

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

RSA No. 5747 of 2018 (O&M)

Date of decision : September 05, 2019

HDFC Bank Limited

.....Appellant

Versus

Heera Lal

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.S. Randhawa, Advocate for the appellant.

Mr. Anurag Jain, Advocate for the respondent – caveator.

LISA GILL, J.

This appeal has been preferred by the appellant – plaintiff/HDFC bank challenging judgment and decree dated 23.01.2017 passed by the learned Civil Judge (Junior Division), Panipat as well as judgment and decree dated 24.07.2018 passed by the learned District Judge, Panipat to the extent the counter claim of the respondent – defendant has been decreed.

Brief facts necessary for the adjudication of the case are that the appellant – plaintiff filed a suit for recovery of ₹90,000/- alongwith pendente lite and future rate of interest @ 18% till its realisation. It is pleaded that the plaintiff – Bank entered into a lease deed/agreement dated 12.04.2013 in respect to the premises as described in the plaint and owned by the defendant. The plaintiff took the premises on lease from the defendant, for a period of 09 years from 12.04.2013 to 11.04.2022. A sum of ₹90,000/- was paid to the defendant as a refundable security deposit. The lease agreement is Ex. P1. However, the plaintiff – bank on 23.11.2013 sent a communication to the defendant expressing that he did not need the premises any longer and sought to vacate the same on or before 22.02.2014.

Refund of the security amount was sought. Possession of the premises was handed over, however, the security amount was not refunded. Reimbursement of electric connection expenses was duly made by the plaintiff – bank as demanded by the defendant. Despite request and legal notice dated 26.02.2015, the amount was not refunded by the defendant. Hence, the suit.

Respondent – defendant filed a written statement taking various preliminary objections. A counter claim was filed by the defendant, pleading that actual physical possession of the premises was handed over to the plaintiff - bank on 12.04.2013 for the bank building after completion of civil works on the building at the asking and desire of the plaintiff – bank. The plaintiff, it is stated, remained in possession of the suit property up to 31.03.2014. It is stated that the defendants suffered a loss to the tune of ₹3,80,000/-, which he had incurred on the work carried out in the building as per the desire of the plaintiff. Moreover, ₹60,000/- claimed to be the rent, is stated to be due from the plaintiff towards the defendant. The counter claim for ₹4,40,000/- was set up.

Replication to the written statement as well as reply to the counter claim was filed.

Following issues were framed by the learned trial Court on the basis of the pleadings of the parties:-

1. Whether the plaintiff is entitled to a decree for recovery of Rs.90,000/- as prayed for?OPP
2. Whether the defendant is entitled to a decree for the amount of Rs. 4,40,000/- as recovered from the plaintiff u/o 8 rule 6-A CPC as prayed for in the counter claim?OPD
3. Whether suit is not maintainable in the present form? OPD.

4. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD.
5. Whether the plaintiffs has not come to court with clean hands and has concealed the true and material facts from the Hon'ble Court?OPD
6. Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record vide judgment and decree dated 23.01.2017 decreed the suit of the plaintiff to the effect that it is entitled to ₹90,000/- with interest at the rate of 8% per annum from the date of filing of the suit till realisation. Counter claim filed by the defendant – respondent was also decreed to the effect that he is entitled to a sum of ₹3,80,000/- (and not ₹4,40,000/-) at the rate of 8% per annum from the date of filing of the counter claim till its realisation.

Appeal was filed by the appellant - plaintiff and cross objections by the defendant – respondent. Learned District Judge, Panipat vide impugned judgment and decree dated 24.07.2018 dismissed both the appeal filed by the plaintiff as well as the cross objections filed by the respondent – defendant. Aggrieved therefrom, present appeal has been filed by the plaintiff - bank challenging the decree in favour of the counter claimant.

Learned counsel for the appellant vehemently argues that as per the terms and conditions of the lease deed dated 12.04.2013, the plaintiff – bank was well within its rights to have terminated the lease at any time without assigning any reason, before the expiry of the tenure of the lease, by giving a three months prior notice in writing, to the lessee. Learned counsel refers to Clause III (b) of the lease deed dated 12.04.2013. Learned counsel also refers to Clause B (k) to submit that the lessor had undertaken to

complete all the civil works in the demised premises as mentioned in Schedule 2 of the lease agreement to the full satisfaction of the lessee within thirty days of the handing over of possession of the demised premises, failing which the lessee was entitled to carry out the same through some other person and adjust the cost so incurred, from the rent to be paid to the lessor. The civil work, it is submitted, carried out on the premises in question was as per the terms and conditions of the lease agreement. Therefore, there is no question of the present appellant having to indemnify the defendant for the perceived loss. The said finding of the learned courts below, it is contended, is perverse and the counter claim filed by the respondent should be dismissed in toto. It is further submitted that both the learned courts below have grossly erred in relying upon a written receipt (Ex.DW2/A) tendered on behalf of the defendant in order to assess the expenditure incurred on the said civil work. Learned counsel further argues that in respect to the seepage and leakage of the roof, the lessor in any case was liable to take care of the same, irrespective of who the lessee may be. It is not that the said work was carried out on the specific desire of the appellant. It is, thus, prayed that the present appeal be allowed and the counter claim filed by the defendant – respondent be dismissed.

