“9. The crucial question is whether a concluded contract was formed in the instant case as per the provisions of the Indian Contract Act, 1872 so as to create an obligation on the defaulting party to pay damages/compensation for breach of its items, or not. The Section 2(a) (b), (e) and (h) of the Indian Contract Act, 1872 are relevant for a better understanding and they are reproduced as under:

(a) *When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal:*

(b) *When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise:*

(e) *Every promise and every set of promises, forming the consideration for each other, is an agreement:*

(h) *An agreement enforceable by law is a contract:*

10. At the outset, Ld. Counsel for the plaintiff argued that there were two “**concluded contracts**” which took place in the present case firstly on 10.11.2003 and secondly on 03.03.2004. On the other hand, the Ld. Counsel for the defendant argued that there was no acceptance of the proposal from the side of the defendant to any of the offers of the plaintiff and rather there were offers/counter-offers from the side of the defendant and the entire dealings between the parties were at the stage of negotiations only and no contract ever took place.

11. In the instant case, various communications took place between the parties and the significant points of the respective documents can be extracted as under:

Date	By Whom	Nature of Document	Remarks
08.06.2003	Published by Bank	Advertisement inviting bids/offers from general public for leasing their property to the bank	
09.07.2003	Given by defendant	Written proposal letter submitted to the bank	Fulfilling the columns of standard terms and conditions
28.10.2003	Letter of plaintiff	Communication of decision of	Prescribing some new conditions i.e-

	sent to defendant	Management of the plaintiff to the defendant	-Security deposit for 3 months -Removal of Wall between two adjoining portions. -Strong room door to be affixed by the bank -Engineer's fees/expense to be borne by the owner. -In this letter, the bank requested to give acceptance for the said conditions
10.11.2003	Receiving of defendant	Of the letter dated 28.10.2003	
27.11.2003	Sent by the bank		Not proved
17.12.2003	Reminder sent by bank to defendant	Seeking execution of lease deed	
01.01.2004	Letter sent by defendant to bank	Defendant is agreeable to let out subject to some more conditions e.g. rent on super area	
03.03.2004	Letter sent by bank to defendant	Confirming everything	
03.03.2004	Letter sent by defendant to the bank	Intimating property is no longer available to be given on lease	

12. From the aforesaid various communications/letters between the parties, it is clear that various terms and conditions of the ensuing contract kept on adding /modifying from the one side of the other. Besides, the aforesaid written communications, the parties also had oral discussions which is reflected from the initial operating parts of some of the letters. Thus, it shows that there was no final contract in legal sense while making offers and counter-offers till the time the last letter was communicated. The last letter of the bank dated 03.03.2004 provides that

the bank has accepted and sanctioned the proposal on the following modifications i.e.

1. Monthly rent of Rs.2,00,000/-.
2. Rent advance of 6 months
3. Deletion of sub-clause.

13. In the said letter itself, the bank had also requested the defendant to execute the lease deed. Accordingly, the said letter communicated the final acceptance of the proposal after having accepted the final agreed terms and conditions of the contract. In this regard, reliance can be placed on **Section 2(a) of the Indian Contract Act** which provides that “**When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal.**” Thus, it was a complete contract from the side of the bank when the said letter was communicated. As regards the conclusion of the contract from the side of the defendant, the **Section 4 of the Indian Contract Act, 1872** is important and the same is reproduced below for a better understanding:

“Section 4. Communication when complete.- *The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.*

The communication of an acceptance is complete,

-As against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor; as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,

-as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it; as against the person to whom it is made, when it comes to his knowledge”.

14. Keeping in mind the aforesaid basic provisions of the **Indian Contract Act, 1872 (in short, the “Act”)**, I am of the considered opinion that whatever may be the mode of communication, (be it oral or written), and whosoever may be the initiator of negotiations (be it bank or defendant), the person who lastly gives some offer or proposes some modification of conditions or invites deletion of some conditions, becomes the “**Proposer**” within the definition of Section 2(a) of the Act. In the instant case, it was the defendant only who lastly communicated to the bank all her intent and terms conditions, which were ultimately accepted by the bank and consequently the bank communicated the said assent by dispatching the letter dated 03.03.2004 to the defendant.