Learned counsel for the caveator-respondent while refuting the arguments as above submits that the plaintiff – bank had taken the premises on lease for a period of 09 years. The requisite civil work was carried out at the specific desire of the lessee, which is so incorporated in Schedule II of the lease agreement. It is submitted that the plaintiff – bank had not even attached Schedule 2 of the lease agreement and the complete lease agreement with the Schedule was placed on record as Ex.D4 by the

respondent. It is argued that it is due to a mistake on the part of the bank officials that the premises had to be vacated. The branch of the bank had to be opened in a rural area but the premises in question were taken on lease in the urban area due to the negligence on the part of the officials of the bank. The building was taken for a period of 09 years and the necessary works were carried out to the specification of the lessee and huge expenses were incurred by the respondent. The relevant infrastructure was provided only because the respondent was sanguine about the continuance of the lease for a period of 09 years. However, once it came to notice of the concerned bank officials that the branch was to be opened for the Gramin/rural area, notice for termination of the lease was issued. In this situation, both the learned courts below have rightly held the respondent entitled to the expense incurred by him for providing the special civil works as per the specifications of the bank. It is, thus, prayed that this appeal be dismissed.

I have heard learned counsel for the parties and have perused the file as well as a photocopy of the record, which was furnished by learned counsel in Court today.

The question of recovery of ₹90,000/- from the respondent, as ordered by the learned courts below, is not in dispute as the respondent has not challenged the same. The controversy revolves around the question as to whether the respondent – defendant is entitled to a sum of ₹3,80,000/-, as ordered by the learned courts below, on account of the expenses incurred by the respondent on the specific civil works provided as per the desire of the plaintiff – bank. At this stage, it is relevant to note that there is doubtlessly a clause in the lease agreement that the lessee is entitled to terminate the lease at any time before the expiry of tenure of lease without assigning any

reason by giving three months prior notice in writing to the lessor. However, at the same time, it is pertinent to note that there is a specific clause for indemnity provided in the said lease agreement, which reads as under:-

VI. INDEMNITY

Each Party (the “Indemnifying Party”) hereby indemnifies and keeps indemnified the other party against all actions, suits and proceedings and all costs, charges, expenses, claims, demands, loss or damage, which may be incurred or suffered by the other Party by reasons of any breach, default, negligence, contravention, non-observance of conditions, agreements, representations, covenants and provisions contained in this Lease on the part of the indemnifying Party to be observed and performed.

Learned counsel for the appellant is unable to deny that the respondent has taken a specific stand that the branch in question was in fact to be taken on lease for the Gramin/rural area and it is due to the negligence on the part of the officials that the present premises were taken on rent and once the matter came to light, the notice for termination of the lease was issued. It is a matter of record that there is no specific denial of this plea and neither is there any evidence to disprove the same. Learned counsel for the appellant is unable to point out any such evidence on record. As per Schedule 2 attached with the lease deed dated 12.04.2013, there is a detail of the civil works to be completed by the lessor as per the desire of the lessee. The relevant clause reads as under:-

CIVIL WORK:

The Lessor shall at his cost complete all the civil work in the said premises **as desired by the lessee** (emphasis added) as follows:

- Sufficient provisioning of separate water tank on rooftop with availability of water to provide 24 hr. water supply.
- Seepage, if any, will be addressed.
- To provide space for earth pits 6 no's.
- All demolition work required on site and disposal of wastage.
- To provide proper rolling shutters and grills for all openings.
- 24 hours temporary electricity, water supply and toilet facilities during Banks construction.
- To increase the floor level as required by bank and levelling of premises/Bank area as per Bank specification.
- Steps at entrance as per bank specifications in front of entire building entrance in front of the building.
- Water proofing at roof top.

The respondent has examined Indrees son of Babu DW2 to prove the expenses incurred. Ex. DW2/A is the detail of the expenses incurred for the civil works claimed to be demanded by the lessee i.e. ₹1,50,000/- towards raising of the level of the floor/for titles/plaster/wall paper etc., ₹80,000/- for shutters etc. and ₹1,50,000/- for plugging leakage and water proofing of the roof. I do not find any merit in the argument raised by learned counsel for the appellant that Ex.DW2/A is only a hand written estimate, therefore, cannot be relied upon. DW2 the contractor who has carried out the work has specifically deposed in this respect and has duly proved Ex.DW2/A. However, at the same time, it is to be noticed that as far as the water proofing and plugging of the seepage etc. of the roof is concerned, the same would have to be carried out by the lessor in any case, irrespective of who the lessee is. The premises to be given out on rent would have to be made free from leakage etc. The works regarding installation of the shutters etc. and raising of the level of the floor etc. is proved to have been carried out at the instance and specific desire of the lessee. It is

apparent that the said work would not have been carried out in case the building was not leased out to the plaintiff – bank, while water proofing and plugging of the leakage/seepage from the roof is a part of the normal maintenance and upkeep of the building. Therefore, the respondent/counter claimant is held entitled to a sum of ₹2,30,000/- instead of ₹3,80,000/-.

No other argument has been addressed.

With the above said modification in the amount to which the respondent/counter claimant is entitled to recover, this appeal is disposed of.

September 05, 2019
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No