Illustrations to Section 4

(a) A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.

(b) B accepts A’s proposal by a letter sent by post.

The communication of the acceptance is complete,

- as against A when the letter is posted;

- as against B, when the letter is received by A.

15. The aforesaid illustrations appended to **Section 4 of the Act** are squarely applicable to the facts of the present case. In the instant case, if A is treated as the plaintiff/bank and B is treated as defendant, then everything is easily comprehensible. When the final letter dated 03.03.2004 was sent by the bank to the defendant, as per Section 4 of the Act, the acceptance was complete from the side of bank as soon as the bank dispatched the said letter. From the said of defendant, it was complete when the said letter came to the notice of defendant. The subsequent letter (dated 03.03.2004) of the defendant communicating that the suit property was no longer available for giving on rent, cannot revoke the said contract. The **Illustration (c) of the Section 4 of the Act** can be relied in this regard which is an under:

Illustration (c): A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is dispatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is dispatched, and as against A when it reaches him.

16. In the light of aforesaid facts, I hold that there was a concluded contract in the eyes of law after communication of letter dated 03.03.2004 by the bank to the defendant. So far as the obligation of the defendant to pay damages/compensation is concerned, the matter would be examined further in the next issue. Thus, this issue is decided in favour of plaintiff and against the defendant."

8. For the sake of convenience, the letter of the appellant/defendant to the respondent/plaintiff dated 1.1.2004, letter in response of the respondent/plaintiff to the appellant/defendant dated 3.3.2004, and the letter of the appellant/defendant to the respondent/plaintiff of the same date 3.3.2004 are reproduced as under:-

"Letter dated 1.1.2004

The Chief Manger,

Dated: 1st January, 04

Indian Bank,
South Extension-1,
New Delhi

Reference: M-5, First Floor, South Extension-11, New Delhi-49.

Dear Sir,

As per earlier discussion I am agreed to let out the above mentioned premises for the use of your bank branch. In the terms and conditions as follows:-

1. The area finally as per the plan measured 2900 sq.ft. Carpet area/ Plinth Area 3240 sq.ft./ Super Area 4000 Sq. ft. (plan attached).
2. Monthly rent of per sq.ft. is Rs.60/- for the area as per clause No. 1.
3. Whitewash shall be done after period of initial lease or every renewal of the lease.
4. After the first renewal of the lease second renewal of the lease will be discussed as mutually agreed.
5. Interest free security deposit of six month rent will be refunded at the time of vacation of premises at the time expiry of lease deed.
6. All the internal fixtures and fittings shall be done by the bank.
7. There is no subletting rights to any other person except any subsidiary company of your financial institution.
8. The notification of the use of premises for banking use has also been provided to you whereas incase of any charges/levy to use for banking purpose shall be paid by the bank. I will apply for the NOC for the same purpose as and when required. I undertake to pay the House Tax etc. to the MCD.
9. I am also entitled to construct the above floors as per Building By Laws without disturbing the First Floor premises.
10. I undertake to remove the center wall of the front portion as advisable by the structural engineer and to construct the Strong Room as per specification and also provide the grills in the windows and glaze by the glass area.
11. Incase you are agreed to pay us the rent on super area or on area then we undertake to pay the charges/levy to use the premises for banking purpose.

We hope your early decision to give the consent.

Thanking you,

Yours truly,

(VEENA KHANNA)

Letter dated 3.3.2004 (letter of respondent to the appellant)

Mrs. Veena Khanna,
D-199, Defence Colony,
New Delhi,
Madam,

Dated:03-03-2004

Sub: Premises at M-5, NDSE-II offered to the Bank

With reference to your offer dated 04-05-2003 offering us the premises at M-5, NDSE-II, New Delhi, The Bank communicated you the sanction vide our letter dated 28-10-2003. The sanction letter duly received and accepted by you on 10-11-2003 was sent to us.

However you had vide your letter dated 01-01-2004 submitted certain modifications in your proposal as such we submitted the revisions in the proposal to our Head office, Chennai.

We are pleased to inform you that the Bank has sanctioned the premises at M-5, NDSE-II, New Delhi with the following modifications:

- a) Monthly rent of Rs.2,00,000
- b) Rent advance of 6 months
- c) deletion of sub ,lease clause from the lease deed

Kindly execute the lease deed at the earliest.

Yours faithfully,
Sd/-
Branch Manager

Letter dated 3.3.2004 (letter of appellant to the respondent)

March 3, 2004.

THE BRANCH MANAGER

Indian Bank

G-6, N.D.S.E.-I

New Delhi-110049.

Sub: M-5, N.D.S.E.-II.

Dear Sir,

With reference to your letter dated March 3, 2004, I regret to inform you that the above mentioned real-estate is no longer available for rent.

Sincerely

VEENA KHANNA

BHAWANI HOUSE

Proprietor"

(underlining added)

9. It is seen that after the earlier correspondence entered into between the parties, and at the stage of appellant/defendant writing her letter dated 1.1.2004, there remained three disagreements; firstly with respect to deletion of the right of the respondent/plaintiff of its claim to entitlement to sub-lease the premises, secondly of entitlement of the

appellant/defendant to advance rent of six months and thirdly of rate of rent. I have put it to the counsel for the appellant/defendant that what was the subject matter which remained which was not agreed upon after the letters dated 1.1.2004 and 3.3.2004, but the counsel for the appellant/defendant could not point out to me any point of disagreement which remained. Obviously no point of disagreement remained because respondent/plaintiff deleted its claim for it being entitled to sub-lease the premises, it also accepted the claim of the appellant/defendant for six months advance rent and also that there was no dispute that rate of rent of Rs.2 lacs would be in accordance with the paras 1 and 2 of the letter dated 1.1.2004 by the appellant/defendant to the respondent/plaintiff. It is extremely relevant and important to note that appellant/defendant in her letter dated 3.3.2004 in reply to the letter dated 3.3.2004 sent by the respondent/plaintiff to the appellant/defendant, did not mention in her letter dated 3.3.2004 as to what point of disagreement remained because this letter dated 3.3.2004 of the appellant/defendant to the respondent/plaintiff does not talk of any clauses which have yet to be agreed upon and this letter only states that the premises of the

appellant/defendant was no longer available for being leased to the respondent/plaintiff. Even in pleadings of the appellant/defendant filed in the trial court it is only generally stated that no concluded contract was arrived at without pleading which was the term on which there was no agreement. So for rent figure of Rs. 2lacs it is not pleaded or shown as to how this figure of rent is not in accordance with paras 1 and 2 of the letter dated 1.1.2004 of the appellant/defendant to respondent/plaintiff. I therefore hold that the trial court has not committed any illegality in holding that there was a concluded contract between the parties as in terms of the final correspondences between the parties dated 1.1.2004 and 3.3.2004 there remained no other points on which and at the end of which there remained disagreement or lack of *consensus ad idem*.

10. I may for the sake of completion of narration note that the respondent/plaintiff has been held entitled by the impugned judgment to differential rent totaling to an amount of Rs.17 lacs for the four years lease period of the new premises. To this amount decreed in favour of the respondent/plaintiff there is adjustment granted to the appellant/defendant with respect to its counter-claim decreed for a

sum of Rs.6 lacs resulting in a decree being passed for the net amount of Rs.11 lacs in favour of the respondent/plaintiff and against the appellant/defendant. As already stated above no interest or costs have been awarded in favour of the respondent/plaintiff.

11. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

01 MARCH, 2018/ Ne

VALMIKI J. MEHTA, J